WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING PROFESSIONAL ASSOCIATIONS

MIAMI-DADE OFFICE
2525 PONCE DE LEON BOULEVARD
SUITE 700
CORAL GABLES, FLORIDA 33134

TELEPHONE 305-854-0800
FACSIMILE 305-854-2323
WWW.WSH-LAW.COM

BROWARD OFFICE
200 EAST BROWARD BOULEVARD • SUITE 1900
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE 954-763-4242 • FACSIMILE 954-764-7770

*OF COUNSEL

MITCHELL BIERMAN, P.A.
NINA L. BONISKE, P.A.
MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
MICHAEL S. POPOK, P.A.
JOSEPH H. SEROTA, P.A.
SUSAN L. TREVARTHEN, P.A.
RICHARD JAY WEISS, P.A.
DAVID M. WOLPIN, P.A.

DANIEL L. ABBOTT
AARON BEHAR
GARY L. BROWN
IGNACIO G. DEL VALLE
ALAN L. GABRIEL
DOUGLAS R. GONZALES
EDWARD G. GUEDES
JONATHAN Z. KURRY
MATTHEW H. MANDEL
ALEXANDER L. PALENZUELA-MAURI
ANTHONY L. RECIO
SCOTT A. ROBIN
BRETT J. SCHNEIDER
LAURA K. WENDELL

LORI ADELSON*
LILLIAN M. ARANGO
CARLA M. BARROW*

BROOKE P. DOLARA
RAQUEL ELEJABARRIETA
CHAD S. FRIEDMAN
OLIVER GILBERT
MACADAM J. GLINN
R. BRIAN JOHNSON
JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY*
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
MATTHEW PEARL
JOHN J. QUICK
AMY J. SANTIAGO
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SIBILA
ALISON F. SMITH
ANTHONY C. SOROKA
EDUARDO M. SOTO
JOANNA G. THOMSON
MICHELLE D. VOS
PETER D. WALDMAN
JAMES E. WHITE
DEREK R. YOUNG

January 14, 2011

January 14,

Mayor Jean Rosenfield
Members of the Bal Harbour Village Council
Bal Harbour Village Hall
655 - 96th Street
Bal Harbour, Florida 33154

Re: Ownership, Use, Maintenance and Repair of Property within the Plat of RESIDENTIAL SECTION OF BAL HARBOUR, Plat Book 44, Page 98, Miami-Dade County, Florida

Dear Mayor Rosenfield and Members of the Bal Harbour Village Council:

You have asked us to provide you with detailed information and answer certain questions pertaining to the ownership, use, and maintenance of property located within the Plat of Residential Section of Bal Harbour, Plat Book 44, Page 98, Miami-Dade County, Florida. This letter will set forth the historical background pertaining to the property in question, and respond to questions that relate to Village operating and responsibilities.

We are well aware that there are many legal questions that surround the Residential Section of Bal Harbour. As Village Attorneys, however, we think it is only appropriate for us to answer the questions which affect Village operations. Although this letter leaves many questions unanswered, we do not believe that answering those questions is within our purview as counsel to the Village. They are private matters to be addressed by others.

A. Materials Examined:

The following documents and materials have been reviewed and analyzed.

1. Documents recorded in the Public Records of Miami-Dade County.

   1.1. Deed from the Trustees of the Internal Improvement Fund of the State of Florida to Miami Beach Heights, Inc., a Florida corporation, recorded April 24, 1945 in Deed Book 2501, Page 340, as corrected by Corrective Deed recorded September 9, 1946 in Deed Book 2747, Page 281. **(TAB 1)**

   1.2. Plat of RESIDENTIAL SECTION OF BAL HARBOUR recorded in Plat Book 44, Page 98. **(TAB 2)**

   1.3. Restrictive Covenants set forth in each deed from Miami Beach Heights conveying the lots in the Plat of Residential Section of Bal Harbour, as recorded in Plat Book 44, Page 98[1]. **(TAB 3)**

   1.4. Easement from Miami Beach Heights, Inc. to Florida Power & Light Company dated April 27, 1951 and recorded in Deed Book 3437, Page 310. **(TAB 4)**

   1.5. Assignment from Miami Beach Heights, Inc., a Florida corporation, to Bal Harbour Club, Inc., a Florida non-profit corporation, dated February 23, 1952, and recorded in Deed Book 3567, Page 2. **(TAB 5)**

   1.6. Grant of Easement from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour, dated October 6, 1953, and recorded in Deed Book 3828, Page 206. **(TAB 6)**

   1.7. Warranty Deed from Miami Beach Heights, Inc., a Florida corporation, to Bal Harbour Club, Inc., a Florida non-profit corporation, dated October 6, 1953, and recorded in Deed Book 3828, Page 561. **(TAB 7)**

   1.8. Quit Claim Deed from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour dated February 28, 1952, and recorded in Deed Book 3968, Page 442. **(TAB 8)**

[1] The deeds are too numerous to list, and we have only examined a sampling of them, but each one contains the Restrictive Covenants.

1.9. Plat of RESUBDIVISION OF LOT 21, BLOCK 12 & TRACT "F" – RESIDENTIAL SECTION OF BAL HARBOUR recorded in Plat Book 53, Page 15. **(TAB 9)**

1.10. Assignment and Assumption between Miami Beach Heights, Inc., and Bal Harbour Club, Inc., dated August 2, 1954, and recorded in Deed Book 4022, Page 153. **(TAB 10)**

1.11. Assignment[2] from Miami Beach Heights, Inc., to Bal Harbour Club, Inc., dated February 25, 1955, and recorded in Deed Book 4050, Page 317. **(TAB 11)**

1.12. Resolution and Declaration of Amendments to Covenants and Restrictions for the Residential Section of Bal Harbour dated December 10, 1982, and recorded in Official Records Book 11640, Page 137. **(TAB 12)**

1.13. Resolution and Declaration Concerning the Covenants and Restrictions for the Residential Section of Bal Harbour dated January 18, 1983, and recorded in Official Records Book 11672, Page 267. **(TAB 13)**

1.14. Resolution and Declaration Concerning the Covenants and Restrictions for the Residential Section of Bal Harbour dated January 21, 1983, and recorded in Official Records Book 11686, Page 931. **(TAB 14)**

1.15. Assignment and Confirmation of Assignment from Bal Harbour Club, Inc., a Florida non-profit corporation, to Bal Harbour Civic Association, Inc, a Florida non-profit corporation, recorded February 6, 1992, in Official Records. Book 15377, Page 3530. **(TAB 15)**

1.16. Grant of Easement from Bal Harbour Civic Association, Inc., a Florida non-profit corporation, to Bal Harbour Village, dated June 3, 1995, and recorded in official Records Book 16806, Page 3330. **(TAB 16)**

1.17. Easement from Bal Harbour Manor, Inc. to Bal Harbour Village dated February 5, 1997, and recorded in Official Records Book 17544, Page 204. **(TAB 17)**

1.18. Grant of Easement from Bal Harbour Civic Association, Inc., a Florida corporation not for profit, to Florida Power and Light Company, dated October 31, 2007, and recorded in official Records Book 26293, Page 2194. **(TAB 18)**

[2] There is no title on this document, but it appears to be an assignment.

1.19. Grant of Easement from Bal Harbour Civic Association, Inc., a Florida corporation not for profit, to Bal Harbour Quarzo, LLC, dated June 2, 2009, and recorded in Official Records Book 26940, Page 4680. **(TAB 19)**

2. Title Searches.

2.1. Title Search Report prepared by Attorneys' Title Fund Services, LLC, covering portions of Residential Section of Bal Harbour that are not residential lots, including but not limited to roads, parks and other common areas, according to the plat thereof recorded in Plat Book 44, Page 98, Public records of Miami-Dade County (Effective Date of Search: June 24, 2010) **(TAB 20)**

2.2. Ownership and Encumbrance Report prepared by First American Title Insurance Company, dated December 3, 2010, File No. 1062-2445808. **(TAB 21)**

3. Documents filed with the Florida Secretary of State.

3.1. Certificate of Dissolution for Miami Beach Heights, Inc. dated August 30, 1989, and recorded in Official Records Book 14277, Page 592. **(TAB 22)**

3.2. Articles of Incorporation, as amended, of Bal Harbour Club, Inc. **(TAB 23)**

3.3. Articles of Incorporation of Bal Harbour Civic Association, Inc., filed on February 10, 1984. **(TAB 24)**

4. Other corporate documents.

4.1. By-Laws of the Bal Harbour Civic Association, Inc.[3] **(TAB 25)**

5. Other documents.

5.1. Opinion Letter from Village Attorney Alan Gold to the Village Council dated May 26, 1978. **(TAB 26)**

5.2. Bill of Sale from Bal Harbour Civic Association, Inc. to Bal Harbour Village dated June 3, 1995. **(TAB 27)**

5.3. Letter dated January 12, 2004 from Sandra Dunn, President of the Civic Association, to Alfred Treppeda, Village Manager. **(TAB 28)**

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[3] The copy of the By-Laws we reviewed is not a certified copy. The only date reference is "REV 3/90" at the end of the document.

5.4. Bal Harbour Security District Research dated September 14, 2010, prepared by Ellisa L. Horvath, MMC, Bal Harbour Village Clerk. **(TAB 29)**

5.5. Memorandum from Alfred J. Treppeda, Village Manager, and Ellisa L. Horvath, Village Clerk, to the Mayor and Council of Bal Harbour, dated November 1, 2010, (Research Regarding History of Gated Residential Area). **(TAB 30)**

5.6. Miami-Dade County Real Estate Tax Information for Folio #12-2226-002-2370. **(TAB 31)**

5.7. Portion of survey for 10210 Lanai Condominium, a Condominium, undated. **(TAB 32)**

6. Statutes, Ordinances, and Code Provisions

6.1. Florida Statutes Section 95.361 (Roads presumed to be dedicated). **(TAB 33)**

6.2. Florida Statutes Section 170.01 (Authority for providing improvements and levying and collecting special assessments against property benefited). **(TAB 34)**

6.3. Village of Bal Harbour Resolution No. 279 – A RESOLUTION OF THE BAL HARBOUR VILLAGE COUNCIL ORDERING LOCAL IMPROVEMENTS FOR BAL HARBOUR RESIDENTIAL IMPROVEMENT DISTRICT R-1; ASSESSING THE COST THEREOF; ESTABLISHING THE METHOD OF SSESSMENT; PROVIDING FOR THE CREATION OF AN ASSESSMEMT ROLL AND ESTABLISHING THE TERMS OF PAYMENT. **(TAB 35)**

6.4. Bal Harbour Village, Florida Ordinance No. 264 – AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II ("LOCAL IMPROVEMENTS") BY ADDING A NEW SECTION 16-16A CREATING THE RIGHT TO ESTABLISH SPECIAL ASSESSMENT FOR SECURITY PURPOSES UPON PETITION OF 75 PERCENT OF PROPERTY OWNEERS WITHIN A TAXING DISTRICT; AMENDING BAL HARBOUR CODE SECTIONS 16-17, 16-18, 16-19, AND 16-23 TO CONFORM TO THE PROVISIONS OF SECTION 16-16A; CONTAINING A REPEAL PROVISION AND A SEVERABILITY CLAUSE; PRVIDING THAT THIS ORDINANCE TO BE CODIFIED AND PROVIDING FOR AN EFFECTIVE DATE. **(TAB 36)**

6.5. Village of Bal Harbour Resolution No. 303 entitled RESOLUTION CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT; DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED; PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM; PROVIDING A METHOD TO LEVY SAID ASSESSMENTS; ESTABLISHING THE INITIAL ESTIMATED COST; APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL, adopted January 28, 1986. **(TAB 37)**

6.6. Village of Bal Harbour Resolution No. 304 entitled RESOLUTION EQUALIZING AND ADJUSTING SPECIAL ASSESSMENTS FOR BAL HARBOUR SECURITY PROGRAM, SPECIAL TAXING DISTRICT 85-1; CONFIRMING SPECIAL ASSESSMENT ROLL; DIRECTING RECORDATON BY THE VILLAGE CLERK IN VILLAGE IMPROVEMENT LIEN BOOK; DECLARING SAID ASSESSMENTS TO BE LIENS -- CO-EQUAL WITH THE LEIN OF ALL STATE, COUNTY, DISTRICT AND MUNICIPAL TAXES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN EFFECTIVE DATE, adopted February 25, 1986. **(TAB 38)**

6.7. Village of Bal Harbour Resolution No. 316 entitled RESOLUTION OF BAL HARBOUR VILLAGE TERMINATING A SPECIAL TAXING DISTRICT FOR SECURITY PURPOSES AS CREATED BY RESOLUTION NO. 303; CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT; DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED; PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM; PROVIDING A METHOD TO LEVY SAID ASSESSMENTS; ESTABLISHING THE INITIAL ESTIMATED COST; APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL, adopted September 30, 1986. **(TAB 39)**

6.8. Village of Bal Harbour Resolution No. 464 entitled RESOLUTION OF BAL HARBOUR VILLAGE TERMINATING A SPECIAL TAXING DISTRICT FOR SECURITY PURPOSES AS CREATED BY RESOLUTION NO. 316; CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF

ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT; DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED; PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM; PROVIDING A METHOD TO LEVY SAID ASSESSMENTS; ESTABLISHING THE INITIAL ESTIMATED COST; APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL; PROVIDING FOR AN EFFECTIVE DATE, adopted September 15, 1992. **(TAB 40)**

6.9. Article V of the Bal Harbour Village Code (Special Assessments). **(TAB 41)**

7. Case Law.

7.1. *Smith v. Horn*, 70 So. 435 (Fla. 1915). **(TAB 42)**

7.2. *Servando Building Company v. Zimmerman*, 91 So.2d 289 (Fla. 1956). **(TAB 43)**

7.3. *United States v. 16.33 Acres of Land in County of Dade*, 342 So.2d 476 (Fla. 1977). **(TAB 44)**

8. Attorney General Opinions.

8.1. Florida Attorney General Advisory Legal Opinion 073-222, June 20, 1973 (Maintenance and repair of private roads). **(TAB 45)**

8.2. Florida Attorney General Advisory Legal Opinion 79-14, February 16, 1979 (Public funds, private roads). **(TAB 46)**

8.3. Florida Attorney General Advisory Legal Opinion 85-90, October 30, 1985 (Assessment on unrecorded subdivision). **(TAB 47)**

B. Defined Terms:

For ease of reference, the following terms or abbreviations will have the meaning set forth.

BHC. Bal Harbour Club, Inc., a Florida corporation not for profit.

Civic Association. Bal Harbour Civic Association, a Florida corporation not for profit.

Council or Village Council. The Mayor and council members of the Bal Harbour Village Council.

Lots. The platted lots shown on the Plat.

MBH. Miami Beach Heights, Inc., a Florida corporation

Parks. All of the land labeled as "Park" on the Plat.

Plat. The Plat of RESIDENTIAL SECTION OF BAL HARBOUR, as recorded in Plat Book 44, Page 98.

Property. The land described in the Plat.

Residential Section. The land described in the Plat.

Restrictive Covenants. The 22 restrictions set forth in each deed from MBH conveying the lots in the Residential Section.

Resubdivision Plat. Plat of Resubdivision of Lot 21, Block 12 & Tract "F" – Residential Section of Bal Harbour, as recorded in Plat Book 53, Page 15.

Security District. All of the Lots of the Subdivision other than the West Side Lots.

Streets. The streets designated "Bal Bay Drive," Bal Cross Drive," "Park Drive," "Biscay Drive," "Camden Drive," "Balfour Drive," "Camden Court," and "Harbour Way," on the Plat.

Subdivision. The Plat of RESIDENTIAL SECTION OF BAL HARBOUR, as recorded in Plat Book 44, Page 98.

Village. The Village of Bal Harbour.

Village Memorandum. Memorandum from Alfred J. Treppeda, Village Manager, and Ellisa L. Horvath, Village Clerk, to the Mayor and Council of Bal Harbour, dated November 1, 2010 (Subject: Research Regarding History of Gated Residential Area).

Wall. The white concrete wall that runs along the eastern boundary of the West Side Lots.

West Side Lots. Lots 1 through 10, in Block 7 and Lots 1 through 5, in Block 8, as shown on the Plat, and Lot 1 in Block 8-A of the Resubdivision Plat.

C. **Background:**

Original Subdivision and Conveyances

MBH acquired title to the Residential Section in 1945 by deed from the Trustees of the Internal Improvement Fund of the State of Florida. MBH subdivided the Property by recording the Plat. The Plat contains the following dedication language:

> **The streets designated "Bal Bay Drive", "Bal Cross Drive", "Park Drive", "Biscayne Drive", "Camden Drive", "Balfour Drive", "Camden Court" and "Harbour Way", together with all areas designated "Park" on said plat, are hereby dedicated to the use and enjoyment of the owners of lots in said subdivision, and to them only, so long as said streets and parks shall remain within the corporate limits of Bal Harbour Village, Florida, or in the limits of any town or municipality which directly succeeds said Bal Harbour Village, Florida. In the event any of the streets or parks referred to in this paragraph are taken out of the corporate limits of Bal Harbour Village or any village or municipality which directly succeeds Bal Harbour Village, then in that event said streets and parks are thereupon dedicated to the perpetual use of the public for proper purposes, reserving, however, to Miami Beach Heights, Inc., its successors and assigns the reversion or reversions thereof whenever discontinued by law or otherwise. So long as the streets and parks described in this paragraph shall remain dedicated to the use and enjoyment of the owners of the lots in said subdivision, the County of Dade, the State of Florida, the United States of America (or any political subdivision of any of them) shall have the right at all times to use said streets in the performance of their official functions.**[4]

MBH conveyed the Lots shown on the Plat to third party homeowners subject to the Restrictive Covenants. Under the Restrictive Covenants, MBH retained certain rights, including a right of reverter if an owner violated any of the Restrictive Covenants. (A right of reverter would allow MBH to retake possession of the Lot upon which the violation occurred)

In 1946, the principals of MBH filed a Charter with the Circuit Court to form BHC as a social club not for profit. The original Charter and the subsequent amendments suggest that the

[4] Plat of RESIDENTIAL SECTION OF BAL HARBOUR recorded in Plat Book 44, Page 98.

owners of the Lots were the members of the BHC, but the documents are not clear, and we have been unable to locate the Bylaws for BHC[5].

Between 1952 and 1955, in three separate instruments[6], MBH assigned to BHC all of the rights which MBH had reserved under the Restrictive Covenants, including the right of reverter. In 1983, BHC filed a Resolution and Declaration[7], which extinguished the right of reverter.

In 1984, the Civic Association filed its Articles of Incorporation with the State of Florida. The Articles state that the Civic Association was formed to "exercise, promote and protect the security, privileges and interests of the residents, lot owners and home owners of the residential area of Bal Harbour, Florida; ... to acquire, manage, and supervise the common real property and related facilities located within the residential area of Bal Harbour; to establish facilities for the mutual security and safety of its members...." Anyone owning real property in the Residential Section was qualified for membership, and "real property" was defined to include residential lots and condominium units. However, in the Civic Association's Bylaws, the owners of the West Side Lots were not included as members[8], and the Board of Directors was expressly prohibited from imposing any liability or levy upon the members.[9]

In 1984[10], BHC and the Civic Association recorded an Assignment and Confirmation of Assignment in which BHC assigned to the Civic Association all of the remaining rights,

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[5] According to the Village Memorandum, "it was common knowledge that potential purchasers of Lots had to be approved as members of the Bal Harbor Club first. The Bal Harbour Club seemed to be the fund-raising mechanism for dealing with issues in the single-family residential area. The Bal Harbour Club funded part-time guards at the Harbour Way entry gate."

[6] MBH assigned to BHC its right to approve building plans by the Assignment recorded in Deed Book 3567, Page 2; all of the remaining rights other than the right of reverter by the Assignment and Assumption recorded in Deed Book 4022, Page 153; and finally, the right of reverter by the Assignment and Assumption recorded in Deed Book 4050, Page 317.

[7] Resolution and Declaration Concerning the Covenants and Restrictions for the Residential Section of Bal Harbour dated January 18, 1983, and recorded in Official Records Book 11672, Page 267.

[8] Article II, Section 1, Civic Association Bylaws

[9] Article VIII, Section 4, Civic Association Bylaws

[10] The Assignment and Assumption recorded in Official Records Book 15377, Page 3530 is dated March 1, 1984, but did not get recorded until 1992. The Assignment states that BHC previously

privileges, duties and obligations which MBH had previously assigned to BHC. The last sentence of the Assignment states that **"This Assignment . . . is not intended and shall not be deemed to convey any interest in real property..."**

It does not appear that the Civic Association has any authority to act on behalf of the Lot owners in the conduct of transactions with the Village Although the Civic Association's Articles of Incorporation state that one of its purposes is to **acquire** and manage the common real property located in the Residential Section, there is no recorded conveyance of the Streets or Parks to the Civic Association.

Maintenance of the Streets

Information about the Village's role in the maintenance and operation of the Streets can be found in the Village Memorandum.[11] In 1955, the Council was asked (more than once) if they would be willing to assist BHC in closing the Streets. The Village Manager said that the Village did not have the power to do so.

In 1978, Village Attorney Alan Gold was asked to issue a legal opinion regarding the ownership of the Streets. His opinion stated that "the streets are held in private ownership, subject, however, to the police powers of Bal Harbour Village...." He opined that the Village's powers under Section 8 of the Bal Harbour Village Charter, along with powers reserved to the Village by the Plat, "permit the Village to exercise its police powers over the streets and to otherwise, pursuant to Section 16-16, Code of Bal Harbour Village[12], impose the cost of construction, reconstruction, repair, repaving and resurfacing of streets by special assessment against the properties deemed to be benefitted thereby."[13] Relying on a 1973 Attorney General's Opinion,[14] Mr. Gold stated that the Village could not expend ad valorem tax dollars for minor repair work or maintenance of the streets.[15]

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assigned certain rights, privileges, duties and obligations to the Civic Association, but for "unexplained reasons" the assignment was never recorded.

[11] Village Memorandum, pages 7-9.

[12] Section 16-16 of the 1974 Village Code is now Section 18-112

[13] Opinion Letter from Village Attorney Alan Gold to the Village Council dated May 26, 1978.

[14] Florida Attorney General Advisory Legal Opinion AGO 073-222, June 20, 1973.

[15] In a footnote, he acknowledged that "the Village has also swept the streets and intermittently performed minor repairs, the cost of which has been paid from the general ad valorem tax fund of the Village

In 1982, the Village adopted Resolution No. 279 to create a local improvement district (Residential Improvement District R-1) for the purpose of assessing costs to replace the storm water drainage facilities and the repaving and resurfacing of the Streets. The Resolution provided for the cost for the drainage improvements to be paid by the Village[16], and the cost of the Street repairs to be paid by special assessment against the benefitted Lots. It is worth noting that only two of the West Side Lots were included in the Lots to be assessed – the corner lots which directly abutted a Street. Presumably the other West Side Lots were not viewed as being benefitted by the improvements because they did not abut a Street, even though they had access to the Streets at that time.

Maintenance of the Parks

Village staff was not able to identify any specific date when the Village started maintaining the Parks.[17] Based upon the Village Memorandum, it appears that Park maintenance was performed by the Village from the very beginning of the incorporation of Bal Harbour Village, and that the open spaces were initially available for use by those residing both inside and outside of the Residential District.[18] At a meeting on June 6, 1950, the Council approved money to be used to install sprinkler systems in the various park areas along Harbour Way from Collins Avenue to the Yacht Basin. The Village Manager asked to use Village funds to install sprinklers in the Park area behind the apartments in Block 7 (the open space along Park Drive). The Council approved money from surplus to install a sprinkler system in the Park in Block 8 on June 16, 1952. In 1953, the Council approved funds to install sprinkler systems in several of the Park areas.

Creation of the Security District

During 1984, Village Manager Fred Maley was approached by members of the Civic Association about creating a Special Taxing District to provide the security guard services, which were previously furnished by BHC. He outlined the procedure under the County code to

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[16] We suspect that the drainage improvements were paid for by the Village because the Village owns the drainage improvements by virtue of the Quit Claim Deed from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour dated February 28, 1952, and recorded in Deed Book 3968, Page 442. While the instrument is titled "Quit Claim Deed," it does not appear to convey any interest in real estate, only an interest in the referenced utility installations.

[17] The Parks are actually just open space areas on the Plat.

[18] Village Memorandum, Page 6.

be followed. This procedure included a petition and an election, possibly by mail ballot. The Council approved the concept. However, at the November 27, 1984 Bal Harbour Village Council meeting, Manager Maley explained that the special taxing district was not permitted by the County because of the private street dedication.[19]

In 1985, Village Attorney Alan Gold suggested that in order for the Village to take over the security for the Residential Section, the local improvement section of the Village Code should be amended to provide for security purposes. On June 25, 1985, the Council adopted Ordinance No. 264, providing for assessment of the residents for security purposes.[20]

In January 1986, the Village Council adopted Resolution No. 303, which created a Special Taxing District to assess the lots in District 3 for the purpose of providing a security program to be financed from the special assessments collected from the owners within the taxing district. District 3 included all of the Property in the Subdivision except for the West Side Lots and Tracts D and G. The purpose of the Special Taxing District was to provide one uniformed, unarmed security guard, to be stationed in a guardhouse 24 hours a day, 7 days a week, 365 days a year. Included in Resolution No. 303 was an agreement between the Village and the Civic Association authorizing the Civic Association to implement the security program on behalf of the Village. Resolution No. 304, adopted in February 1986, approved the assessment roll for the Special Taxing District.

Nine months later, on September 30, 1986, the Village Council adopted Resolution No. 316, which terminated the Special Taxing District created under Resolution No. 303, and created a "New Taxing District." The New Taxing District was identical to the Special Taxing District created under Resolution No. 303; the only difference was in the manner of allocating the assessments. Resolution No. 316 also included an agreement between the Village and the Civic Association authorizing the Civic Association to implement the security program on behalf of the Village.

In September 1992, the Village Council adopted Resolution No. 464, which terminated the "New Taxing District" created by Resolution 316, and created another "New Taxing District. The same Lots were included in this New Taxing District; but the services to be provided were changed to include the operation and maintenance of an unattended gate at Bal Bay Drive as well as the operation and maintenance of automated gates at Harbor Way. Resolution No. 464 did not include an agreement with the Civic Association, but it appears that the agreement signed by the Village and the Civic Association in 1986 remained in effect until it was terminated by the Civic

[19] This chronology is taken from the Village Memorandum.

[20] Village Memorandum, Page 3.

Association in 2004[21] In its letter of termination, the Civic Association stated its intention to no longer act as agent for the Village in operating the Security District. The Civic Association acknowledged that it was terminating the agency agreement because the administration of the agreement had become "the subject of some contention between some of the residents and the board [of the Civic Association].

Currently, the Village administers the security program for the Security District.[22]

Utility Easements

The utility easements within the Subdivision were initially created by the Plat. In the "Dedications and Reservations" section of the Plat, MBH reserved to itself, its successors and assigns, a perpetual easement over, under, and across five feet wide strips of land off the rear or sides of various lots, all shown with dotted lines on the Plat, for the purpose of constructing, installing, maintaining, and repairing public utilities in these areas.

In 1951, MBH transferred to Florida Power & Light Company the underground electric distribution system, which MBH had constructed and installed in the Town of Bal Harbour Village and in the Subdivision. In the transfer document[23] MBH also assigned the right to use the easements reserved by the Plat, but made it clear that the easements were not exclusive to the grantee.

In 1952, MBH conveyed to the Village by Quit Claim Deed all of its right, title and interest in the water system, sanitary sewer system, storm sewer system, and electric street lighting system "lying and being in the Village of Bal Harbour, Town of Surfside and City of Miami Beach, **together with all rights, privileges duties and obligations contained in each and every agreement, now in force and effect, that has heretofore been made and entered into by the Grantor with any and all parties whatsoever."**[24] We have so far been unable to

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[21] Letter dated January 12, 2004 from Sandra Dunn, President of the Civic Association, to Alfred Treppeda, Village Manager.

[22] Village Memorandum, Page 5.

[23] Easement from Miami Beach Heights, Inc. to Florida Power & Light Company dated April 27, 1951 and recorded in Deed Book 3437, Page 310.

[24] Quit Claim Deed from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour dated February 28, 1952, and recorded in Deed Book 3968, Page 442. While the instrument is titled "Quit Claim Deed," it does not appear to convey any interest in real estate; only an interest in the referenced utility installations.

locate any other agreements entered into by MBH to ascertain what, if any, additional rights, privileges, duties or obligations were conveyed to the Village by this Quit Claim Deed.

Although the water, sanitary sewer and storm sewer systems were conveyed to the Village by the 1952 Quit Claim Deed from MBH, the Quit Claim Deed did not include any easement rights to allow the Village to enter upon the Property to maintain the utility lines. Relying on the records of the Miami-Dade County Property Appraiser, which show the Streets and Parks to be owned by the Civic Association, in 1995 the Civic Association recorded a Grant of Easement to the Village, granting an easement for utilities and for ingress and egress over, under and through the Streets and Parks for the sole purpose of operating, maintaining, repairing and replacing utilities.[25] The Grant of Easement recites that the Civic Association has the authority to act on behalf of the owners of the Lots within the Residential Section with regard to their common interests in the Streets and Parks. At the time, based on the Property Appraiser's records, both the Village and the Civic Association believed that the Civic Association owned the Streets and Parks, but there is nothing in the documents referenced in the Grant of Easement to support that position.[26]

Relying on the same authority set forth in the Grant of Easement to the Village, in 2008 the Civic Association granted to Florida Power & Light Company an easement for utilities and for ingress and egress over, under and through the Streets and Parks. In 2009, the Civic Association granted to Bal Harbour Quarzo, LLC, an easement for use, access, and limited ingress and egress over a portion of Bal Bay Drive for the purpose of constructing, operating and maintaining an entryway feature and roundabout.

Although the Civic Association does **not** have authority to act on behalf of the Lot owners with regard to the Streets and Parks, the Grants of Easement it delivered were presumably required by the grantee service providers (including the Village). Since there is no other entity with authority to represent the Lot owners, and since the Miami-Dade County Property Appraiser's records show the Civic Association as the owner of the Streets and Parks[27], the delivery and acceptance of the Grants of Easement is not surprising.

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[25] Grant of Easement from Bal Harbour Civic Association, Inc., a Florida non-profit corporation, to Bal Harbour Village, dated June 3, 1995, and recorded in official Records Book 16806, Page 3330.

[26] As recently as July 2010, Attorneys' Title Fund Services provided us with a Title Search Report stating that title to the Streets and Parks was vested in the Civic Association.

[27] Miami-Dade County Real Estate Tax Information for Folio #12-2226-002-2370.

The Wall

One of the "mysteries" of the Subdivision is the origin of the Wall. Village staff has not been able to determine who built the Wall. It appears from a survey of one of the West Side Lots[28] that the Wall is on Park property. In 1959 and 1960, the Village Council approved the expenditure of funds to paint the Wall.[29] These expenditures predated any of the special assessments for security or improvement of the Streets, and, according to the Village Manager, were most likely paid out of the Village's general funds.

D. <u>The Village's Questions:</u>

Who holds title to the Streets?

Although the answer to this question is not entirely clear, our best judgment is that a court would find that the underlying fee title to the Streets is owned by the abutting lots owners. We base this judgment on the conclusions of First American Title Insurance Company[30] and our own research.[31] The Streets are clearly **not** owned by either BHC or the Civic Association.

Since at least 1887, as announced by the Florida Supreme Court in *Florida Southern Ry. Co. v. Brown,* 1 So. 512 (Fla. 1887), the rule in Florida is that where one conveys a lot bounded by a street and the grantor owns the fee to the street, in order to give effect to the presumed intention of the parties, the deed of conveyance will be construed so that in addition to conveying title to the lot, it also conveys fee title to the abutting street to the center of the street. This rule has been consistently applied by the Florida Supreme Court throughout the years, see *Smith v. Horn*, 70 So. 435 (Fla. 1915), *Servando Bldg. Co. v. Zimmerman*, 91 So.2d 289 (Fla. 1956) and *United States v. 16.33 Acres of Land in County of Dade*, 342 So.2d 476 (Fla. 1977).

The presumption that the parties intended that the deed conveys title to the abutting street arises from the fact that due to the size of the abutting street parcel, the grantor would not be able

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[28] Portion of survey for 10210 Lanai Condominium, a Condominium, undated.

[29] Village Memorandum, Page 6.

[30] Ownership and Encumbrance Report prepared by First American Title Insurance Company, dated December 3, 2010, File No. 1062-2445808.

[31] There is also some authority for the Village to claim title to the Streets. See Florida Statute §95.361. We have had no indication from the Village that it wishes to pursue this avenue, and therefore have not addressed it in this letter.

to put the abutting street parcel to any practical use and it therefore has little, if any, value to the grantor, but by supplementing the size of the grantee's abutting lot, the grantee would be able to put the abutting street parcel to practical use, and therefore is of significant value to the grantee. In the courts' view, it is so contrary to reason that the parties would intend that the grantor reserve an interest which is essentially valueless to the grantor when that interest is of significant value to the grantee, that the courts are not going to presume that the parties intended such a result. If the parties really do intend this result, that intention needs to be explicitly and clearly stated.

Although the above-cited cases primarily involved abutting streets which had been dedicated for public use, the policy considerations are equally applicable to private streets and, therefore, the same result should be reached in the case of private streets. In fact, in *Servando Bldg. Co. v. Zimmerman, supra,* the court, in addition to applying the rule to the publicly dedicated street abutting the lots in question, applied the rule to the private alleyway abutting the lots in question.

At the time MBH filed the Plat for the Residential Section, it clearly owned fee title to the Streets created by the Plat. In order to establish that the ownership of the streets subsequently vested in the abutting lot owners, it is necessary to review the deeds out of the MBH to ascertain whether those deeds explicitly exclude or reserve MBH's interest in the abutting streets. First American Title Insurance Company, in examining the title to the Streets, reviewed a sampling of the deeds from MBH conveying individual Lots, and none of them purported to reserve or exclude MBH's interest in the abutting streets.[32]

Because the Streets are privately owned, the Village has no obligation to maintain them. General funds of the Village should not be used for this purpose.

Who holds title to the Parks?

The underlying fee simple title to the Parks was never conveyed out by MBH. Unlike the Streets, where the owners of the abutting Lots are deemed to own the underlying title up to the centerline of the Street, absent a specific conveyance, the Parks remain in the ownership of the original developer, MBH, subject to the Plat dedication of the Parks to the use and enjoyment of

[32] As Glenn Lee, Associate Counsel for Underwriting for First American Title wrote in an email, "I would be surprised, no astounded, if any of these documents contained anything which would cause us to rethink our conclusions. I have never seen a deed out of any developer anywhere which reserved an interest in abutting streets." Email from Glenn Lee to Ignacio del Valle dated November 4, 2010.

the Subdivision Lot owners[33]. Since MBH was voluntarily dissolved on May 20, 1955[34], title is vested in the Last Board of Directors of MBH, a dissolved Florida corporation, as trustees for the benefit of creditors and shareholders of the corporation. Because the Parks are privately owned, the Village has no obligation to maintain them. General funds of the Village should not be used for this purpose.

Are owners of the West Side Lots entitled to the use the Parks and Streets in the Security District?

The West Side Lots are located on the west side of Collins Avenue, and are included within the boundaries of the Plat. The West Side Lots are improved with multi-family apartment, cooperative, and condominium buildings. The dedication on the Plat states:

> The streets designated "Bal Bay Drive," Bal Cross Drive," "Park Drive," "Biscay Drive," "Camden Drive," "Balfour Drive," "Camden Court," and "Harbour Way," together with all areas designated "Park" on said plat are hereby dedicated **to the use and enjoyment of the owners of the lots in said subdivision**, and to them only, so long as said streets and parks shall remain in the corporate limits of Bal Harbour Village, Florida.

Since the apartment units on the west side of Collins Avenue are located on Lots within the Subdivision, the owners of these Lots (and their tenants) are clearly entitled to use the Streets and Parks within the gated portion of the Residential Section. The Plat makes no distinction between the Lots on the west side of Collins Avenue, and any other Lots in the Subdivision. The Plat dedication did not contemplate the installation of a gate separating the Lots on the west side of Collins Avenue from the other lots in the Subdivision. The West Side Lot owners cannot legally be prohibited from using the Parks and Streets, and the security gates should not be used to deprive the West Side Lot owners of this right.

Who owns the concrete Wall that separates the Security District from the West Side Lots? Who is responsible for maintenance of the Wall?

From the information that we have, it is impossible to determine who owns the Wall. It is clear from our research, however, that the Village does not own the Wall; it is privately owned. Because it is privately owned, the Village should not spend general funds to maintain or repair

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[33] Ownership and Encumbrance Report prepared by First American Title Insurance Company, dated December 3, 2010, File No. 1062-2445808.

[34] Certificate of Dissolution for Miami Beach Heights, Inc. dated August 30, 1989, and recorded in Official Records Book

the Wall. It appears that the Wall is located on Park property, and is therefore part of the Parks. The Village has no record of who built the wall, and no survey showing the exact location of the Wall. A survey of the Lanai Condominium, located on one of the West Side Lots, was provided to the Village in 2010. That survey shows the Wall lying immediately outside the boundary of the Lanai Condominium Lot.

Are there any easements between the Bal Harbour Civic Association and the Village regarding any land in the gated area?

The following easement from the Bal Harbour Civic Association is recorded in the Public Records of Miami-Dade County:

> Grant of Easement from Bal Harbour Civic Association in favor of Bal Harbour Village, dated June 3, 1995, and recorded on June 7, 1995 in Official Records Book 16806, Page 3330 (for the operation, maintenance, repair and replacement of water and sewer transmission and distribution facilities, and surface and stormwater drainage systems).

As stated above, all of the Grants of Easement recite that the Civic Association has the authority to act on behalf of the owners of the Lots within the Residential Section with regard to their common interests in the Streets and Parks. At the time these easements were prepared, based on the Property Appraiser's records, both the Village and the Civic Association believed that the Civic Association owned the Streets and Parks. However, there is nothing in the documents referenced in the Grant of Easement to support that position. To the contrary, the Assignment and Confirmation of Assignment from BHC to the Civic Association expressly states that "it is not intended and shall not be deemed to convey any interest in real property."[35]

May the Village maintain the storm drainage system in the gated portion of the Residential Section using general funds?

Since the storm sewer system was conveyed to the Village in 1952[36], the Village may pay for the cost of maintaining the storm drainage system using the Village's general funds. The storm sewer system includes the concrete gutters and curbs where the drainage facilities are located.

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[35]Assignment and Confirmation of Assignment from Bal Harbour Club, Inc., a Florida non-profit corporation, to Bal Harbour Civic Association, Inc, a Florida non-profit corporation, recorded February 6, 1992, in Official Records. Book 15377, Page 3530.

[36] Quit Claim Deed from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour dated February 28, 1952, and recorded in Deed Book 3968, Page 442.

May the Village maintain the water and sewer system in the gated portion of the Residential Section using general funds?

Since the water supply and sanitary sewer systems were conveyed to the Village in 1952[37], the Village should maintain these facilities and should pay for the maintenance costs from the Village's Water and Sewer Fund.

Please do not hesitate to contact us if you have any further questions.

Respectfully submitted,

Richard Jay Weiss

Gail D. Serota

cc: Alfred Treppeda, Village Manager (w/enc)
Ellisa L. Horvath, MMC, Village Clerk (w/enc)

[37] Quit Claim Deed from Miami Beach Heights, Inc., a Florida corporation, to Village of Bal Harbour dated February 28, 1952, and recorded in Deed Book 3968, Page 442.

BOOK 2501 PAGE 340

Internal Improvement Fund, State of Florida

DEED NO. 19053

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under and by virtue of the authority of Section 253.12, Florida Statutes 1941 and according to the provisions and procedure provided for in Section 253.13, Florida Statutes 1941, and for and in consideration of the sum of Ten Thousand and 00/100 Dollars, to them in hand paid by MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, whose principal office is in Miami Beach, Dade County, Florida, receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed to the said MIAMI BEACH HEIGHTS, INC. and their successors and assigns, forever, the following described lands, to-wit:

All of the submerged lands situated adjacent to Government Lots 1, 2, 3, and 5, Section 26, Township 52 South, Range 43 East, lying wholly within the confines of the westerly, northwesterly and northerly face of the concrete bulkhead now in place. The courses and distances of the confines of said concrete bulkhead being more particularly described as follows:

Beginning at the intersection of the center line of 96th St. and the westerly face of the concrete bulkhead situated on the easterly shore of Indian Creek (Biscayne Bay), (said intersection being 1,269.4 feet west of the intersection of the westerly line of Harding Avenue produced northerly, with the center line of 96th Street. The last mention intersection is shown and designated as "Point of Beginning" on a plat entitled "OCEAN FRONT SECTION OF BAY HARBOR" and recorded in Plat Book 44, Page 27, Public Records of Dade County, Florida. The said distance of 1,269.4 feet being measured along the center line of 96th Street produced westerly).

Thence run northerly along the westerly face of said concrete bulkhead, along the arc of a circular curve deflecting to the left and having for its elements a central angle of 9° 48' 45" and a radius of 2,006.29 feet, a distance of 343.60 feet to a point (the chord of the last mentioned circular curve deflecting to the right from the center line of said 96th. Street 82° 58' 04", length of chord being 343.18 feet, said point also being the Point of Tangency of the said circular curve;)

Thence run along the westerly face of said concrete bulkhead, along a line tangent to the last mentioned circular curve, a distance of 598.11 feet to the point of curvature of a circular curve;

Thence run along the arc of a circular curve deflecting to the left and having for its elements a central angle of 12° 37' 50" and a radius of 1,000.0 feet, a distance of 220.44 feet to the point of reverse curvature;

Thence run along the arc of a circular curve deflecting to the right and having for its elements a central angle of 24° 57' 10" and a radius of 530.0 feet, a distance of 230.82 feet to the point of reverse curvature of a circular curve;

Thence run along the arc of a circular curve deflecting to the left and having for its elements a central angle of 12° 55' 04" and a radius of 2,658.0 feet, a distance of 599.27 feet to the point of tangency of said circular curve;

Thence run tangent to the last mentioned curve along the westerly face of said concrete bulkhead, a distance of 402.8 feet to a point; Thence run along a line deflecting to the right 3° 31' 04" from the last mentioned course, across the Yacht Basin opening, a distance of 404.47 feet to a point on the westerly face of said concrete bulkhead; Thence run along the westerly face of said bulkhead, along a line deflecting to the left 1° 50' 51" from the last mentioned course a distance of 186.15 feet to the point of curvature of a circular curve, deflecting to the right and having for its elements a central angle of 40° 45' 00" and a radius of 985.0 feet, a distance of 700.85 feet to the point of compound curvature of a circular curve; Thence run along the arc of a circular curve deflecting to the right, along the northwesterly face of said bulkhead, and having for its elements a central angle of 25° 30' 00" and a radius of 2,404.0 feet, a distance of 1,069.92 feet to the point of compound curvature; Thence run along the northwesterly face of said bulkhead, along the arc of a circular curve deflecting to the right and having for its elements a central angle of 38° 03' 47" and a radius of 302.61 feet, a distance of 195.15 feet to the point of tangency of said circular curve, said point being on the northerly face of the concrete bulkhead situated on the southerly shore of Baker's Haulover, containing Twenty (.0) acres, more or less, lying and being in Dade County Florida.

TO HAVE AND TO HOLD the said above mentioned and described land and premises, and all the title and interest of the Trustees therein as granted to them by Section 1061 of the Revised General Statutes of Florida,

unto the said... MIAMI BEACH HEIGHTS, INC.

and their heirs and assigns, forever.
~~heirs~~ successors

SAVING AND RESERVING unto the Trustees of the Internal Improvement Fund of Florida, and their successors, an undivided three-fourths interest in and title in and to an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on or under the said above described lands, and an undivided one-half interest in and title in and to an undivided one-half interest in all the petroleum that is or may be in or under the said above described land, with the privilege to mine and develop the same.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and affixed their seals, and have caused the seal of the DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, at the Capitol, in the City of Tallahassee, on this the 27th day of March, A. D. Nineteen Hundred and forty-five.

Governor. (SEAL)

Comptroller. (SEAL)

Treasurer. (SEAL)

Attorney-General. (SEAL)

Commissioner of Agriculture. (SEAL)

State of Florida, County of Dade:
This instrument was filed for record the 27 day of April 1945 at 9:22 AM and duly recorded in Record Book 2501 on Page 340 File No. U 26983

E. B. LEATHERMAN
Clerk Circuit Court
By M Fetters D.C.

41

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

CORRECTIVE DEED

No. 19053"A".

WHEREAS, the Trustees of the Internal Improvement Fund of the State of Florida, in Deed No. 19053 under date of March 27, 1945, conveyed to Miami Beach Heights, Inc., "a corporation organized and existing under the laws of the State of Florida", whose principal office is in Miami Beach, under the authority of Section 253.12, Florida Statutes 1941 and according to the provisions and procedure provided for in Section 253.13 Florida Statutes 1941, and for and in consideration of the sum of Ten Thousand and 00/100($10,000) dollars, the following described land in Dade County, State of Florida to-wit:

All of the submerged lands situated adjacent to Government Lots 1, 2, 3, and 5, Section 26, Township 52 South, Range 42 East, lying wholly within the confines of the westerly, northwesterly and northerly face of the concrete bulkhead now in place. The courses and distances of the confines of said concrete bulkhead being more particularly described as follows:

Beginning at the intersection of the center line of 96th St. and the westerly face of the concrete bulkhead situated on the easterly shore of Indian Creek (Biscayne Bay), (said intersection being 1,269.4 feet west of the intersection of the westerly line of Harding Avenue produced northerly, with the center line of 96th Street. The last mentioned intersection is shown and designated as "Point of Beginning" on a plat entitled "OCEAN FRONT SECTION OF BAY HARBOR" and recorded in Plat Book 44, Page 27, Public Records of Dade County, Florida. The said distance of 1,269.4 feet being measured along the center line of 96th Street produced westerly).

Thence run northerly along the westerly face of said concrete bulkhead, along the arc of a circular curve deflecting to the left and having for its elements a central angle of 9 degrees 48' 45" and a radius of 2,006.29 feet, a distance of 543.60 feet to a point (the chord of the last mentioned circular curve deflecting to the right from the center line of said 96th Street 82 degrees 58'04", length of chord being 543.18 feet, said point also being the Point of Tangency of the said circular curve,)

Thence run along the westerly face of said concrete bulkhead, along a line tangent to the last mentioned circular curve, a distance of 598.11 feet to the point of curvature of a circular curve;

Thence run along the arc of a circular curve deflecting to the left and having for its elements a central angle of 12 degrees 37' 50" and a radius of 1,000.0 feet, a distance of 220.44 feet to the point of reverse curvature;

Thence run along the arc of a circular curve deflecting to the right and having for its elements a central angle of 24 degrees 57' 10" and a radius of 530.0 feet, a distance of 230.82 feet to the point of reverse curvature of a circular curve;

Thence run along the arc of a circular curve deflecting to the left and having for its element a central angle of 12 degrees 35' 04" and a radius of 2,658.0 feet, a distance of 599.27 feet to the point of tangency of said circular curve;

Thence run tangent to the last mentioned curve along the westerly face of said concrete bulkhead, a distance of 462.8 feet to a point; Thence run along a line deflecting to the right 2 degrees 31' 04" from the last mentioned course, across the Yacht Basin opening, a distance of 464.47 feet to a point on the westerly face of said concrete bulkhead. Thence run along the westerly face of said bulkhead,

Best Copy Available

Beginning at the intersection of the center line of 96th Street and the westerly face of the concrete bulkhead situated on the easterly shore of Indian Creek (Biscayne Bay), said intersection being 1,269.4 feet west of the intersection of the westerly line of Harding Avenue produced northerly, with the center line of 96th Street, the last mentioned intersection is shown and designated as "Point of Beginning" on a plat entitled "OCEAN FRONT SECTION OF BAY HARBOR" and recorded in Plat Book 44, Page 27, Public Records of Dade County, Florida, The said distance of 1,269.4' feet being measured along the center line of 96th Street produced westerly).

Thence run northerly along the outside face of said concrete bulkhead along the arc of a circular curve deflecting to the left, having a central angle of 6 degrees 11' 49.547", a radius of 2078.531 feet, a distance of 224.814 feet.
Thence along the arc of a circular curve deflecting to the left, having a central angle of 3 degrees 37' 01.829", a radius of 1882.40 feet, a distance of 118.838 feet, to the point of tangency (P. T.) of said circular curve;
Thence North 15 degrees 25' 21.18" West a distance of 599.761 feet.
Thence along the arc of a circular curve deflecting to the left having a central angle of 12 degrees 23' 22", a radius of 1002.874 feet, a distance 216.868 feet, to the Point of Tangency (P. T.) of said circular curve;
Thence North 28 degrees 48' 43.18" West a distance of 6.99 feet;
Thence along the arc of a circular curve deflecting to the right having a central angle of 14 degrees 37' 32.40", a radius of 521.989 feet, a distance of 133.246 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 2 degrees 48' 56.10", a radius of 712.502 feet, a distance of 34.550 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 7 degrees 25' 13.14", a radius of 358.012 feet, a distance of 46.366 feet;
Thence tangent North 3 degrees 59' 21.54" West, 11.159 feet;
Thence along the arc of a circular curve deflecting to the left, having a central angle of 12 degrees 59' 08.653", a radius of 2651.767 feet, a distance of 601.007 feet;
Thence tangent North 16 degrees 58' 30.193" West a distance of 410.00 ft;
Thence North 17 degrees 08' 39.119" West a distance of 53.212 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 26 degrees 03' 18.251", a radius of 150 feet, a distance of 68.212 feet;
Thence North 14 degrees 59' 06.418" West a distance of 337.390 feet across the mouth of the Private Yacht Basin;
Thence North 15 degre45'54" West a distance of 156.160 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 40 degrees 45' 14", a radius of 984.786 feet a distance of 700.469 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 25 degrees 30' 00", a radius of 2392.330 feet, a distance of 1064.730 feet;
Thence along the arc of a circular curve deflecting to the right, having a central angle of 26 degrees 49' 45.741", a radius of 327.154 feet, a distance of 153.194 feet, to a point, said point being the intersection of the out-side face of said concrete bulkhead with the South property line of Baker's Haulover District as described in deed filed in Deed Book 1453, Pages 5 & 7 of the Public Records of Dade County, Florida, containing 88 acres, more or less, lying and being in Dade County, Florida.

TO HAVE AND TO HOLD the said above mentioned and described land and premises, and of all the title and interest of the Trustees therein as granted to them by Section 253.12, Florida Statutes 1941 and conveyed by the proceedings and procedure provided for in Section [illegible] Florida Statutes 1941, unto the said Bay Harbor Islands, Inc., [illegible]

the petroleum that is or may be in or under the said above described land with the privilege to mine and develop the same.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and affixed their seal, and have caused the seal of the "DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, at the Capitol, in the City of Tallahassee, on this the 24th day of August, A. D. 1946.

_____ (SEAL).
Governor

_____ (SEAL).
Comptroller

J. Edwin Larson (SEAL).
Treasurer

_____ (SEAL).
Attorney General

_____ (SEAL).
Commissioner of Agriculture

As and constituting the Trustees of the Internal Improvement Fund of the State of Florida.

THE STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE
NATHAN MAYO, COMMISSIONER
TALLAHASSEE

LAND DIVISION

FLORIDA

August 29, 1946

Mr. Fred E. Zurwelle, President
Zurwelle-Whittaker, Inc.
605 Lincoln Road
Miami Beach 39
Florida

Dear Mr. Zurwelle:

Complying with your request of August 20th there is enclosed herewith Corrective Deed No. 19053"A" and receipt to be signed and returned to this office.

You will note that this deed is not signed by the Attorney General. He declines to sign sovereignty deeds, but I shall refer you to "Hicks vs. State, ex rel; Landis, Attorney General, et al - 116 Florida Reports, Page 603 - 156 South, Page 603, relative to majority of Trustees' signatures.

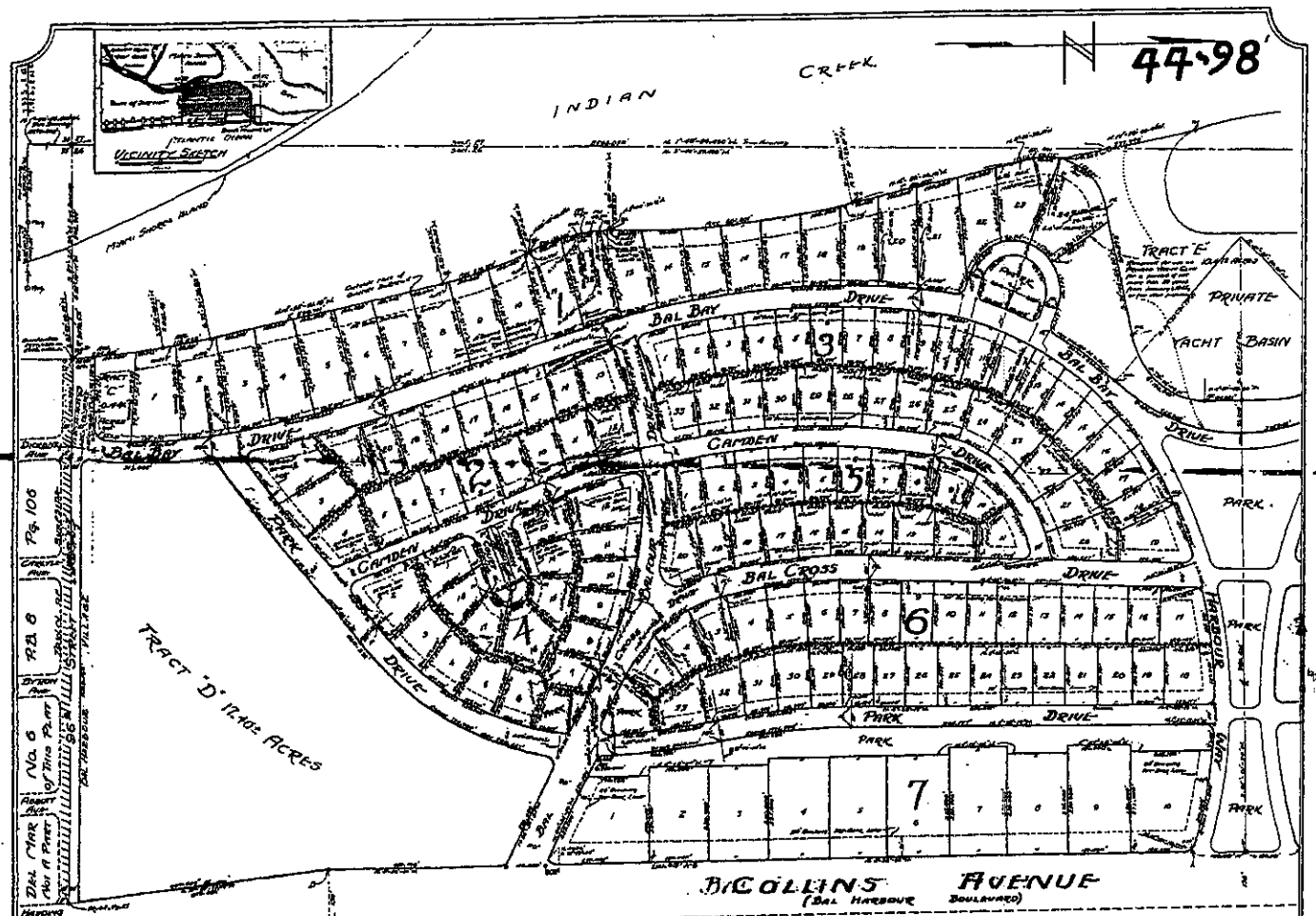
Yours very truly,

Nathan Mayo
Commissioner of Agriculture

/p

encl. 2

State of Florida, County of Dade.
This instrument was filed for record the 9 day of Sept
1946 at 4:22 P.M. and duly recorded in Rec'd
Book 2747 on Page 281 File No. V-73155
E. B. LEATHERMAN
Clerk Circuit Court
By M. E. Cahill D.C.



RESIDENTIAL SECTION OF

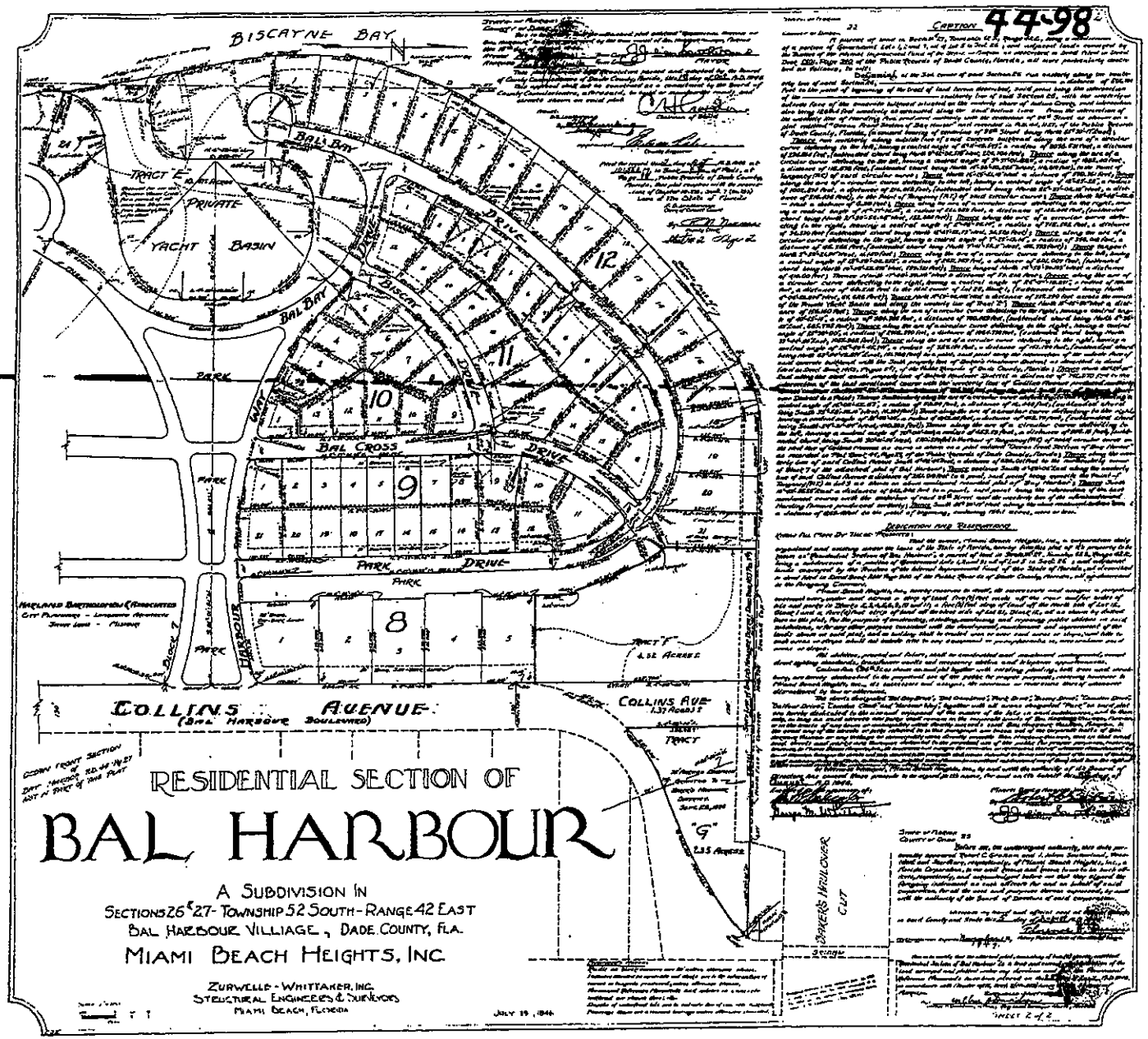
BAL HARBOUR

A SUBDIVISION IN
SECTIONS 26 & 27 - TOWNSHIP 52 SOUTH - RANGE 42 EAST
BAL HARBOUR VILLAGE, DADE COUNTY, FLA.
MIAMI BEACH HEIGHTS, INC.

HAREWOOD BARTHOLOMEW & ASSOCIATES
CITY PLANNERS · LANDSCAPE ARCHITECTS
SAINT LOUIS - MISSOURI

ZURWELLE-WHITTAKER, INC.
STRUCTURAL ENGINEERS & SURVEYORS
MIAMI BEACH, FLORIDA.

JULY 25, 1946


BISCAYNE BAY
BAL BAY
TRACT "E"
PRIVATE
YACHT BASIN
BAL BAY
BISCAY
DRIVE
PARK
WAY
BAL CROSS
DRIVE
PARK
PARK DRIVE
PARK
HARBOUR
BLOCK 7
TRACT "F"
4.52 ACRES
COLLINS AVENUE
(BAL HARBOUR BOULEVARD)
COLLINS AVE
TRACT
"G"
2.35 ACRES
BAKER'S HAULOVER CUT
CAPTION 44-98
DEDICATION AND RESERVATIONS
RESIDENTIAL SECTION OF
BAL HARBOUR
A SUBDIVISION IN
SECTIONS 26 & 27 - TOWNSHIP 52 SOUTH - RANGE 42 EAST
BAL HARBOUR VILLIAGE, DADE COUNTY, FLA.
MIAMI BEACH HEIGHTS, INC.
ZURWELLE - WHITTAKER, INC.
STRUCTURAL ENGINEERS & SURVEYORS
MIAMI BEACH, FLORIDA
JULY 19, 1946
SHEET 2 of 2

Section 26, Township 52 South, Range 42 East,

Bal Harbour Village, Dade County, Fla.

Miami Beach Heights, Inc.

Zurwelle-Whittaker, Inc.
Structural Engineers & Surveyors
Miami Beach, Florida.

July 29, 1946.

Filed October 3, 1946
Recorded in Plat Book 44
Page 98

State of Florida:
ss
County of Dade :

CAPTION

A parcel of land in Sects. 26 & 27, Township 52 S., Range 42 E., being a subdivision of a portion of Government Lots 1, 2 and 3; all of Lot 5 in Sect. 26; and adjacent lands conveyed by the Trustees of the Internal Improvement Fund of the State of Florida as described in Deed filed in Deed Book 2501, page 340 of the Public Records of Dade County, Florida, all more particularly described as follows, to-wit:

Beginning at the S.W. corner of said Section 26 run easterly along the southerly line of said Section 26, a distance of 502.744 feet to the point of beginning of the tract of land herein described, said point being the intersection of the southerly line of said Section 26, with the westerly or outside face of the concrete bulkhead situated on the easterly shore of Indian Creek, said intersection also being 1269.4 feet westerly as measured along the said Section line from the intersection of the westerly line of Harding Ave. produced northerly with the centerline of 96th Street as shown on a plat entitled "Ocean Front Section of Bay Harbor" and recorded in P.B. 44, P. 27, of the Public Records of Dade County, Florida, (assumed bearing of centerline of 96th Street being North 85°-30'-17" East); Thence run northerly along outside face of said concrete bulkhead along the arc of a circular curve deflecting to the left, having a central angle of 6°-11'-49.547", a radius of 2078.531 feet, a distance of 224.814 feet, (subtended chord being North 9°-42'-24.578" West, 224.704 feet; Thence along the arc of a circular curve deflecting to the left, having a central angle of 3°-37'-01.829", a radius of 1882.40 feet, a distance of 118.838 feet, (subtended chord being North 14°-36'-50.265" West, 118.819 feet), to the poing of tangency (P.T.) of said circular curve; Thence North 16°-25'-21.18" West a distance of 599.761 feet; Thence along the arc of a circular curve deflecting to the left, having a central angle of 12°-23'-22", a radius of 1002.874 feet, a distance of 216.858 feet, (subtended chord being North 22°-37'-02.18" West, a distance of 216.436 feet), to the Point of Tangency (P.T.) of said circular curve; Thence North 28°-48'-43.18" West a distance of 6.99 feet; Thence along the arc of a circular curve deflecting to the right, having a central angle of 14°-37'-32.40", a radius of 521.989 feet, a distance of 133.246 feet (subtended chord being North 21°-29'-56.98" West, 132.885 feet); Thence along the arc of a circular curve deflecting to the right, having a central angle of 2°-46'-36.10", a radius of 712.502 feet, a distance of 34.530 feet (subtended chord being North 12°-47'-52.73" West, 34.526 feet); Thence along the arc of a circular curve deflecting to the right, having a central angle of 70°-25'-13.14", a radius of 358.012 feet, a distance of 46.366 feet, (subtended chord being North 70°-41'-58.11" West, 46.363 feet); Thence tangent North 3°-59'-21.54" West, 11.159 feet; Thence along the arc of a circular curve deflecting to the left, having a central angle of 12°-59'-08.653", a radius of 2[illegible], a distance of 601.007 feet, (subtended chord being North

EXAMINED
COPELAND, THERREL, BAISDEN & PETERSON
ATTYS.
PAGE 40

going caption.

Miami Beach Heights, Inc., hereby reserves to itself, it's successors and assigns a perpetual easement over, under and across a strip of land five (5) feet wide off the rear and/or sides of lots and parks in Blocks 2, 3, 4, 5, 6, 9, 10 and 11; a five (5) foot strip of land off the North side of Lot 12, Block 1 and a five (5) foot strip of land off the West side of Lot 21, Block 12, all as shown by dotted lines on this plat, for the purpose of constructing, installing, maintaining and repairing public utilities in said subdivision, or for any other purpose consistent with the development, maintenance and improvement of the lands shown on said plat; and no building shall be erected upon or over said areas or strips, and title to such areas or strips shall not include title to any equipment or paraphernalia in, over or above said areas or strips.

All utilities, present and future, shall be constructed and maintained underground, except street lighting standards, transformer vaults and necessary electric and telephone appurtenances.

Collins Ave. & 96th St. as shown on said plat together with existing planting, both trees and shrubbery are hereby dedicated to the perpetual use of the public for proper purposes, reserving however to Miami Beach Heights, Inc., its successors and assigns, the reversion or reversions thereof whenever discontinued by law or otherwise.

The streets designated "Bal Bay Drive", "Bal Cross Drive", "Park Drive", "Biscay Drive", "Camden Drive", "Balfour Drive", "Camden Court" and "Harbour Way", together with all areas designated "Park" on said plat are hereby dedicated to the use and enjoyment of the owners of the lots in said subdivision, and to them only, so long as said streets or parks remain in the corporate limits of Bal Harbour Village, Florida, or in the limits of any town or municipality which directly succeeds said Bal Harbour Village, Florida. In the event any of the streets or parks referred to in this paragraph are taken out of the corporate limits of Bal Harbour Village or any village or municipality, which directly succeeds Bal Harbour Village, then in that event said streets and parks are thereupon dedicated to the perpetual use of the public for proper purposes, reserving however, to Miami Beach Heights, Inc., its successors and assigns the reversion or reversions thereof whenever discontinued by law or otherwise. So long as the streets and parks described in this paragraph shall remain dedicated to the use and enjoyment of the owners of the lots in said subdivision, the County of Dade, the State of Florida, the United States of America (or any political subdivision of any of them) shall have the right at all times to use said streets in the performance of their official functions.

In Witness Whereof, Miami Beach Heights, Inc., by and with the authority of it's Board of Directors has caused these presents to be signed in it's name, for and on it's behalf this 5th day of August, A. D. 1946.

Miami Beach Heights, Inc.

By (signed) Robert C. Graham
President

Attest: (signed) J. Julien Southerland
Secretary

(Corporate Seal)

Two witnesses.

Duly acknowledged.

EXAMINED
ROBERLAND, THERREL, BAISDEN & PETERSON

PAGE 4-7

No. 49, continued.

This is to certify that the attached plat, consisting of two (2) sheets, entitled "Residential Section of Bal Harbour" is a true and correct representation of the land surveyed and platted under my direction and that the Permanent Reference Monuments have been placed on the 29th day of July, A. D. 1946, in accordance with Chapter 10,275 Sect. 7, (No. 253) Laws of the State of Florida.

Zurwelle-Whittaker, Inc.

By (signed) Wilbur D. Davidson
Wilbur D. Davidson, V.Pres., Reg. Land Surveyor No. 151, Florida.

(Official Seal)

STATE OF FLORIDA:
COUNTY OF DADE : ss.

This is to certify that the attached plat entitled "Residential Section of Bal Harbour" has been approved by the town council of Bal Harbour Village, Florida this 15th day of August, 1946.

Signed: J. Julian Southerland,
Mayor

Attest: (signed) Mary Wetterer, Town Clerk
Approved: (signed) Fred E. Zurwelle, Town Engineer.

(Official Seal)

This plat approved by Resolution passed and adopted by the Board of County Commissioners of Dade County, Florida, this 1st day of Oct. A. D. 1946.

This approval shall not be construed as a commitment by the Board of County Commissioners, aforesaid, to build or maintain the roads and streets shown on said plat.

(Official Seal)

(Signed) C. H. Crandon,
Chairman of Board

Attest:
E. B. Leatherman,
By (signed) H. S. Swooting,
Deputy Clerk.

Approved (Signed) Earle M. Rader,
County Engineer.

Engineer's Notes:

Radii on block corners are 20' unless otherwise shown.
Distances indicated on corner lots and blocks are to the intersection of curves or tangents produced, unless otherwise shown.
Permanent Reference Monuments and notches in concrete bulkhead are shown thus: --O--
Depths of waterfront lots are to outside face of concrete bulkhead.
Bearings shown are assumed bearings unless otherwise indicated.

EXAMINED
COPELAND, THERREL, BAISDEN & PETERSON

No. 49, continued.

This Plat is subdivided into 12 Blocks numbered 1 to 12 inclusive, and Tracts "D", "F" and "G", also 5 Parks in streets.

Block 1, contains 24 lots, numbered 1 to 24 inclusive, and Tract "C" and Tract "E".
Block 2, contains 20 lots, numbered 1 to 20 inclusive.
Block 3, contains 33 lots, numbered 1 to 33 inclusive.
Block 4, contains 18 lots, numbered 1 to 18 inclusive, and Park.
Block 5, contains 20 lots, numbered 1 to 20 inclusive.
Block 6, contains 33 lots, numbered 1 to 33 inclusive, & Park.
Block 7, contains 10 lots, numbered 1 to 10 inclusive, & Park.
Block 8, contains 5 lots, numbered 1 to 5 inclusive.
Block 9, contains 21 lots, numbered 1 to 21 inclusive.
Block 10, contains 13 lots, numbered 1 to 13 inclusive.
Block 11, contains 22 lots, numbered 1 to 22 inclusive.
Block 12, contains 21 lots, numbered 1 to 21 inclusive.

EXAMINED
COPELAND, THERRELL, BAISDEN & PETE

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RESTRICTIVE COVENANTS

ANING OF TERMS AS USED HEREIN:

SUBDIVIDER and GRANTOR mean MIAMI BEACH HEIGHTS, a Florida corporation, its successors and assigns.

GRANTEE means the person or persons or concern to whom the divider first conveys the lands herein described, and his, her, r or its heirs, executors, administrators, personal representatives, cessors, and assigns, and all persons or concerns claiming by, ough or under such grantee; and wherever in this instrument the culine is used it shall include the feminine and neuter as the ext may require.

SUBDIVISION means the "Residential Section of BAL HAR-UR" as shown on the plat thereof recorded in Plat Book 44 at e 98 of the public records of Dade County, Florida.

PLAT means the plat of the "Residential Section of BAL HAR-UR" recorded in Plat Book 44 at Page 98 of the public records of de County, Florida.

USE RESTRICTION—Except as hereinafter provided no building ll be erected or constructed on any lot in this Subdivision, other n one single family dwelling house (with the usual outbuildings use in connection therewith) for the use of one family only, and lot shall be used except for residential purposes exclusively for one ily only. No outbuilding shall be allowed that is susceptible of g occupied for residential purposes (except by domestic servants) no outbuilding shall be used except in connection with the main se. No temporary residence shall be permitted on any lot, except se constructed by the grantor.

PROVIDED, however, that apartment buildings may be erected the lots hereinafter named, and within the limitations and re-ctions set forth as to each lot, to-wit:

On Lots 1 to 10 in Block 7 and
On Lots 1 to 7 in Block 8

Apartment buildings may be erected not exceeding three (3) stories in height, including any penthouse or similar structure, and containing not more than twenty-four (24) dwelling units.

On Lots 1 to 4 in Block 1

Apartment buildings may be erected not exceeding three (3) stories in height, including any penthouse or similar structure, and containing not more than sixteen (16) dwelling units, but no building or any part thereof shall be erected on said lots nearer to the front line, which is the waterfront, than forty (40) feet, or nearer to the rear or sidelines than ten (10) feet.

On Lots 21 to 25 in Block 12

Apartment buildings may be erected not exceeding three (3) stories in height, including any penthouse or similar structure, and containing not more than twenty-four (24) dwelling units, but no building or any part thereof shall be erected on said lots nearer to the front line, which is the waterfront, than forty (40) feet, or nearer to the sidelines or to the rear or street line than ten (10) feet.

On Lots 2, 3 and 4 in Block 2 and
On Lots 2, 3, 4, 5 and 6 in Block 4

Apartment buildings may be erected not exceeding two (2) stories in height, including any penthouse or similar structure, on lot 3 of block 2 and lots 3, 4, and 5 of block 4, containing not more than eight (8) dwelling units; and on lots 2 and 4, block 2, and lot 6, block 4, containing not more than ten (10) dwelling units; and on lot 2, block 4, containing not more than twelve (12) dwelling units. No building or any part thereof shall be erected on said lots nearer to the side or rear lines than ten (10) feet or nearer to the side street setback line as shown on the plat as to lots 2 and 4 in block 2, and lot 2 in block 4, or nearer to the front line than the front set-back line as shown on the plat.

The foregoing use restrictions shall not apply to the Ocean Front tion of BAL HARBOUR, for which there are separate and different trictions, nor to the Business Section of BAL HARBOUR.

OWNERSHIP—No lot, nor any part thereof, nor any other portion the property shown on the plat of the Residential Section of BAL RBOUR, shall be sold, conveyed or leased to anyone not a member the Caucasian race, nor to anyone having more than one-fourth Hebrew or Syrian blood, nor to any concern or corporation in which y member or stockholder has more than one-fourth Hebrew or ian blood, or is not of the Caucasian race. This covenant shall pire at the end of twenty-one years from January 1, 1947.

OCCUPANCY—No lot, nor any part thereof, nor any portion of property shown on the plat of the Residential Section of BAL RBOUR, shall be used or occupied by anyone not a member of Caucasian race, nor by anyone having more than one-fourth brew or Syrian blood. The provisions of this covenant shall not ply to bona fide domestic servants domiciled on the premises where y are employed.

SETBACK LINES—On waterfront lots no building or any part reof may be erected nearer to the seawall than forty (40) feet, asured from the outside face thereof, or nearer to the rear line, which the line abutting the street, or to the side lines than ten (10) feet.

In Blocks 1 and 12 garages and servants quarters may be con-ucted as a part of the residence building; or should the grantee erect a wall along the rear line of the lot, the outside face of such wall shall not be nearer than ten (10) feet to the street line in which event garages and servants' quarters not more than one story in height may be constructed as a part of or abutting such wall, with a gateway entry from the street; otherwise garages or servants' quarters must be located not nearer than twenty (20) feet to the rear line of the lot. No garage shall have an entry directly facing the street unless such entry is obscured by a wall five (5) feet in height between the street and the garage entrance.

In Blocks 7 and 8 no building or any part thereof may be erected nearer to the front line, which is "Bal Harbour Boulevard," than fifty (50) feet or nearer than the front setback line of Lots 6 and 7 of Block 8 as shown on the plat, or nearer to the side lines than twenty-five (25) feet, or nearer to the rear line than fifty (50) feet, except that one-story garages and/or servants quarters may be erected within the rear thirty (30) feet of the lot, but not nearer than 5 feet to the side or rear lines. All lots in said block shall be regarded as fronting on "Bal Harbour Boulevard."

No building or any part thereof may be erected on any lot elsewhere in the Subdivision beyond the front setback lines as shown on the plat, or nearer than ten (10) feet to the side or rear lines.

Where the side or rear setback lines are shown on the plat of the Subdivision, no building or any part thereof may be erected nearer to the side or rear lines than said setback lines.

On the waterfront lots the front line is the line facing the water and on all other lots in the Subdivision the front line is the line abutting the street or streets.

Terraces not more than three feet six inches (3' 6") above the grade of the center of the street on which the lot fronts shall not be deemed a part of the building when actually connected to the building.

5. BOATS, BOATHOUSES AND ANCHORAGE—No boathouse or dock building shall be erected on or adjoining any of the lots in this Subdivision, but a dock extending such a distance from the line of the bulkhead of the waterfront lots as may be approved by the Subdivider may be permitted, PROVIDED no dock shall be higher than three and one-half (3½) feet above mean high tide, or shall extend more than eight (8) feet beyond the seawall, and no cover shall be permitted to be erected in connection with any dock except temporary boat awnings which may not extend over eight (8) feet above mean high tide; PROVIDED FURTHER that no boat landing, dock or pier shall be constructed until the plans and specifications therefor shall have been approved in writing by the Subdivider. No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the Subdivider. The Subdivider shall have the right to regulate the size and type of boats, yachts or vessels which may be moored to any dock or mooring along the waters adjacent to the Subdivision, regardless of the location.

No mooring pile shall be placed more than twenty-five (25) feet beyond the outside face of the seawall of any lot, and no mooring pile shall be placed nearer than seven and one-half (7½) feet to a line formed by the projection of the sidelines of the lot.

6. FILLING IN—No lot or parcel shall be increased in size by filling in the waters on which it abuts.

7. SEAWALLS—No seawall shall be erected or constructed in this Subdivision or adjacent thereto unless and until its location, design, materials, structure, strength, etc., shall have been approved in writing by the Subdivider.

8. WALLS AND FENCES—Heights of any walls and fences built outside of the building setback lines shall not be greater than as follows:

No wall or fence may be erected on any lot in the Subdivision higher than five (5) feet above finish grade or more than six (6) feet above the elevation of the center of the adjoining street. In Blocks 1 and 12, no wall or fence more than four (4) feet in height may be erected between the seawall and the front set-back line.

The Subdivider may in its discretion approve minor projections above the restricted heights for architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing by the Subdivider.

9. NUISANCES—Nothing shall be done on any lot which may be or become an annoyance or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry or fowl shall be kept on any lot. No sign of any character shall be displayed, except that the owner may display on his premises a "For Sale" or "For Rent" sign referring only to the premises on which displayed, provided the term and size of such signs be first approved in writing by the Subdivider.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the premises hereby conveyed, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Subdivider may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

10. BUILDING PLANS—For the purpose of further insuring the development of the lands in the Subdivision as a residential area of high standards, the Subdivider reserves the power to control the buildings, structures and other improvements placed on each lot.

Whether or not provision therefor is specifically stated in any conveyance of a lot made by the Subdivider, the owner or occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building, wall or other structure shall be placed upon such lot unless and until the plans and specifications therefor and the plot plan have been approved in writing by the Subdivider. Each such building, wall or structure shall be placed on the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans and specifications by the Subdivider may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Subdivider shall seem sufficient. No alteration in the exterior appearance of the buildings or structures shall be made without like approval.

Should the Subdivider fail to approve or disapprove the plans and specifications submitted to it by the owner of a lot or lots in the Subdivision within thirty (30) days after written request therefor, then such approval shall not be required; provided, however, that no building or other structure shall be erected or shall be allowed to remain on any lot which violates any of the covenants or restrictions herein contained.

11. NO TEMPORARY BUILDINGS—No tents and no temporary or accessory building or structure shall be erected on the lands hereby conveyed or on any of the lots in said Subdivision, without the written consent of the Subdivider.

12. MINIMUM SIZE OF RESIDENCE—On waterfront lots, no residence may be constructed with floor areas, exclusive of garages and terraces, of less than 2,500 square feet.

On all other lots in the Subdivision, no residence may be constructed with floor areas, exclusive of garages and terraces, of less than 1,800 square feet.

13. RESIDENTIAL SITE—A residential or apartment site may consist of one or more lots. All of one lot and part of another or contiguous parts of more than one lot, or any other combination of contiguous parts of lots, will form an integral unit of land suitable for use as a site for a residence or an apartment, provided it extends from the street serving it to the rear boundary or to the waterfront boundary; but no site shall have a frontage of less width than is contained in the largest adjoining lot shown on the plat. For all purposes of this instrument and all the restrictions herein contained, the unit of land so formed for use as a residential site, or for an apartment site where apartments are allowed to be built, shall be considered to be a lot to the same extent as though it had been laid out and platted as one.

No resubdivision as herein provided or otherwise shall be permitted except with the approval in writing of the Subdivider.

14. EASEMENTS—Except on the waterfront lots and the lots in Blocks 7 and 8, an easement is reserved over the rear five (5) feet of each lot in the Subdivision for the installation and maintenance of telephone and electric lines and conduits, water and gas mains, sewers, and any other utility, and for any similar facility deemed by the Subdivider necessary for the service of said lands; and the Subdivider further reserves the right to assign the use of said easements and rights of way to any person, firm, corporation or municipality furnishing one or more of said facilities.

A similar easement is reserved over the side lines of the lots where such easements are shown on the plat.

No trees may be planted within the easement hereby reserved.

All electric and telephone wires from utility lines into the buildings on all lots in the Subdivision shall be run underground only.

15. OWNER MUST BE MEMBER OF CLUB—The grantee herein is a member of BAL HARBOUR CLUB, INC., and as such member is familiar with and agrees to abide by the rules, regulations, restrictions and objects of said CLUB. It is a condition of the estate hereby conveyed that the grantee herein shall not rent, lease, give, convey or in any wise transfer, the property hereby conveyed to any person not at the time of such transfer, lease, gift or conveyance, a member of BAL HARBOUR CLUB, INC., or to any concern or corporation in which any member or stockholder is not at the time of such transfer, lease, gift, or conveyance a member of said Club; it being expressly understood and agreed that a similar condition will be made by the grantor in all other conveyances of similar property in the Residential Section of Bal Harbour Subdivision, the purpose of this and such other conditions being to insure to the grantee and all other members of BAL HARBOUR CLUB, INC., and to the CLUB itself, that the Club property and all other property in said Residential Section shall at all times be occupied by a colony of congenial persons, and the further purpose of benefitting lands owned by the grantor and developed under the same general plan with the property hereby conveyed. The foregoing shall not be construed as requiring the occupants of apartments in the Residential Section of BAL HARBOUR to be members of the BAL HARBOUR CLUB, INC.

In cases where the grantee is a corporation, every stockholder in such grantee-corporation must be a "regular member" or "special member" of Bal Harbour Club, Inc., and the by-laws and stock certificates of such grantee-corporation must provide that the stock in said corporation is transferable only to regular members or special members of Bal Harbour Club, Inc.

By the acceptance of this deed, the grantee expressly stipulates and agrees, for himself and for his heirs, executors, administrators, legal representatives, and assigns, and if a corporation for its successors and assigns, that in the event proceedings are instituted to foreclose any mortgage on the property hereby conveyed, the grantor herein and its successors and assigns shall have the right to redeem from the mortgage for the amount due thereunder, or to purchase said property at the foreclosure sale for the amount found to be due the mortgagee in the foreclosure proceedings, should the mortgagor fail to redeem from such mortgage, and in case of such redemption by the grantor, the grantor, its successors and assigns, so redeeming shall take and have absolute fee simple title to the property redeemed, free of any claim or right of the grantee, his heirs or assigns, or its successors or assigns, or the mortgagor, and every person or concern claiming by, through, or under him or it.

Any deed or conveyance directly or indirectly, and whether by way of will or judicial proceedings or otherwise, in violation of this covenant, limitation or restriction, shall be void and of no effect.

16. REMEDIES FOR VIOLATIONS—In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the Subdivider, or by virtue of any judicial proceedings, the Subdivider, and the owners of lots in the Subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right the Subdivider shall have the right, whenever there shall have been built on any lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this deed, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any of the restrictions in this deed contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

17. GRANTOR'S OPTION TO PURCHASE IF SOLD—In the event that the grantee herein desires to sell the property conveyed by this deed, with its improvements, if any, then said property shall be offered for sale to the grantor at the same price at which the property is about to be sold, and the said grantor shall have fifteen (15) days within which to exercise its option to purchase said property; and should the grantor fail or refuse (within fifteen days after receipt of notice of the price and terms at which said property is about to be sold) to exercise its option to purchase said property at the price at which it is about to be sold, then the owner of said property shall have the right to sell said property subject to the foregoing restriction numbered 15 and to each and every other restriction, covenant, limitation and agreement herein contained.

18. REVERTER CLAUSE—In addition to any other right or remedy herein prescribed, violation directly or indirectly, in whole or in part, of any covenant, limitation or restriction contained in this instrument, by the grantee or his heirs or assigns, or its successor or assigns, or anyone claiming by, through or under him, or it, whether by deed, will, descent, trust indenture, mortgage foreclosure, or by virtue of any judicial proceedings or otherwise, shall cause the above described lands to revert immediately to the grantor and shall authorize and empower the grantor to enter immediately upon said property and to take possession thereof, together with all improvements thereon, with full title in fee simple.

19. ADDITIONAL RESTRICTIONS—The Subdividers may include in any contract or deed hereafter made, any additional restrictive covenants not inconsistent with those herein contained.

20. DURATION OF RESTRICTIONS—The foregoing agreements, covenants, restrictions and conditions shall constitute an easement and servitude in and upon the lands hereby conveyed running with the land and shall be deemed for the benefit of all the lands in the Subdivision; and they shall be and remain in full force for 25 years from the 1st day of January, A. D. 1947, at which time they shall be automatically extended for successive periods for 10 years each unless by vote of a majority of the then owners of the lots of the Residential Section of BAL HARBOUR, it is agreed to change them in whole or in part.

21. GRANTOR MAY ASSIGN—Miami Beach Heights, Inc., may assign any and all of its rights, obligations and privileges under this instrument to BAL HARBOUR CLUB, INC., or to any other corporation or person, and such assignee shall have every right, power and authority reserved to or given to said assignor by this instrument.

22. RESTRICTIONS UNIFORM—The foregoing restrictions shall be incorporated in all deeds which the Subdivider may execute and deliver conveying lots in said Subdivision.

Easement

#2

KNOW ALL MEN BY THESE PRESENTS, that MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, party of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations, to it paid by FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said Florida Power & Light Company, its successors and assigns, all those certain properties located in the County of Dade and State of Florida, more particularly described as follows:

> All property used and useful for or in connection with that underground electric distribution system constructed and installed by the party of the first part in the Town of Bal Harbour Village, Dade County, Florida, and in Bal Harbour Village, a subdivision of Dade County, Florida, a plat of which subdivision is recorded in Plat Book 44 at Page 98 of the Public Records of Dade County, Florida, including but not limited to all conduits, ductlines, manholes, handholes, transformer vaults, cables, fused cut outs, switches, and all other electrical appurtenances and property used and useful in rendering electric service through said underground electric distribution system to electric consumers in said Town and subdivision, and all rights of way, licenses, permits, easements and privileges necessary and used or useful for and in connection with the installation, operation and maintenance of said underground electric distribution system, which underground electric distribution system is shown on print hereto attached, made a part hereof and marked "Exhibit A." It is the purpose and intention of the party of the first part to convey to the party of the second part by this Indenture all property comprising the said underground electric distribution system and used and useful in rendering electric service and also to assign to the party of the second part the use of easements and rights of way heretofore reserved of public record by the party of the first part and necessary and used or useful for and in connection with the installation, operation and maintenance of said underground electric distribution system.

TOGETHER with every right, privilege, permit and easement of every kind and nature of the party of the first part in, to and in connection with the above described properties, as the same are now located. It is not the intention hereby to convey the fee title to any land. The easements, rights of way, licenses, permits and privileges hereby conveyed are such as were reserved to the Grantor by the above-referred to plat of Bal Harbour Village and are not exclusive.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns, forever.

AND the said party of the first part does for itself and its successors covenant to and with the said party of the second part, its successors and assigns, that it is the lawful owner of the above described properties and that the said properties are free and clear

from all liens, encumbrances and charges whatsoever; that it has good right and lawful authority to sell the same as aforesaid, and that it will warrant and defend the title and the sale of the said properties hereby made, unto the said party of the second part, its successors and assigns, against the lawful claims and demands of all persons whomsoever, claiming by, through or under it.

It is understood and agreed by and between the parties hereto that the party of the first part hereby releases the party of the second part from any claim or liability in connection with the past use of said properties by the party of the second part.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its duly authorized officers and its corporate seal to be affixed hereto, this 27th day of April , 1951.

MIAMI BEACH HEIGHTS, INC.

Signed, sealed and delivered in the presence of:

By Robert C. Graham
President

ATTEST: Catchings Therrel
Assistant Secretary

Jean E. Rainsberger

STATE OF FLORIDA }
COUNTY OF DADE } ss

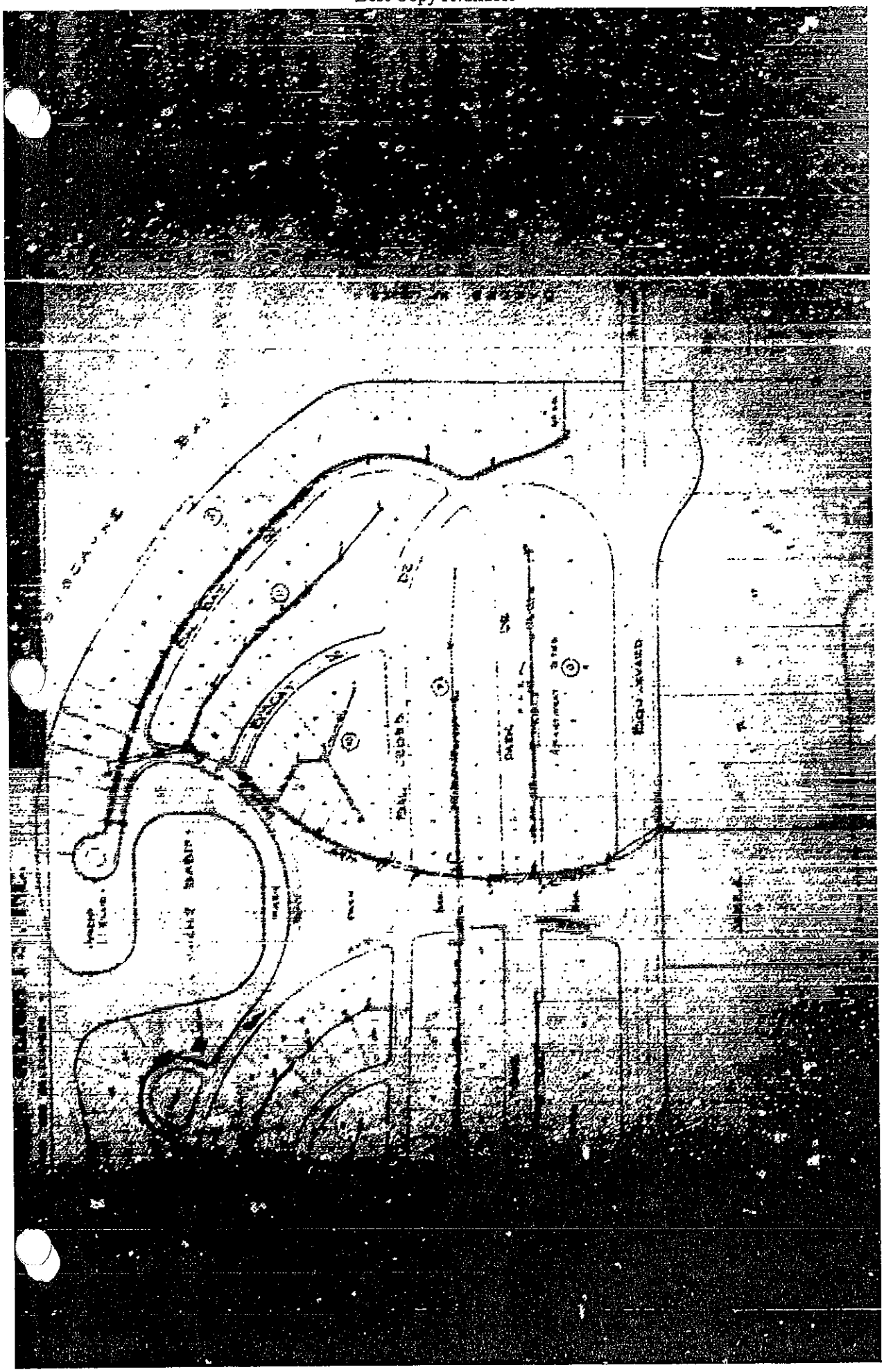
I HEREBY CERTIFY that on this day before me personally appeared ROBERT C. GRAHAM and CATCHINGS THERREL , respectively, President and Assistant Secretary of MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation and that said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Miami Beach , in the County and State aforesaid, this 27th day of April , 1951.

Jean E. Rainsberger
Notary Public, State of Florida at Large

My Commission expires:
7/30/52

Best Copy Available



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A S S I G N M E N T

THIS INDENTURE, Made this 2nd day of February, A. D. 1952, between MIAMI BEACH HEIGHTS, INC., a Florida corporation, hereinafter sometimes referred to as the Subdivider, and BAL HARBOUR CLUB, INC., a non-profit Florida corporation with its principal place of business at 10201 Collins Avenue, Bal Harbour, Dade County, Florida, hereinafter sometimes referred to as the Club;

W I T N E S S E T H:

WHEREAS, the Subdivider was the owner and developer of that certain Subdivision in Dade County, Florida, known as the "Residential Section of Bal Harbour" as shown on the Plat thereof recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida; and

WHEREAS, the Subdivider has heretofore conveyed all but a few of the lots in said Subdivision to the respective purchasers thereof, and in each and every deed the Subdivider incorporated certain uniform restrictive covenants; and

WHEREAS, restrictive covenant No. 10 provided that no building, wall or other structure, and no alteration to the exterior appearance of any structure, shall be made or placed upon any lot in said subdivision, unless and until the plans and specifications therefor and the lot plan have been approved in writing by the Subdivider; and

WHEREAS, restrictive covenant No. 21 provides that the Subdivider may assign any and all of its rights, obligations and privileges under said covenants to Bal Harbour Club, Inc.; and

WHEREAS, the Subdivider now desires to assign all of its rights, obligations and privileges under said restrictive covenant No. 10 to Bal Harbour Club, Inc., and Bal Harbour Club, Inc. agrees to accept said assignment;

NOW, THEREFORE, for and in consideration of the premises and in the further consideration of One Dollar ($1.00) paid by Bal Harbour Club, Inc. to Miami Beach Heights, Inc., receipt of which is hereby acknowledged,

Miami Beach Heights, Inc. does hereby assign, transfer, set over and convey all of its rights, obligations and privileges under restrictive covenant No. 10 entitled "BUILDING PLANS" under the uniform restrictive covenants contained in all deeds from Miami Beach Heights, Inc. to the purchasers, past, present and future, of Lots in the Residential Section of Bal Harbour as shown in the plat thereof, according to Plat Book 44 at Page 98, of the Public Records of Dade County, Florida.

Bal Harbour Club, Inc. does hereby accept and assume all of its rights, obligations and privileges herein assigned to it.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their names on their behalf, by their officials thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first above written.

Signed, sealed and delivered
in the presence of:

(As to the Subdivider)

MIAMI BEACH HEIGHTS, INC.

By _____
President

ATTEST: _____
Secretary

Subdivider

(As to the Club)

BAL HARBOUR CLUB, INC.

By _____
President

Attest: _____
Secretary

Club

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY, That on this 23rd day of February, A. D. 1952, before me personally appeared ROBERT C. GRAHAM and H. M. SISSON, respectively President and Secretary of Miami Beach Heights, Inc., a corporation under the Laws of the State of Florida, to me known to be the persons described in and who executed the foregoing assignment to BAL HARBOUR CLUB, INC., and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Miami Beach, in the County of Dade and State of Florida, the day and year last aforesaid.

_____
Notary Public, State of Florida at Large

My commission expires: _____

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY, That on this 21st day of February, A. D. 1952, before me personally appeared THOMAS P. COOGAN and W. H. WEBB, respectively President and Secretary of Bal Harbour Club, Inc, a non-profit Florida corporation, to me known to be the persons described in and who executed the foregoing assignment and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned, and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Miami Beach, in the County of Dade and State of Florida, the day and year last aforesaid.

Mary Hial Withers
Notary Public, State of Florida at Large

My commission expires: _____

State of Florida, County of Dade.
This instrument was filed for record the 18 day of Mar 1952 at 9:36 AM. and duly recorded in Deed Book 3567 on Page 2 File No. BB 29607
E. B. LEATHERMAN
Clerk Circuit Court

By [signature] D.C.

GRANT OF EASEMENTS

THIS INDENTURE, Made this 6th day of October, A. D. 1953, by and between MIAMI BEACH HEIGHTS, INC., a Florida corporation, having its principal place of business in the County of Dade, State of Florida, hereinafter referred to as the Grantor, and VILLAGE OF BAL HARBOUR, a municipal corporation in the County of Dade, State of Florida, hereinafter referred to as the Grantee;

W I T N E S S E T H :

That the said Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations to it in hand paid by the Grantee, receipt of which is hereby acknowledged, has granted and by these presents does grant unto the Grantee, its successors and assigns, full and free right and authority to perpetually use the following described storm sewer lines and/or emergency sanitary sewer overflow lines, and for purposes of ingress and egress over and upon each of the following described five parcels of land for the purpose of maintaining, repairing, replacing and removing said sewer lines running across a portion of Tract "E" and draining into the Private Yacht Basin located in said Tract "E", said easements being located in the Village of Bal Harbour, County of Dade, State of Florida, more particularly described as follows:

Five (5) easements all being in Tract "E" as the said Tract "E" is shown on a plat entitled "Residential Section of Bal Harbour" as recorded in Plat Book 44, at Page 98, of the Public Records of Dade County, Florida, more particularly described as follows:

EASEMENT NO. ONE, STORM SEWER.

Beginning at the Permanent Reference Monument (P.R.M.) designated (P.C.C.) Point of Compound Curvature on the easterly line of Bal Bay Drive, or westerly line of Tract "E", 65 feet easterly from the center of the circle opposite Lot 1, Block 12, all as shown on a plat entitled, "Residential Section of Bal Harbour", as recorded in Plat Book 44, at Page 98, of the Public Records of Dade County, Florida; run in a northerly direction along the arc of a circular curve on the easterly line of Bal Bay Drive, said curve having for its elements, a central angle of 7°-38'-49.26", a radius of 1437.10 feet, and an arc distance of 191.82 feet; a distance of 70.97 feet to the point of beginning of the easement herein described;

From said point of beginning run along a line deflecting to the left 94°-25' along the center line of a 5 foot easement 3 feet plus or minus to the easterly line of Bal Bay Drive or the westerly line of Tract "E"; also

From said point of beginning run along a line deflecting to the right 125°-35' along the center line of a 5 foot easement, 60 feet plus or minus to the Mean High Water line or face of concrete bulkhead on the westerly side of area marked, "Private Yacht Basin".

EASEMENT NO. TWO. STORM SEWER.

Commencing at the Permanent Reference Monument (P.R.M.) at the Point of Compound Curvature (P.C.C.) situated on the southerly line of Bal Bay Drive or the northerly line of Tract "E" opposite Lot 5, Block 10, as shown on a plat entitled, "Residential Section of Bal Harbour", as recorded in Plat Book 44 at Page 98, Public Records of Dade County, Florida; run in a northwesterly direction along the chord of a circular curve, along the southerly line of Bal Bay Drive, said curve having for its elements, a central angle of 36°-22'-19.38", a radius of 374 feet, an arc distance of 237.421 feet, a distance of 105.21 feet to the point of beginning of the easement herein described:

From said point of beginning run along a line deflecting 103°-53' to the left along the center line of a 5.0 foot easement, a distance of 85 feet plus or minus to the Mean High Water or the face of the concrete bulkhead on the northerly side of the area marked, "Private Yacht Basin;" also

From said point of beginning run along a line deflecting 76°-07' to the right along the center line of a 5.0 foot easement, a distance of 20 feet plus or minus to the southerly line of Bal Bay Drive or the northerly line of Tract "E".

EASEMENT NO. THREE. STORM SEWER.

Beginning at the Permanent Reference Monument (P.R.M.) situated at the intersection of the center line of Harbour Way with the westerly line of Bal Bay Drive or the easterly line of Tract "E" as same is shown on a plat entitled "Residential Section of Bal Harbour", as recorded in Plat Book 44, at Page 98, Public Records of Dade County, Florida, run in a southerly direction along the westerly line of said Bal Bay Drive, as shown on above mentioned plat, a distance of 2.1 feet to a point on the center line of a 10 foot easement:

Thence run in a southwesterly direction along the center line of a 10 foot easement to a point on the westerly face of the concrete bulkhead or the Mean High Water line on the easterly side of the area marked, "Private Yacht Basin", said point being 15 feet southerly from the P.R.M. shown at the intersection of the center line of "Harbour Way" with the bulkhead on the easterly shore of area marked, "Private Yacht Basin" or the westerly line of Tract "E" as shown on the above recorded plat.

EASEMENT NO. FOUR. STORM AND/OR EMERGENCY SANITARY SEWER.

Beginning at the intersection of the westerly line of Bal Bay Drive with the southerly line of Tract "E" or the northerly line of a 37.5 foot drive on the northerly side of an area designated "Park" as said intersection is shown on a plat entitled "Residential Section of Bal Harbour" as recorded in Plat Book 44 at Page 98, Public Records of Dade County, Florida, run in a northeasterly direction along the westerly line of said Bal Bay Drive along the arc of a circular curve having for the elements a central angle of 4°-52'-02.50" a radius of 824 feet, a distance of 70 feet to a point, (chord of said curve making an angle to the northeast from the said southerly line of Tract "E" of 100°-48'-27.01") a distance of 69.979 feet;

Thence run along a line deflecting to the left 87°-33'-58.75", radial to the last mentioned circular curve, a distance of 100 feet to a point:

Thence run in a southwesterly direction along the chord of a circular curve parallel to and 100 feet distant westerly from the westerly line of Bal Bay Drive, said curve having for its elements a central angle of 6°-23'-05.72", a radius of 924.0 feet, an arc distance of 102.915 feet, a distance of 44.65 feet to a point on the center line of a 5.0 foot easement:

Thence run in a northwesterly direction along the center line of a 5.0 foot easement, along a line deflecting to the right 119°-34' from the aforementioned chord extended a distance of 5.15 feet to a point:

Thence continue along a line deflecting 11°-15' to the right

10-9-74 Dade Co. S.L. Simon Jr.

along the center line of a 5.0 foot easement, a distance of 96.6 feet plus or minus to the Mean High Water or the northerly face of the concrete bulkhead on the southerly side of the area marked, "Private Yacht Basin" or the northerly line of Tract "E".

EASEMENT NO. FIVE. STORM AND/OR EMERGENCY SANITARY SEWER.

Beginning at the intersection of the westerly line of Bal Bay Drive with the southerly line of Tract "E" or the northerly line of a 37.5 foot drive on the northerly side of an area designated, "Park" as said intersection is shown on a plat entitled, "Residential Section of Bal Harbour" as recorded in Plat Book 44, at Page 98, Public Records of Dade County, Florida, run in a northeasterly direction along the westerly line of said Bal Bay Drive along the arc of a circular curve having for its elements a central angle of 4°-52'-02.50" a radius of 824 feet, a distance of 70 feet to a point, (chord of said curve making an angle to the northeast from the said southern line of Tract "E" of 100°-48'-27.01") a distance of 69.979 feet;

Thence run along a line deflecting to the left 87°-33'-58.75", radial to the last mentioned circular curve, a distance of 100 feet to a point:

Thence run in a southwesterly direction along the chord of a circular curve parallel to and 100 feet distant westerly from the westerly line of Bal Bay Drive, said curve having for its elements a central angle of 6°-23'-05.72", a radius of 924 feet, an arc distance of 102.915 feet; a distance of 26.63 feet, to a point on the center line of a 5.0 foot easement:

Thence run in a northwesterly direction along the center line of a 5.0 foot easement along a line deflecting to the right 80°-29' from the last mentioned chord extended a distance of 163.5 feet plus or minus to the Mean High Water line or the northerly face of the concrete bulkhead on the southerly side of the area marked, "Private Yacht Basin" or the northerly line of Tract "E".

The easements herein granted shall be perpetual; provided, however, that should any one or more of the said sewers ever be discontinued then in such event the Grantee agrees to remove such said sewer or sewers and thereupon the easement or easements herein granted for such said sewer, or sewers, shall terminate.

In accepting this Grant of Easements, the Grantee agrees to exercise the rights and privileges herein granted with the least possible injury to the landscaping, walks, driveways and seawall of the fee owner of said property, and to repair and replace any such damage.

IN WITNESS WHEREOF, Miami Beach Heights, Inc. has caused these presents to be signed in its name by its President, attested by its Secretary, and its corporate seal to be affixed, this the day and year first hereinabove written.

Signed, sealed and delivered in the presence of us:

[signature]

[signature]

As to President

[signature]

MIAMI BEACH HEIGHTS, INC.

By [signature]

Attest: [signature]

1929

STATE OF FLORIDA }
COUNTY OF DADE }

I HEREBY CERTIFY That on this 6th day of October, A. D. 1953, before me personally appeared ROBERT C. GRAHAM, President of MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, to me known to be the person described in and who executed the foregoing instrument, and he acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Bal Harbour, in the County of Dade and State of Florida, the day and year last aforesaid.

Mary Ethel Wilkes
Notary Public, State of Florida at Large

My commission expires:

STATE OF }
COUNTY OF }

I HEREBY CERTIFY That on this 9th day of October, A. D. 1953, before me personally appeared H. M. Sisson Secretary of MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, to me known to be the person described in and who executed the foregoing instrument, and he acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and that said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Detroit, in the County of Wayne and State of Michigan, the day and year last aforesaid.

Frances E. Collord
Notary Public, State of Michigan

My commission expires: May 14, 1957

FRANCES E. COLLORD NOTARY PUBLIC WAYNE CO. MICH.

State of Florida, County of Dade.
This instrument was filed for record the 12 day of Oct. 1953 at 10:20 A.M. and duly recorded in [illegible]
Book 3828 on Page 206 File No. CC 128646
E. G. LEATHERMAN
Clerk Circuit Court
By [illegible] D.C.

WARRANTY DEED

THIS INDENTURE, Made this 6th day of October, A. D. 1953, between MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, having its principal place of business in the County of Dade, State of Florida, party of the first part, and BAL HARBOUR CLUB, INC., a non-profit corporation organized and existing under the laws of the State of Florida, having its principal place of business in the County of Dade, State of Florida, 10201 Collins Avenue, Miami Beach, Fla.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of Dade and State of Florida, to-wit:

All of Tract "F" as same is shown on a plat entitled, "RESIDENTIAL SECTION OF BAL HARBOUR", as recorded in Plat Book 44, at Page 98, of the Public Records of Dade County, Florida, LESS the following described parcel:

Beginning at the intersection of the westerly line of Bal Bay Drive with the Southerly line of Tract "F" or the Northerly line of 37.5 foot Drive on the Northerly side of an area designated, "Park" as said intersection is shown on a Plat entitled, "Residential Section of Bal Harbour" as recorded in Plat Book 44, at Page 98, Public Records of Dade County, Florida, run in a Northeasterly direction along the westerly line of said Bal Bay Drive, along the arc of a circular curve having for its elements a central angle of 4°-52'-02.50" a radius of 822 feet, a distance of 70 feet to a point, (chord of said curve making an angle to the Northeast from the said Southerly line of Tract "F" of 100°-48'-27.01") a distance of 69.979 feet; thence run along a line deflecting to the left 87°-33'-58.79", radial to the last mentioned circular curve, a distance of 100 feet to a point; thence run in a Southwesterly direction along a line parallel to and 100 feet distant westerly from the westerly line of Bal Bay Drive along the arc of a circular curve deflecting to the left, having for its elements a central angle of 6°-23'-05.72", a radius of 924 feet, a distance of 102.915 feet (chord of said curve deflecting to the left 93°-11'-32.86" from the last mentioned radial line, a distance of 102.915 feet) to a point on the Northerly line of the aforementioned 37.5 foot Drive.

Thence run in an Easterly direction along the Northerly line of said Drive or Southerly line of said Tract "F" along the arc of a circular curve deflecting to the right having for its elements a central angle of 23°-11'-16.65", a radius of 120 feet, a distance of 48.565 feet to the Point of Tangency (PT) of said circular curve, (chord of this curve making an angle from the

North to the East from the chord of the last mentioned curve of 68°-21'-26.27" a chord distance of 48.234 feet).

Thence run tangent to the last mentioned curve along the Northerly line of said Drive along a line deflecting 11°-35'-38.33" to the right from the chord of the last mentioned curve, a distance of 54.927 feet to the Point of Beginning of the tract of land herein described, containing 0.17 acres, more or less.

This deed is given subject to the restrictions, conditions, limitations and easements which appear of record; to the provisions of zoning ordinances of the Village of Bal Harbour, and any amendments thereto in force and effect; to the taxes for the year 1953 and subsequent years; to that certain agreement dated April 26, 1947, by and between the grantor herein and Sinclair Refining Company with reference to the sale of gasoline, oils, and petroleum products at the yacht basin located in Tract "E" hereinabove described, and the furnishing of land without charge for gasoline pumping equipment at or near said yacht basin; and to a fifteen foot (15') easement running from the westerly bulkhead of the Yacht Basin in a westerly direction to Bal Bay Drive to insure the continued location therein of two thirty inch (30") pipe culverts serving as circulating pipes for the Yacht Basin (said pipes continuing westerly under Bal Bay Drive and Lot 1, Block 12 of said Residential Section of Bal Harbour), and for the right of access to said pipes.

It is mutually understood and agreed between the parties hereto that the lands above described are sold and conveyed subject also to the following restrictions, conditions and limitations:

1. USE RESTRICTION.

The said property shall be used only for club purposes of the Bal Harbour Club, Inc., the grantee herein, until January 1, 1965.

2. TAXES.

The grantee shall pay all taxes prior to such time as they may become delinquent.

3. SEAWALLS.

The grantee shall maintain the seawall on said property in good condition.

4. LANDSCAPING.

The grantee shall keep and maintain said property landscaped in keeping with the park areas in the Village of Bal Harbour.

5. UTILITY WIRES.

All electrical and telephone wires from utility lines shall be run underground only.

6. REMEDIES FOR VIOLATIONS.

In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the grantor, or by virtue of any judicial proceedings, the grantor, and the owners of lots in

the Subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction or condition contained in this deed, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any of the restrictions in this deed contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

7. GRANTOR'S OPTION TO PURCHASE IF SOLD.

In the event that the grantee herein desires to sell the property conveyed by this deed, with its improvements, if any, then said property shall be offered for sale to the grantor at the same price at which the property is about to be sold, and the said grantor shall have fifteen (15) days within which to exercise its option to purchase said property; and should the grantor fail or refuse (within fifteen days after receipt of notice of the price and terms at which said property is about to be sold) to exercise its option to purchase said property at the price at which it is about to be sold, then the owner of said property shall have the right to sell said property subject to the foregoing restrictions and to each and every other restriction, covenant, limitation and agreement herein contained.

8. REVERTER CLAUSE.

In addition to any other right or remedy herein prescribed, violation directly or indirectly, in whole or in part, of any covenant, limitation or restriction contained in this instrument, by the grantee or its successor or assigns, or anyone claiming by, through or under it, whether by deed, will, descent, trust indenture, mortgage foreclosure, or by virtue of any judicial proceedings or otherwise, shall cause the above described lands to revert immediately to the grantor and shall authorize and empower the grantor to enter immediately upon said property and to take possession thereof, together with all improvements thereon, with full title in fee simple.

9. DURATION OF RESTRICTIONS.

The foregoing agreements, covenants, restrictions and conditions

shall constitute an easement and servitude in and upon the lands hereby conveyed running with the land and shall be deemed for the benefit of all the lands in the Subdivision; and they shall be and remain in full force until January 1, 1965.

By accepting this deed the grantee agrees that the foregoing restrictions, limitations and conditions are made as part of the consideration for this conveyance and as part of the purchase price of the above described lands, and that they are covenants running with the land and shall be binding upon the grantee and all subsequent owners.

And the said party of the first part does hereby fully warrant the title to said lands, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its proper officers, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Signed, sealed and delivered in the presence of us:

Elaine C. Burk

Grand F. Parker
As to President

Frances E. Cullard

S. Sheridan
As to Secretary

MIAMI BEACH HEIGHTS, INC.

By Robert C. Graham
President

Attest: [signature]
Secretary

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY, that on this 6th day of October, A. D. 1953, before me personally appeared ROBERT C. GRAHAM, President of MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the laws of the State of Florida, to me known to be the person described in and who executed foregoing Warranty deed, and he acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Bal Harbour, in the County of Dade and State of Florida, the day and year last aforesaid.

Mary Hiel Wilson
Notary Public, State of Florida at Large

My commission expires: [illegible]

STATE OF MICHIGAN)
COUNTY OF WAYNE)

I HEREBY CERTIFY, that on this 9th day of October, A. D. 1953, before me personally appeared [illegible], Secretary of MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the

under the laws of the State of Florida, to me known to be the person described in and who executed the foregoing warranty deed, and he acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and that said instrument is the act and deed of said corporation.

WITNESS my signature and official seat at Detroit, in the County of Wayne, and State of Michigan, the day and year last aforesaid.

Frances E. Collord
Notary Public, State of Michigan

My commission expires: May 14, 1957

NOTARY PUBLIC

State of Florida, County of Dade.
This instrument was filed for record the 14 day of Oct. 1953 at [illegible] M. and duly recorded in Deed Book 3828 on Page 561 File No. CC 129244
E. B. LEATHERMAN
Clerk Circuit Court
By [illegible] D.C.

QUIT CLAIM DEED

THIS INDENTURE, Made this 28th day of February, A. D. 1952, between MIAMI BEACH HEIGHTS, INC., a Florida corporation, hereinafter referred to as the Grantor, and VILLAGE OF BAL HARBOUR of the County of Dade and State of Florida, hereinafter referred to as the Grantee,

W I T N E S S E T H :

WHEREAS, the Grantor was formerly the sole owner of all of the land now incorporated within the boundary of the Grantee; and

WHEREAS, the Grantor has heretofore caused the said land to be subdivided into two plats known as (1) Residential Section of Bal Harbour as shown on the plat thereof recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida, and (2) Ocean Front Section of Bay Harbor recorded in Plat Book 44, at Page 27, of the Public Records of Dade County, Florida; and

WHEREAS, the Grantor installed a water supply system in said subdivisions and connected it with the water system of the City of Miami Beach and made and entered into certain agreements with the City of Miami Beach for supplying the water and with the Town of Surfside concerning the right to install and maintain certain water mains in the streets of the Town of Surfside; and

WHEREAS, the Grantor installed a sanitary sewer system in said subdivisions and connected it with sanitary sewer system of the City of Miami Beach, and made and entered into certain agreements with the City of Miami Beach for the disposal of the sewage handled by said system, and with the Town of Surfside concerning the right to install and maintain certain sewer mains in the streets of the Town of Surfside; and

WHEREAS, the Grantor installed a system of storm sewers in said subdivisions; and

WHEREAS, the Grantor installed an electric street lighting system; and

WHEREAS, the residents of said subdivisions are now incorporated under the laws of the State of Florida as a municipality known as the

Village of Bal Harbour, the Grantee herein; and

WHEREAS, the ownership of the aforementioned public services should no longer be in the Grantor, but should be in the Grantee municipality;

NOW, THEREFORE, the said Grantor, for and in consideration of One Dollar ($1.00) and other valuable considerations paid by the Grantee, receipt of which is hereby acknowledged, hath remised, released and quit claimed, and by these presents doth remise, release and quit claim unto the Grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the Grantor hath in and to the aforementioned water system, sanitary sewer system, storm sewer system and electric street lighting system lying and being in the Village of Bal Harbour, Town of Surfside and City of Miami Beach, all in the County of Dade, State of Florida, together with all rights, privileges, duties and obligations contained in each and every agreement, now in force and effect, that has heretofore been made and entered into by the Grantor with any and all party or parties whatsoever.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Secretary, the day and year above written.

Signed, sealed and delivered
in the presence of:

Katherine O'Russell

Jeannette G. Rose

MIAMI BEACH HEIGHTS, INC.

By: Robert Shaker
President

Attest: [illegible]
Secretary

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY, That on this 28th day of February, A. D. 1952, before me personally appeared ROBERT C. GRAHAM and H. M. SISSON, respectively President and Secretary of Miami Beach Heights, Inc., a corporation under the laws of the State of lorida, to me known to be the persons described in and who executed the foregoing conveyance to the Village of Bal Harbour, and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

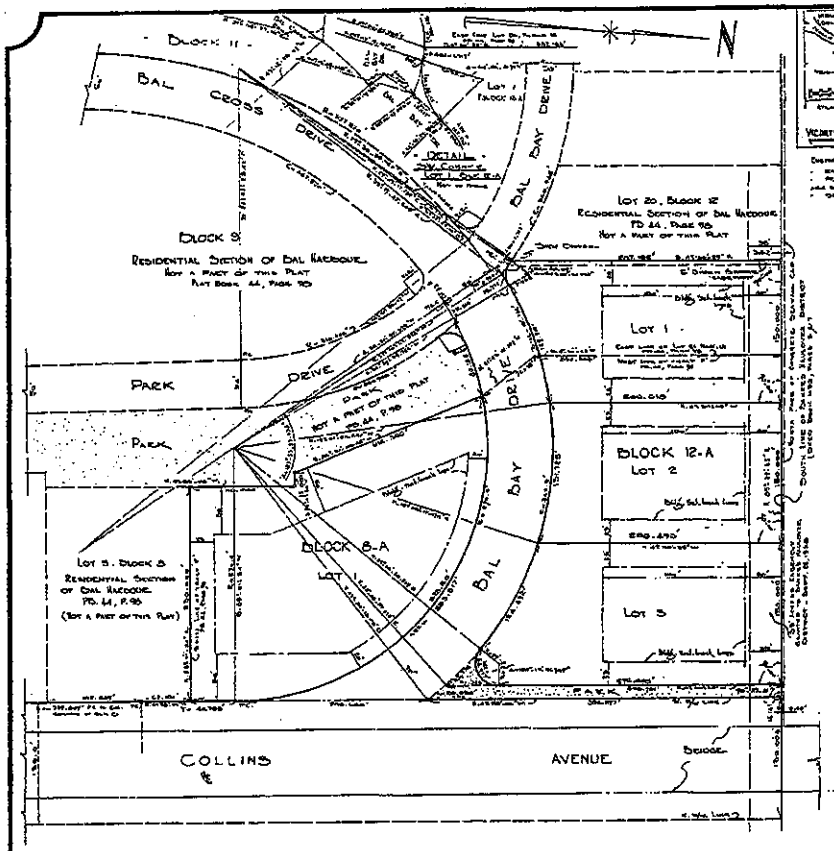
WITNESS my signature and official seal at Miami Beach, in the County of Dade and State of Florida, the day and year last aforesaid.

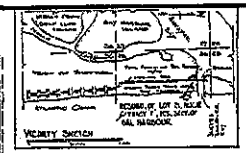
Jeannette G. Rose
Notary Public, State of Florida at Large

My commission expires: Nov. 17, 1955

State of Florida, County of Dade.
This instrument was filed for record the 2 day of [illegible]
1954 at [illegible] M. and duly recorded in [illegible]
Book [illegible] on Page [illegible] File No. DD [illegible]
E. R. LEATHERMAN
Clerk Circuit Court
By [illegible] D.C.

53-15





Surveyor's Notes:

- Indicates set monuments unless otherwise noted.
- Indicates Permanent Reference Monuments (P.R.M.)
- Indicates Concrete Monument Found Unchanged

DEDICATION & RESERVATIONS

KNOW ALL MEN BY THESE PRESENTS:

THAT THE OWNER, MIAMI BEACH HEIGHTS, INC., A CORPORATION DULY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, HEREBY FILES THIS PLAT OF ITS PROPERTY TO BE KNOWN AS "RESUBDIVISION OF LOT 21, BLOCK 12 AND TRACT 'F', RESIDENTIAL SECTION OF BAL HARBOUR, BAL HARBOUR VILLAGE, FLORIDA", RECORDED IN PLAT BOOK 44, PAGE 90 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

MIAMI BEACH HEIGHTS, INC. HEREBY RESERVES TO ITSELF, ITS SUCCESSORS AND ASSIGNS, A STRIP OF LAND FIVE (5') FEET WIDE OFF THE WEST SIDE OF LOT 1, BLOCK 8A AS SHOWN BY DOTTED LINES FOR THE PURPOSE OF INSTALLING AND MAINTAINING A STORM SEWER AND FOR NO OTHER PURPOSE.

ALL UTILITIES, PRESENT AND FUTURE, SHALL BE CONSTRUCTED AND MAINTAINED UNDERGROUND, EXCEPT STREET LIGHTING STANDARDS, TRANSFORMER VAULTS AND NECESSARY ELECTRIC AND TELEPHONE APPURTENANCES.

BAL BAY DRIVE, TOGETHER WITH AREA DESIGNATED "PARK", AS SHOWN ON SAID PLAT, ARE HEREBY DEDICATED TO THE USE AND ENJOYMENT OF THE OWNERS OF LOTS IN SAID SUBDIVISION, AS WELL AS THE OWNERS OF LOTS IN THE RESIDENTIAL SECTION OF BAL HARBOUR AS SHOWN ON PLAT THEREOF RECORDED IN PLAT BOOK 44 PAGE 90 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, AND TO THEM ONLY, SO LONG AS SAID DRIVE AND PARK SHALL REMAIN IN THE CORPORATE LIMITS OF BAL HARBOUR VILLAGE, FLORIDA, OR IN THE LIMITS OF ANY TOWN OR MUNICIPALITY WHICH DIRECTLY SUCCEEDS SAID BAL HARBOUR VILLAGE, FLORIDA. IN EVENT THE DRIVE OR PARK REFERRED TO IN THIS PARAGRAPH ARE TAKEN OUT OF THE CORPORATE LIMITS OF BAL HARBOUR VILLAGE OR ANY VILLAGE OR MUNICIPALITY WHICH DIRECTLY SUCCEEDS BAL HARBOUR VILLAGE, THEN IN THAT EVENT SAID DRIVE AND PARK ARE THEREUPON DEDICATED TO THE PERPETUAL USE OF THE PUBLIC FOR PROPER PURPOSES, RESERVING HOWEVER, TO MIAMI BEACH HEIGHTS, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHTS OR REVERSIONS THEREOF WHENEVER DISCONTINUED BY LAW OR ORDINANCE. SO LONG AS THE DRIVE AND PARK DESCRIBED IN THIS PARAGRAPH SHALL REMAIN DEDICATED TO THE USE AND ENJOYMENT OF THE OWNERS OF THE LOTS IN SAID SUBDIVISIONS, THE COUNTY OF DADE, THE STATE OF FLORIDA, THE UNITED STATES OF AMERICA, (OR ANY POLITICAL SUBDIVISION OF ANY OF THEM) SHALL HAVE THE RIGHT AT ALL TIMES TO USE SAID DRIVE IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS.

THE LAWFUL ZONING REGULATIONS, NOW IN EFFECT, OR AS THE SAME MAY FROM TIME TO TIME BE LAWFULLY CHANGED OR AMENDED, APPLICABLE TO THE AREA COVERED BY THIS PLAT WILL BE OBSERVED.

IN WITNESS WHEREOF, MIAMI BEACH HEIGHTS, INC., DO AND WITH THE AUTHORITY OF ITS BOARD OF DIRECTORS, HAS CAUSED THESE PRESENTS TO BE SIGNED IN ITS NAME, FOR, AND ON ITS BEHALF, THIS 15TH DAY OF MAY, A.D. 1952.

EXECUTED IN THE PRESENCE OF:

MIAMI BEACH HEIGHTS, INC.

By Robert C. Graham
PRESIDENT

Attest: Catherine Lytle
ASSISTANT SECRETARY

STATE OF INDIANA,
COUNTY OF DAVIESS, SS

BEFORE ME, THE UNDERSIGNED AUTHORITY, THIS DAY PERSONALLY APPEARED ROBERT C. GRAHAM, PRESIDENT OF MIAMI BEACH HEIGHTS, INC., A FLORIDA CORPORATION, TO ME WELL KNOWN AND KNOWN TO ME TO BE SUCH OFFICER, AND ACKNOWLEDGED BEFORE ME THAT HE SIGNED THE FOREGOING INSTRUMENT AS SUCH OFFICER FOR AND ON BEHALF OF SAID CORPORATION, FOR ALL THE USES AND PURPOSES THEREIN CONTAINED, BY AND WITH THE AUTHORITY OF THE BOARD OF DIRECTORS OF SAID CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL AT WASHINGTON, IN SAID COUNTY AND STATE, THIS 21ST DAY OF MAY, A.D. 1952.

MY COMMISSION EXPIRES: Dec. 17-1953

NOTARY PUBLIC - STATE OF INDIANA

STATE OF FLORIDA, SS
COUNTY OF DADE,

BEFORE ME, THE UNDERSIGNED AUTHORITY, THIS DAY PERSONALLY APPEARED CATHERINE TREBETT, ASSISTANT SECRETARY OF MIAMI BEACH HEIGHTS, INC., A FLORIDA CORPORATION, TO ME WELL KNOWN AND KNOWN TO ME TO BE SUCH OFFICER AND ACKNOWLEDGED BEFORE ME THAT HE SIGNED THE FOREGOING INSTRUMENT AS SUCH OFFICER FOR AND ON BEHALF OF SAID CORPORATION, FOR ALL THE USES AND PURPOSES THEREIN CONTAINED, BY AND WITH THE AUTHORITY OF THE BOARD OF DIRECTORS OF SAID CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL AT MIAMI BEACH, IN SAID COUNTY AND STATE, THIS 22nd DAY OF MAY A.D. 1952.

MY COMMISSION EXPIRES: June 17, 1955

NOTARY PUBLIC, STATE OF FLORIDA, AT LARGE

THIS IS TO CERTIFY THAT THE ATTACHED PLAT ENTITLED "RESUBDIVISION OF LOT 21, BLOCK 12 AND TRACT 'F', RESIDENTIAL SECTION OF BAL HARBOUR, BAL HARBOUR VILLAGE, FLORIDA", IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SURVEYED AND PLATTED UNDER MY DIRECTION AND THE PERMANENT REFERENCE MONUMENTS HAVE BEEN SET AS SHOWN THEREON, THIS 15TH DAY OF MAY, A.D. 1952, IN ACCORDANCE WITH CHAPTER 177.091, FLORIDA STATUTES, SECTION 7, SUBSECTION (9) OF THE STATE OF FLORIDA.

ZURWELLE-WHITTAKER, INC.

By Wilbur S. Davidson
REGISTERED LAND SURVEYOR, STATE OF FLORIDA
CERTIFICATE NO. 1911

STATE OF FLORIDA, SS
COUNTY OF DADE,

THIS IS TO CERTIFY THAT THE ATTACHED PLAT ENTITLED "RESUBDIVISION OF LOT 21, BLOCK 12 AND TRACT 'F', RESIDENTIAL SECTION OF BAL HARBOUR, BAL HARBOUR VILLAGE, FLORIDA", HAS BEEN SUBMITTED TO THE TOWN COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, THIS 27th DAY OF May, A.D. 1952.

APPROVED: ZURWELLE-WHITTAKER, INC.
TOWN ENGINEERS

By Wilbur S. Davidson
REGISTERED LAND SURVEYOR, STATE OF FLORIDA
CERTIFICATE NO. 1911

ATTEST: Edward H. Gray
TOWN CLERK

ATTEST: Wilbur S. Davidson
TOWN ATTORNEY

THIS PLAT WAS APPROVED BY RESOLUTION NO. 5161 PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, THIS 3rd DAY OF July A.D. 1952.

ATTEST: E.R. LEATHERMAN, CLERK OF CIRCUIT COURT

By [illegible] DEPUTY CLERK

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

E.R. LEATHERMAN, CLERK OF CIRCUIT COURT

FILED FOR RECORD THIS 1 DAY OF July A.D. 1952 AT 11:30 O'CLOCK A.M. AND DULY RECORDED IN PLAT BOOK 62 AT PAGE 75 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA. THIS PLAT COMPLIES WITH REQUIREMENTS OF CHAPTER 177.081 (REC. ED. 57 PAGE) LAWS OF THE STATE OF FLORIDA.

E.R. LEATHERMAN, CLERK OF CIRCUIT COURT

By [illegible] DEPUTY CLERK

PLAT ENTITLED

RESUBDIVISION OF LOT 21 - BLOCK 12 & TRACT 'F'

RESIDENTIAL SECTION OF BAL HARBOUR

BAL HARBOUR VILLAGE, FLORIDA

MIAMI BEACH HEIGHTS, INC.
OWNERS

ZURWELLE-WHITTAKER, INC.
CIVIL ENGINEERS & SURVEYORS
MIAMI BEACH, FLORIDA

MAY 5, 1952

ASSIGNMENT AND ASSUMPTION

THIS INDENTURE, Made this 2nd day of August, A. D. 1954, between MIAMI BEACH HEIGHTS, INC., a Florida corporation, hereinafter sometimes referred to as the Subdivider, and BAL HARBOUR CLUB, INC., a non-profit Florida corporation with its principal place of business at 10201 Collins Avenue, Bal Harbour, Dade County, Florida;

W I T N E S S E T H :

WHEREAS, the Subdivider was the owner and developer of that certain Subdivision in Dade County, Florida, known as the "Residential Section of Bal Harbour" as shown on the Plat thereof, recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida; and

WHEREAS, the Subdivider has heretofore conveyed all of the lots in said Subdivision to the respective purchasers thereof, and in each and every deed the Subdivider incorporated certain uniform restrictive covenants; and

WHEREAS, restrictive covenant No. 21 provides that the Subdivider may assign any and all of its rights, obligations and privileges under said restrictive covenants to Bal Harbour Club, Inc.; and

WHEREAS, the Subdivider now desires to retain only its right of reverter as set forth in restrictive covenant No. 18 entitled "REVERTER CLAUSE" and to assign all of its other rights, obligations and privileges under said restrictive covenants to Bal Harbour Club, Inc., and Bal Harbour Club, Inc. agrees to accept said assignment and to assume said obligations;

NOW, THEREFORE, for and in consideration of the acceptance by Bal Harbour Club, Inc. of the obligations of Miami Beach Heights, Inc. and in the further consideration of the sum of One Dollar ($1.00) paid by Bal Harbour Club, Inc. to Miami Beach Heights, Inc., receipt of which is hereby acknowledged, Miami Beach Heights, Inc. does hereby assign, transfer, set over and convey to Bal Harbour Club, Inc. all of its rights, obligations and privileges under the uniform restrictive covenants contained

in all deeds from Miami Beach Heights, Inc. to the purchasers of lots in the Residential Section of Bal Harbour, according to the Plat thereof, recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida, excepting only the right of reverter as set forth in restrictive covenant No. 18 entitled "REVERTER CLAUSE", which said right is specifically reserved and retained by Miami Beach Heights, Inc.

It is understood and agreed that it is a definite part of the consideration for this assignment that it shall include the absolute assignment of the option of Miami Beach Heights, Inc. to purchase each and every lot in said subdivision at the time of each subsequent transfer, all as more particularly set forth in restrictive covenant No. 17 entitled "GRANTOR'S OPTION TO PURCHASE IF SOLD".

Bal Harbour Club, Inc. does hereby accept all of the rights and privileges herein assigned to it, and does hereby assume all of the obligations of Miami Beach Heights, Inc. as set forth in said restrictive covenants.

Signed, sealed and delivered in the presence of:

MIAMI BEACH HEIGHTS, INC.

By _____
President

Attest: _____
Secretary

(As to the President)

(As to the Secretary)

BAL HARBOUR CLUB, INC.

By _____
President

Attest: _____
Secretary

(As to Bal Harbour Club, Inc.)

STATE OF Florida)
COUNTY OF Dade)

I HEREBY CERTIFY, That on this 26th day of August, A. D. 1954, before me personally appeared ROBERT C. GRAHAM, President of MIAMI BEACH HEIGHTS, INC., a Florida corporation, to me known to be the person described in and who executed the foregoing assignment to BAL HARBOUR CLUB, INC., and acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Bal Harbour, said County and State, the day and year last aforesaid.

Jeannette G. Rose
Notary Public, State of Florida at Large

My commission expires: Nov. 17, 1955

STATE OF MICHIGAN)
COUNTY OF WAYNE)

I HEREBY CERTIFY, That on this 2nd day of August, A. D. 1954, before me personally appeared H. M. SISSON, Secretary of MIAMI BEACH HEIGHTS, INC., a Florida corporation, to me known to be the person described in and who executed the foregoing assignment to BAL HARBOUR CLUB, INC., and acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Detroit, in the County and State aforesaid, the day and year last aforesaid.

Frances E. Collord
Notary Public, Frances E. Collord

My commission expires: May 14, 1957

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY, That on this 2ND day of ~~August~~ December, A. D. 1954, before me personally appeared T. P. COOGAN and DAVID W. EXLEY respectively PRESIDENT and SECRETARY OF BAL HARBOUR CLUB, INC., a non-profit Florida corporation, to me known to be the persons described in and who executed the foregoing assignment and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Miami Beach, in the County of Dade and State of Florida, the day and year last aforesaid.

Alfred Franklin Smearingen
Notary Public, State of Florida at Large

My commission expires Mar. 6, 1956.
Notary Public, State of Florida at large.

State of Florida, County of Dade.
This instrument was filed for record the 31 day of Dec 1954 at 11:16 A.M. and duly recorded in Deed Book 4022 on Page 153 File No. DD 170422
E. B. LEATHERMAN
Clerk Circuit Court
By [signature] D.C.

42

February 25, A. D. 1955

KNOW ALL MEN BY THESE PRESENTS, That MIAMI BEACH HEIGHTS, INC., a corporation organized and existing under the Laws of the State of Florida, Party of the First Part, in consideration of the sum of Ten Dollars ($10.00), lawful money of the United States, in hand paid by BAL HARBOUR CLUB, INC., (whose mailing address is 10201 Collins Avenue, Miami Beach, Florida) a non-profit corporation organized and existing under the Laws of the State of Florida, Party of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, quit-claimed, assigned, transferred and set over and by these presents does grant, bargain, sell, quit-claim, assign, transfer and set over unto the said Party of the Second Part all of its reversionary rights, title and interests reserved, retained and withheld in each and every deed heretofore made, executed and delivered by the Party of the First Part to each and every purchaser of each and every lot in each and every block in the Residential Section of Bal Harbour, according to the Plat thereof, recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida.

TO HAVE AND TO HOLD the same unto the said Party of the Second Part, its successors and assigns forever.

IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by its duly authorized officers and its corporate seal to be affixed this the day and year first hereinabove written.

Signed, sealed and delivered
in the presence of:

MIAMI BEACH HEIGHTS, INC.

By: Robert B. Graham
President

Attest: _____
Secretary

STATE OF FLORIDA)
:
COUNTY OF DADE)

Before me, the undersigned authority, this day personally appeared ROBERT C. GRAHAM, President of MIAMI BEACH HEIGHTS, INC, a Florida corporation, be me well known to be such officer and to be the person described in and who executed the foregoing instrument, and he acknowledged before me that he executed said instrument as such officer for and in behalf of said corporation, for all the uses and purposes therein expressed and with full authority so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Miami Beach, in said County and State, this 28th day of February, A. D. 1955.

Notary Public, State of Florida at Large

My commission expires: Nov. 6th 1955

STATE OF MICHIGAN)
:
COUNTY OF WAYNE)

Before me, the undersigned authority, this day personally appeared H. M. SISSON, Secretary of MIAMI BEACH HEIGHTS, INC., a Florida corporation, to me well known to be such officer and to be the person described in and who executed said instrument as such officer for and in behalf of said corporation, for all the uses and purposes therein expressed and with full authority so to do, and the said H. M. SISSON, Secretary as aforesaid, acknowledged the seal thereto affixed to be the common and corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Detroit, in said County and State, this 25th day of February, A. D. 1955.

Notary Public, Wayne County, Michigan
Frances E. Collord
My commission expires: May 14 1957

State of Florida, County of Dade.
This instrument was filed for record the 1 day of May
1955 at 11:45 A.M. and duly recorded in Deed
Book 4050 on Page 317 File No. EE 21822
E. B. LEATHERMAN
Clerk Circuit Court
By [illegible] D.C.

82 DEC 10 PM 3:49 82R202307

OFF. REC. 11640 PG 137

RESOLUTION AND DECLARATION OF
AMENDMENTS TO COVENANTS AND RESTRICTIONS
FOR THE RESIDENTIAL SECTION OF BAL HARBOUR
a subdivision, of Dade County,
Florida

KNOW ALL MEN BY THESE PRESENTS, that THIS RESOLUTION has been adopted and approved by the true, present, and lawful owners of a majority of the lots in the Residential Section of Bal Harbour and shall be effective as of December 8, 1982.

In consideration of the reciprocal agreements of each and every other party to this Resolution, the owners of a majority of the lots in the Residential Section of Bal Harbour, have resolved and declared that the conditions, restrictions, limitations, easements, and covenants to which lots in the Residential Section of Bal Harbour are or have been commonly subject are declared to be amended by the cancellation and deletion of the following provisions or their substantial equivalents:

"The grantee herein is a member of BAL HARBOUR CLUB, INC., and as such member is familiar with and agrees to abide by the rules, regulations, restrictions and objects of said CLUB. It is a condition of the estate hereby conveyed that the grantee herein shall not rent, lease, give, convey or in any wise transfer, the property hereby conveyed to any person not at the time of such transfer, lease, gift or conveyance, a member of BAL HARBOUR CLUB, INC., or to any concern or corporation in which any member or stockholder is not at the time of such transfer, lease, gift or conveyance, a member of said Club; it being expressly understood and agreed that a similar condition will be made by the grantor in all other conveyances of similar property in the Residential Section of Bal Harbour Subdivision, the purpose of this and such other conditions being to insure to the grantee and all other members of BAL HARBOUR CLUB, INC., and to the CLUB itself, that the Club property and all other property in said Residential Section shall at all times be occupied by a colony of congenial persons, and the further purpose of benefiting lands owned by the grantor and developed under the same general plan with the property hereby conveyed. The foregoing shall not be construed as requiring the occupants of apartments in the Residential Section of BAL HARBOUR to be members of the BAL HARBOUR CLUB, INC.

This document prepared by Harrison, Sawyer, Johnston, Dunnedy & Cole

13/8 P.U. C.A.

"In cases where the grantee is a corporation, every stockholder in such grantee-corporation must be a "regular member" or "special member" of Bal Harbour Club, Inc., and the by-laws and stock certificates of such grantee-corporation must provide that the stock in said corporation is transferable only to regular members or special members of Bal Harbour Club, Inc.

"By the acceptance of this deed, the grantee expressly stipulates and agrees, for himself and for his heirs, executors, administrators, legal representatives, and assigns, and if a corporation for its successors and assigns, that in the event proceedings are instituted to foreclose any mortgage on the property hereby conveyed, the grantor herein and its successors and assigns shall have the right to redeem from the mortgage for the amount due thereunder, or to purchase said property at the foreclosure sale for the amount found to be due the mortgagee in the foreclosure proceedings should the mortgagor fail to redeem from such mortgage, and in case of such redemption by the grantor, the grantor, its successors and assigns, so redeeming shall take and have absolute fee simple title to the property redeemed, free of any claim or right of the grantee, his heirs or assigns, or its successors or assigns, or the mortgagor, and every person or concern claiming by, through, or under him or it.

"Any deed or conveyance directly or indirectly, and whether by way of will or judicial proceedings or otherwise, in violation of this covenant, limitation or restriction, shall be void and of no effect."

and that the conditions, restrictions, limitations, easements, and covenants quoted above, to the extent that the same are imposed by any deed, declaration, or agreement, are hereby declared to be null and void, and of no further force or effect whatsoever.

APPROVED AND ADOPTED, at Bal Harbour, County of Dade, State of Florida;

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16th day of December, 1982.

LEON BARKISIAN, President
BAL HARBOUR CLUB, INC.

DR. LEWIS R. ELIAS, Assistant Secretary
BAL HARBOUR CLUB, INC.

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by the aforenamed officers of the Bal Harbour Club, Inc., a Florida corporation, this 10th day of December, 1982, on behalf of the Corporation.

Notary Public
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MAY 11 1986
BONDED THRU GENERAL INS. UNDERWRITERS

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
RICHARD P. BRINKER
CLERK CIRCUIT COURT

100% Recycled 30% PCW

1983 JAN 18 PM 3:53 83R014119

OFF REC 11672 PG 267

RESOLUTION AND DECLARATION
CONCERNING THE COVENANTS AND RESTRICTIONS
FOR THE RESIDENTIAL SECTION OF BAL HARBOUR
a subdivision, of Dade County,
Florida

KNOW ALL MEN BY THESE PRESENTS, that THIS RESOLUTION has been adopted and approved by a majority of the Regular Members of the Bal Harbour Club, Inc., and shall be effective as of December 8, 1982.

It is hereby Resolved and Declared, that the Bal Harbour Club, Inc., does hereby extinguish, cancel, and nullify the reversionary interest established by the following clause (or its substantial equivalent) found in the standard deeds to lots in the Residential Section of Bal Harbour, and that the Bal Harbour Club, Inc., hereby waives forever any and all rights it may have under said same clause:

> "In addition to any other right or remedy herein prescribed, violation directly or indirectly, in whole or in part, of any covenant, limitation or restriction contained in this instrument, by the grantee or his heirs or assigns, or its successors or assigns, or any one claiming by, through or under him or it, whether by deed, will, descent, trust indenture, mortgage foreclosure, or by virtue of any judicial proceedings or otherwise, shall cause the above described lands to revert immediately to the grantor and shall authorize and empower the grantor to enter immediately upon said property and to take possession thereof, together with all improvements thereon, with full title in fee simple."

and that the clause quoted above, to the extent that the same is imposed by any deed, declaration, or agreement, is hereby declared to be null and void, and of no further force or effect whatsoever.

APPROVED AND ADOPTED, at Bal Harbour, County of Dade, State of Florida;

This document prepared by Mersion, Sawyer, Johnston, Dunwody & Cole

9.00
10.00

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 18th day of January, 1983.

LEON SARKISIAN, President

BAL HARBOUR CLUB, INC.

DR. LEWIS R. ELIAS, Assistant Secretary

BAL HARBOUR CLUB, INC.

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by the aforenamed officers of the Bal Harbour Club, Inc., a Florida corporation, this 18th day of January, 1983, on behalf of the Corporation.

Notary Public
State of Florida at Large

My Commission Expires:

1983 FEB -2 AM 10:55

83R027383

JAMES S. GROH
THERRELL, BAISDEN, STANTON,
WOOD & SETLIN
1111 LINCOLN ROAD
MIAMI BEACH, FLA. 33139

OFF REC 11686 PG 931

RESOLUTION AND DECLARATION
CONCERNING THE COVENANTS AND RESTRICTIONS
FOR THE RESIDENTIAL SECTION OF BAL HARBOUR
a subdivision, of Dade County,
Florida

KNOW ALL MEN BY THESE PRESENTS, that THIS RESOLUTION has been adopted and approved by a majority of the Regular Members of the Bal Harbour Club, Inc., and shall be effective as of December 8, 1982.

It is hereby Resolved and Declared, that the Bal Harbour Club, Inc., does hereby extinguish, cancel, and nullify the right of first refusal established by the following clause (or its substantial equivalent) found in the standard deeds to lots in the Residential Section of Bal Harbour, and that the Bal Harbour Club, Inc., hereby waives forever any and all rights it may have under said same clause:

> "In the event that the grantee herein desires to sell the property conveyed by this deed, with its improvements, if any, then said property shall be offered for sale to the grantor at the same price at which the property is about to be sold, and the said grantor shall have fifteen days within which to exercise its option to purchase said property; and should the grantor fail or refuse (within 15 days after receipt of notice of the price and terms at which said property is about to be sold) to exercise its option to purchase said property at the price at which it is about to be sold, then the owner of said property shall have the right to sell said property subject to the foregoing restriction numbered 15 and to each and every other restriction, covenant, limitation and agreement herein contained."

and that the clause quoted above, to the extent that the same is imposed by any deed, declaration, or agreement, is hereby declared to be null and void, and of no further force or effect whatsoever.

APPROVED AND ADOPTED, at Bal Harbour, County of Dade, State of Florida;

This document prepared by:
Kelshon, Sawyer, Johnston,
Dunwody & Cole

9-

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21st day of January, 1983.

LEON SARKISIAN, President

BAL HARBOUR CLUB, INC.

(SEAL)

DR. LEWIS R. ELIAS, Assistant Secretary

BAL HARBOUR CLUB, INC.

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by the aforenamed officers of the Bal Harbour Club, Inc., a Florida corporation, this 21st day of January, 1983, on behalf of the Corporation.

Notary Public
State of Florida at Large

My Commission Expires:

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
ALSO FILED IN:
RICHARD P. BRINKER,
CLERK CIRCUIT COURT

REPRODUCTIONS.
2-6-1992 COURTHOUSE TOWER
DATE MICROFILMED LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

OFF. REC. 15377 PG 3530 92R044063 1992 FEB 06 12:59

ASSIGNMENT AND CONFIRMATION OF ASSIGNMENT

THIS ASSIGNMENT is made effective as of the 1st day of March, 1984, by and between the BAL HARBOUR CLUB, INC., a non-profit Florida corporation, hereinafter called "CLUB", and the BAL HARBOUR CIVIC ASSOCIATION, INC., a non profit Florida corporation, whose address is post office Box 54-6220, Surfside, Florida 33154, hereinafter called "ASSOCIATION";

WITNESSETH:

WHEREAS, Miami Beach Heights, Inc., a Florida corporation, hereinafter called "DEVELOPER", was the owner and developer of that certain Subdivision in Dade County, Florida known as the "Residential Section of Bal Harbour" as shown on the Plat thereof recorded in Plat Book 44 at Page 98, of the Public Records of Dade County, Florida, which Plat contained a uniform set of restrictive covenants; and

WHEREAS, the DEVELOPER transferred certain rights, privileges, title, interest, duties and obligations in, or under, the uniform set of restrictive covenants to the CLUB by an assignment dated February 23, 1952, filed March 18, 1952 and recorded in Deed Book 3567 at Page 2, and an assignment and assumption dated August 2, 1954, filed December 31, 1954 and recorded in Deed Book 4022 at Page 153, all of the Public Records of Dade County, Florida; and

WHEREAS, by a certain Resolution and Declaration recorded in Official Records Book 11640 at Page 137, and another recorded in Official Records Book 11672 at Page 267, and another recorded in Official Records Book 11686 at Page 931, all of the Public Records of Dade County, Florida, certain conditions, restrictions, limitations, covenants and reservations originally recorded by the Developer were released and cancelled of record; and

WHEREAS, the Club did previously assign certain rights, privileges, interests, duties and obligations to the Association but for unexplained reasons such assignment was never recorded in the Public Records of Dade County, Florida; and

WHEREAS, the CLUB desires to confirm its previous assignment to the ASSOCIATION; and

WHEREAS, the Association has joined in the execution of this Confirmation to acknowledge its agreement with the recitals herein and to accept said assignment and assume the obligations and responsibilities arising thereunder:

NOW THEREFORE, for and in consideration of the acceptance by the ASSOCIATION of the obligations assumed by the CLUB from the DEVELOPER, and in further consideration of the sum of One ($1.00) Dollar and other good and valuable considerations paid by the ASSOCIATION to the CLUB, the receipt and sufficiency of which is hereby acknowledged, the CLUB does hereby assign, and confirm its prior assignment, to the ASSOCIATION all of its rights, privileges, duties and obligations in, relating to and arising out of, and contained in all deeds from the DEVELOPER to the purchasers of lots in the Residential Section of Bal Harbour, according to the Plat thereof, recorded in Plat Book 44 at Page 98 of the Public Records of Dade County, Florida, (except as provided herein), which are more particularly described as the following ("Assigned Rights"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

And the Association, by its joinder herein, hereby accepts the Club's assignment of the Assigned Rights and agrees to assume all obligations and duties arising thereunder or in connection therewith.

REPRODUCTIONS.
2/26, 1992 COURTHOUSE TOWER
DATE MICROFILMED LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

Notwithstanding anything herein to the contrary this Assignment is not intended to reimpose or extend vitality to any right, covenant, restriction, limitation or easement that has previously been released of record by the Club, or that is unenforceable or unlawful, or which purports to impose restrictions relating to race, religion or required membership in the Club. This Assignment is made without any representation or warranty by the Club and is not intended and shall not be deemed to convey any interest in real property or such rights as the Club may enjoy as the owner of real property in the Plat of the Residential Section of Bal Harbor or otherwise.

IN WITNESS WHEREOF, the parties have signed and sealed these presents January 29th 1992 to be effective the day and year first above written.

Signed, sealed & Delivered
the presence of:

Virginia Tuck
Printed signature

Charles G. Brown
Printed signature

Sue A. Olsen
Printed signature

John R. Olsen
Printed signature

BAL HARBOUR CLUB, INC.

By: _____
President
FRANK S. MAY

Frank S. May
Printed signature

By: _____
Secretary
LOIS HARDER

Lois Harder
Printed signature
10201 Collins Avenue
Bal Harbour, FL 33154

BAL HARBOUR CIVIC ASSOCIATION

By: _____
President
ANTHONY RISO

Anthony Riso
Printed signature

By: _____
Secretary
SEAN CLANCY

Sean Clancy
Printed signature
P.O. Box 54-6220
Surfside, FL 33154

dbm1096s

REPRODUCTION
FEB 26, 1992
DATE MICROFILMED
COURTHOUSE TOWER
LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

OFF. REC. 15377P03532

STATE OF FLORIDA)

COUNTY OF DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take oaths and acknowledgments, personally appeared FRANK S. MAY, as President and LOIS HARDER, as Secretary of the BAL HARBOUR CLUB, INC., to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same for the purposes stated therein.

WITNESS my hand and official seal in the County and State aforesaid this 29th day of January, 1992.

NOTARIAL SEAL NANCY C. PECK NOTARY PUBLIC STATE OF FLORIDA

Nancy C. Peck
Printed signature

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA
MY COMM. EXP. OCT. 10, 1993
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)

COUNTY OF DADE)

I HEREBY CERTIFY that on this day, before me officer duly authorized to take oaths and acknowledgments, personally appeared ANTHONY RISO, as President and SEAN CLANCY, as Secretary of the BAL HARBOUR CIVIC ASSOCIATION, INC., to me known to the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same for the purposes stated therein.

WITNESS my hand and official seal in the County and State aforesaid this 29th day of January, 1992.

NOTARY PUBLIC RICHARD H. OLSEN NOTARY PUBLIC STATE OF FLORIDA AT LARGE

Richard H. Olsen
Printed signature

My Commission Expires:
7/13/93

This Instrument Prepared by:
Donald B. McKee
Mershon, Sawyer, Johnston, Dunwody & Cole
200 South Biscayne Blvd.
Miami, Florida 33131-2387

dbm109ds

Feb 6, 1992 COURTHOUSE TOWER
DATE MICROFILMED LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

OFF. REC. 15377 PG 3533

EXHIBIT "A"

1. Except as hereinafter provided no building shall be erected or constructed on any lot in this Subdivision other than one single family dwelling house (with the usual out-buildings for use in connection therewith) for the use of one family only, and no lot shall be used except for residential purposes exclusively for one family only. No out-building shall be allowed that is susceptible of being occupied for residential purposes (except by domestic servants) and no outbuilding shall be used except in connection with the main house. No temporary residence shall be permitted on any lot, except those constructed by the grantor.

Provided, however, that apartment buildings may be erected on the lots hereinafter named, and within the limitations and restrictions set forth as to each lot, to wit:

ON LOTS 1 TO 10 IN BLOCK 7, AND ON LOTS 1 TO 7 IN BLOCK 8

Apartment buildings may be erected not exceeding three (3) stories in height, including any penthouse or similar structure, and containing not more than twenty-four (24) dwelling units.

ON LOTS 1 TO 4 IN BLOCK 1

Apartment buildings may be erected not exceeding three stories in height, including any penthouse or similar structure, and containing not more than sixteen dwelling units, but no building or any part thereof shall be erected on said lots nearer to the front line, which is the waterfront, than forty feet, or nearer to the rear or side lines than ten feet.

ON LOTS 21 TO 25 IN BLOCK 12

Apartment buildings may be erected not exceeding three (3) stories in height, including any penthouse or similiar structure, and containing not more than twenty-four (24) dwelling units, but no building or any part thereof shall be erected on said lots nearer to the front line, which is the waterfront, than forty (40) feet, or nearer the side lines or to the rear or street line than ten (10) feet.

ON LOTS 2, 3 AND 4 in BLOCK 2 AND ON LOTS 2, 3, 4, 5 AND 6 IN BLOCK 4

Apartment buildings may be erected not exceeding two (2) stories in height, including any penthouse or similiar structure, on Lot 3 of Block 2 and Lots 3, 4 and 5 of Block 4, containing not more than eight dwelling units; and on Lots 2 and 4, Block 2, and Lot 6, Block 4, containing not more than ten (10) dwelling units; and on Lot 2, Block 4, containing not more than twelve (12) dwelling units. No building or any part thereof shall be erected on said lots nearer to the side or rear lines than ten (10) feet, or nearer to the side street setback line as shown on the plat as to lots 2 and 4, in block 2, and lot 2 in block 4, or nearer to the front line than the front setback line as shown on the plat.

The foregoing use restrictions shall not apply to the Ocean Front Section of Bal Harbour, for which there are separate and different restrictions, nor to the Business Section of Bal Harbour.

4. On water front lots no building or any part thereof may be erected nearer to the seawall than 40 feet, measured from the outside face thereof, or nearer to the rear line, which is the line abutting the street, or to the side lines than 10 feet.

In blocks 1 and 12 garages and servants quarters may be constructed as a part of the residence building; or should the grantee erect a wall along the rear line of the lot, the outside face of such wall shall not be nearer than ten (10) feet to the street line in which event garages and servants' quarters not more than one story in height may be constructed as a part of or abutting such wall, with a gateway entry from the street; otherwise garages or servants' quarters must be located not nearer than twenty (20) feet to the rear line of the lot. No garage shall have an entry directly facing the street unless such entry is obscured by a wall five (5) feet in height between the street and the garage entrance.

In Blocks 7 and 8 no building or any part thereof may be erected nearer to the front line, which is "Bal Harbour Boulevard", than fifty (50) feet or nearer than the front setback line of Lots 6 an

EXAMINED

Feb 6, 1992 COURTHOUSE TOWER
DATE MICROFILMED LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

7 of Block 8 as shown on the plat, or nearer to the side lines than twenty-five (25) feet, or nearer to the rear line than fifty (50) feet, except that one-story garages and/or servants' quarters may be erected with the rear thirty (30) feet of the lot, but not nearer than 5 feet to the side or rear lines. All lots in said blocks shall be regarded as fronting on "Bal Harbour Boulevard".

No building or any part thereof may be erected on any lot elsewhere in the Subdivision beyond the front setback lines as shown on the plat, or nearer than 10 feet to the side or rear lines.

Where the side or rear setback lines are shown on the plat of the Subdivision, no building or any part thereof may be erected nearer to the side or rear lines than said setback lines.

On the waterfront lots the front line is the line facing the water, and on all other lots in the Subdivision the front line is the line abutting the street or streets.

Terraces not more than three feet six inches above the grade of the center of the street on which the lot fronts shall not be deemed a part of the building when actually connected to the building.

5. No boathouse or dock building shall be erected on or adjoining any of the lots in this Subdivision, but a dock extending such a distance from the line of the bulkhead of the waterfront lots as may be approved by the Subdivider may be permitted, provided no dock shall be higher than 5½ feet above mean high tide, or shall extend more than 8 feet beyond the seawall, and no cover shall be permitted to be erected in connection with any dock except temporary boat awnings which may not extend over 8 feet above mean high tide; PROVIDED FURTHER that no boat landing, dock or pier shall be constructed until the plans and specifications therefor shall have been approved in writing by the Subdivider. No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the Subdivider. The Subdivider shall have the right to regulate the size and type of boats, yachts or vessels which may be moored to any dock or mooring along the waters adjacent to the Subdivision, regardless of the location.

No mooring pile shall be placed more than 25 feet beyond the outside face of the seawall of any lot, and no mooring pile shall be placed nearer than seven and one-half feet to a line formed by the projection of the side lines of the lot.

6. No lot or parcel shall be increased in size by filling in the waters on which it abuts.

7. No seawall shall be erected or constructed in this Subdivision or adjacent thereto unless and until its location, design, materials, structure, strength etc. shall have been approved in writing by the Subdivider.

8. Heights of any walls or fences built outside of the building setback lines shall not be greater than as follows:

No wall or fence may be erected on any lot in the Subdivision higher than 5 feet above finish grade or more than 6 feet above the elevation of the center of the adjoining street. In blocks 1 and 18, no wall or fence more than four feet in height may be erected between the seawall and the front setback line.

EXHIBIT "A"

REPRODUCTIONS.
7-26-1992 COURTHOUSE TOWER
DATE MICROFILMED LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT

The Subdivider may in its discretion approve minor projections above the restricted heights for Architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot until after the heights, type and design and location thereof shall have been approved in writing by the Subdivider.

9. Nothing shall be done on any lot which may be or become an annoyance or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry or fowl shall be kept on any lot. No sign of any character shall be displayed, except that the owner may display on his premises a "For Sale" or "For Rent" sign referring only to the premises on which displayed, provided the form and size of such sign be first approved in writing by the Subdivider.

No Woods, underbrush or other unsightly growths shall be permitted to grow or remain upon the premises hereby conveyed, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the owner shall fail or refuse to keep the demised premises free of woods, underbrush or refuse piles or other unsightly growths or objects, then the Subdivider may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

10. For the purpose of further insuring the development of the lands in the Subdivision as a residential area of high standards, the Subdivider reserves the power to control the buildings, structures and other improvements placed on said lot.

Whether or not provisions therefor is specifically stated in any conveyance of a lot made by the Subdivider, the owner or the occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building, wall or other structure shall be placed upon such lot unless and until the plans and specifications therefor and the plot plan have been approved in writing by the Subdivider. Each such building, wall or structure shall be placed on the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans and specifications by the Subdivider may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Subdivider shall seem sufficient. No alteration in the exterior appearance of the buildings or structures shall be made without like approval.

Should the Subdivider fail to approve or disapprove the plans and specifications submitted to it by the owner of a lot or lots in the Subdivision within 30 days after written request therefor, then such approval shall not be required, provided, however, that no building or other structure shall be erected or shall be allowed to remain on any lot which violates any of the covenants or restrictions hereinin contained.

11. No tents and no temporary or accessory building or structure shall be erected on the lands hereby conveyed or on any of the lots in said Subdivision, without the written consent of the Subdivider.

18. On waterfront lots, no residence may be constructed with floor areas, exclusive of garages and terraces, of less than 2,500.00 square feet.

On all other lots in the Subdivision, no residence may be constructed with floor areas, exclusive of garages and terraces, of less than 1000 square feet.

REPRODUCTIONS.
FEB 26 1992 DATE MICROFILMED
COURTHOUSE TOWER LOCATION
CAMERA OPERATOR
DEPUTY CLERK, CIRCUIT COURT.

OFF. REC. 15377P03536

NO. 3 (Cont'd)

13. A residential or apartment site may consist of one or more lots, all of one lot and part of another or contiguous parts of more than one lot, or any other combination of contiguous parts of lots, will form an integral unit of land suitable for use as a site for residence or an apartment, provided it extends from the street serving it to the rear boundary or to the waterfront boundary; but no site shall have a frontage of less width than is contained in the largest adjoining lot shown on the plat. For all purposes of this instrument and all the restrictions herein contained, the unit of land so formed for use as a residential site; or for an apartment site where apartments are allowed to be built, shall be considered to be a lot to the same extend as though it has been laid out and platted as one.

No resubdivision as herein provided or otherwise shall be permitted except with the approval in writing of the Subdivider.

14. Except on the waterfront lots and the lots in Blocks 7 and 8, an easement is reserved over the rear 5 feet of each lot in the Subdivision for the installation and maintenance of telephone and electric lines and conduits, water and gas mains, sewers, and any other utility, and for any similiar facility deemed by the Subdivider necessary for the service of said lands; and the Subdivider further reserves the right to assign the use of said easements and rights of way to any person, firm, corporation or municipality furnishing one or more of said facilities.

A similar easement is reserved over the side lines of the lots where such easements are shown on the plat.

No trees may be planted within the easement hereby reserved.

All electric and telephone wires from utility lines into the buildings on all lots in the Subdivision shall be run underground only.

16. In the event of a violation or breach of any of these restrictions by and person or concern claiming by, through or under the Subdivider, or by virtue of any judicial proceedings, the Subdivider, and the owners of lots in the Subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compell a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Subdivider shall have the right, whenever there shall have been built on any lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or conditions contained in this deed, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occuring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any of the restrictions in this deed contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
Clerk of Circuit & County Courts

OFF. REC. 16806 PG 3330

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Steven W. Zelkowitz, Esq.
WEISS SEROTA & HELFMAN, P.A.
2665 South Bayshore Drive, Suite 204
Miami, FL 33133
(305) 854-0800

95R224519 1995 JUN 07 11:42

For Recording Purposes Only

DOCSTPOEE 0.60 SURTX 0.45
HARVEY RUVIN, CLERK DADE COUNTY, FL

GRANT OF EASEMENT

THIS GRANT OF UTILITY AND LIMITED INGRESS AND EGRESS EASEMENT (this "Easement") is made this 3rd day of June, 1995, by **BAL HARBOUR CIVIC ASSOCIATION, INC.**, a Florida non-profit corporation, having an address at Post Office Box 54-6110, Bal Harbour, Florida 33154 (hereinafter referred to as the "GRANTOR") to and in favor of **BAL HARBOUR VILLAGE**, a Florida municipal corporation, having an address at 655 96th Street, Bal Harbour, Florida 33154 (hereinafter referred to as the "GRANTEE").

RECITALS:

The real property located in Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property") consisting of the streets and parks as shown on the Plat of the Residential Section of Bal Harbour as recorded in Plat Book 44, Page 98 of the Public Records of Dade County, Florida (the "Plat") was dedicated on the Plat for the "use and enjoyment of the owners of the lots of said subdivision, and to them only, so long as said streets or parks shall remain in the corporate limits of Bal Harbour Village, Florida."

Miami Beach Heights, Inc. was the owner and developer of the residential section of Bal Harbour including the Property and assigned its rights therein to the Bal Harbour Club, Inc. by Assignment, dated February 23, 1952 and recorded March 18, 1952 in Deed Book 3567, Page 2, and an Assignment and Assumption dated August 2, 1954 and recorded December 31, 1954 in Deed Book 4022, Page 153, all of the Public Records of Dade County, Florida. Subsequently, the Bal Harbour Club, Inc. assigned its rights therein to the GRANTOR by Assignment and Confirmation of Assignment, dated January 29, 1992 and recorded February 6, 1992 in Official Records Book 15377, Page 3530 of the Public Records of Dade County, Florida. Pursuant to the above referenced assignments, the GRANTOR has the authority to act

on behalf of the owners of the lots within the residential section of Bal Harbour with regard to their common interests in and to the Property and to enter into and convey this Easement.

Pursuant to a Bill of Sale of even date herewith, GRANTOR has conveyed and transferred to GRANTEE the existing water transmission and distribution facilities, sewage transmission and collection facilities, surface and stormwater drainage systems and all conveyances, equipmen: and appurtenances related thereto located in, over, under and upon the Property within the corporate limits of Bal Harbour Village (collectively, the "Utilities").

GRANTOR has agreed to grant to GRANTEE an easement for utilities and ingress and egress in, over, under, upon and through the Property for the sole purpose of operating, maintaining, repairing and replacing the Utilities, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GRANTOR does hereby grant the following easement as hereinafter set forth:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement if fully set forth herein.

2. Grant of Easement. GRANTOR does hereby grant and convey to the GRANTEE and its licensees, agents, successors and assigns a non-exclusive, perpetual easement for utilities and ingress and egress in, over, under, upon and through the Property with full rights and authority to enter upon and excavate the Property in order to construct, reconstruct, restore, install, operate, relocate, replace, improve, remove, inspect, repair and maintain the Utilities, as the GRANTEE and its assigns may deem necessary. GRANTOR also grants GRANTEE a license to temporarily locate its equipment on any property of GRANTOR adjoining the Property as may be necessary to perform the foregoing.

3. Use of Easement. GRANTEE shall have the right to do all things necessary, useful or convenient for the purposes outlined in Section 2 hereof. GRANTOR hereby covenants with GRANTEE that GRANTEE shall have quiet and peaceful possession, use and enjoyment of this Easement. Nothing contained herein shall be deemed as granting or dedicating the Property to public use.

4. Representations. GRANTOR does hereby represent to the GRANTEE, that it is lawfully seized and possessed of the Property , and that it has good and lawful right to enter into and convey this Easement.

5. Covenants Running with the Land. This Easement and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

6. Rights Reserved. The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. GRANTOR shall have the right to use the Property, or any portion thereof, or any property of GRANTOR adjoining the Property for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of GRANTEE.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed by its duly authorized officer as of the day and year first above written.

WITNESSES: Signed, sealed and delivered in the presence of:

GRANTOR:

BAL HARBOUR CIVIC ASSOCIATION, INC., a Florida non-profit corporation

By: _____
Charles G. Brown, President

_____

_____
(Legibly Print/Type/or Stamp Name)

_____

_____
(Legibly Print/Type/or Stamp Name)

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 25th day of June, 1995, by **CHARLES G. BROWN** the President of **BAL HARBOUR CIVIC ASSOCIATION, INC**, a Florida non-profit corporation on behalf of the corporation. He (check one) [✓] is personally known to me or [ ] has produced _____ (type of identification) as identification.

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
STEVEN W ZELKOWITZ
COMMISSION NUMBER
CC275457
MY COMMISSION EXP.
APR. 6,1997

_____
Notary Public

STEVEN W. ZELKOWITZ
(Legibly Print/Type/or Stamp Name)

My Commission Expires:

EXHIBIT "A"

Certain real property located in Dade County, Florida more particularly described as follows:

The streets designated "Bal Bay Drive," "Bal Cross Drive," "Park Drive," "Biscay Drive," "Camden Drive," "Balfour Drive," "Camden Court" and Harbour Way" together with all areas designated "Park" as set forth on the **PLAT OF THE RESIDENTIAL SECTION OF BAL HARBOUR** according to the plat thereof as recorded in Plat Book 44, Page 98 of the Public Records of Dade County, Florida.

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
HARVEY RUVIN.
Clerk of Circuit & County Courts

027001\easement.fin

OFF REC 17544 PG 204

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Steven W. Zelkowitz, Esq.
WEISS SEROTA & HELFMAN, P.A.
2665 South Bayshore Drive, Suite 204
Miami, FL 33133
(305) 854-0800

97R087054 1997 FEB 27 14:51

For Recording Purposes Only

#4

EASEMENT

DOCSTPDEE 0.60 SURTX 0.45
HARVEY RUVIN, CLERK DADE COUNTY, FL

THIS EASEMENT (this "Easement") is made this 5TH day of FEBRUARY 1997, by **BAL HARBOUR MANOR INC**, a Florida corporation, having an address at 10190 Collins Avenue, Bal Harbour, Florida 33154 (hereinafter referred to as the "GRANTOR"), to and in favor of **BAL HARBOUR VILLAGE**, a Florida municipal corporation, having an address at 655 96th Street, Bal Harbour, Florida 33154 (hereinafter referred to as the "GRANTEE").

RECITALS:

GRANTOR owns fee simple title to certain real property located in Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"); and

GRANTOR has agreed to grant to GRANTEE an easement for landscaping and utilities purposes as well as ingress and egress in, over, under, upon and through the Property for the purpose of installing, constructing, maintaining, repairing and replacing any landscaping and utilities, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. Grant of Easement. GRANTOR does hereby grant and convey to the GRANTEE a non-exclusive, perpetual easement for the purpose of installation and maintenance

of landscaping (including, but not limited to, all forms of plantings and vegetation, ground forms, rock groupings, drainage structures, walkways, lighting and irrigation) and utilities (including, but not limited to, water transmission and distribution facilities, sewage transmission and collection facilities, surface and stormwater drainage systems and all conveyances, equipment and appurtenances related thereto) as well as ingress and egress in, over, under, upon and through the Property with full rights and authority to enter upon and excavate the Property in order to install, construct, reconstruct, operate, relocate, replace, improve, remove, inspect, repair and maintain such work. Subject to the restoration provisions set forth in Section 3 hereof, GRANTOR also grants GRANTEE a license to temporarily locate its equipment on any property of GRANTOR adjoining the Property as may be necessary to perform the foregoing.

3. Improvements and Restoration. In the event GRANTEE exercises its rights as set forth in Section 2 hereof, GRANTEE shall, subject to the work described in Section 2, restore the Property and any improvements thereon to their prior existing condition at no cost or expense to GRANTOR unless such restoration is required due to the acts or omissions of GRANTOR. GRANTEE shall use its best efforts to minimize any impacts to GRANTOR's ongoing activities on the Property in exercising its rights hereunder. To the extent permitted by law, GRANTEE agrees to indemnify and hold GRANTOR harmless from and against any and all damages, liabilities, costs and matters relating to or arising out of the exercise of its rights under this Easement.

4. Warranties and Representations. GRANTOR does hereby covenant with the GRANTEE, that (a) it is lawfully seized and possessed of the Property; (b) it has good and lawful right to enter into this Easement and convey said easement; and (c) all applicable corporate, partnership, trust or other required authorizations, approvals or consents have been obtained and no other authorizations, approvals or consents are required to effectuate GRANTOR's execution and delivery of this Easement.

5. Covenants Running with the Land. This Easement, and the rights and interests created herein, shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

6. Rights Reserved. The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. GRANTOR shall have the right to use the Property, or any portion thereof, or any property of GRANTOR adjoining the Property for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of GRANTEE.

7. Miscellaneous. This Easement shall be construed under the laws of the State of Florida. Grantee may, at Grantee's cost and expense, record this Easement and any amendments hereto in the Public Records of Dade County, Florida. This Easement may only be modified, supplemented or revised in writing signed by the parties, or their successors or

assigns, and any modification shall be effective only upon recordation in the Public Records of Dade County, Florida.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.

WITNESSES:

Print Name: E.K. MATTHEWS

S.E. Pershall, Jr.
Print Name: S.E. PERSHALL, JR

GRANTOR:

BAL HARBOUR MANOR INC,
a Florida corporation

By: Yvonne B. Welstead
Print Name: YVONNE B. WELSTEAD
Its: President

(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF DADE

THIS IS TO CERTIFY, that on this 5th day of February, 1996, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Yvonne B. Welstead as President of BAL HARBOUR MANOR INC, a Florida corporation, on behalf of the corporation, who (check one) [✓] is personally known to me or [ ] produced _____ as identification.

Nancy A. Mays
NOTARY PUBLIC
Print Name: Nancy A. Mays

My Commission Expires: June 11, 1999

NOTARY PUBLIC STATE OF FLORIDA

EXHIBIT "A"

Certain real property located in Dade County, Florida, more particularly described as follows:

The east five (5) feet of Lot 10 in Block 7 of BAL HARBOUR RESIDENTIAL SECTION, according to the Plat thereof, recorded in Plat Book 44, Page 98, of the Public Records of Dade County, Florida.

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

CFN 20080R0255235
OR Bk 26293 Pgs 2194 - 2197; (4pgs
RECORDED 03/28/2008 08:33:06
DEED DOC TAX 0.60
SURTAX 0.45
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Lisa G. Quarrie, Esq.
Florida Power & Light Company
700 Universe Blvd., LAW/JB
Juno Beach, FL 33408

FPL JOB# 1956514
Sec. 26 TWSP. 52 RNG. 42
Folio # 12 2226 002 2370

GRANT OF EASEMENT

THIS GRANT OF UTILITY AND LIMITED INGRESS AND EGRESS EASEMENT (this "Easement") is made this 31st day of October, 2007, by **BAL HARBOUR CIVIC ASSOCIATION, INC.**, a Florida non-profit corporation, having an address at Post Office Box 54-6110, Bal Harbour, Florida 33154 (hereinafter referred to as the "**Grantor**") to and in favor of **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation, having an address at 700 Universe Blvd., Juno Beach, FL 33408 (hereinafter referred to as the "**Grantee**").

RECITALS

The real property located in Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property") consisting of the street and parks as shown on the Plat of the Residential Section of Bal Harbour as recorded in Plat Book 44, Page 98 of the Public Records of Dade County, Florida (the "Plat") was dedicated on the Plat for the "use and enjoyment of the owners of the lots of said subdivision, and to them only, so long as said streets or parks shall remain in the corporate limits of Bal Harbour Village, Florida."

Miami Beach Heights, Inc. was the owner and developer of the residential section of Bal Harbour including the Property and assigned its rights therein to the Bal Harbour Club, Inc. by Assignment, dated February 23, 1952 and recorded March 18, 1952 in Deed Book 3567, Page 2, and an Assignment and Assumption dated August 2, 1954 and recorded December 31, 1954 in Deed Book 4022, Page 153, all in the Public Records of Dade County, Florida. Subsequently, the Bal Harbour Club, Inc. assigned its rights therein to the **GRANTOR** by Assignment and Confirmation of Assignment, dated January 29, 1992 and recorded February 6, 1992 in Official Records Book 15377, Page 3530 of the Public Records of Dade County, Florida. Pursuant to the above referenced assignments, the **GRANTOR** has the authority to act on behalf of the owners of the lots within the residential section of Bal Harbour with regard to their common interests in and to the Property and to enter into and convey this Easement.

Pursuant to a Bill of Sale of even date herewith, **GRANTOR** conveys and transfers to **GRANTEE** the existing and future electric transmission and distribution facilities and all conveyances, equipment and appurtenances related thereto located in, over, under and upon the Property within the corporate limits of Bal Harbour Village (collectively, the "Utilities").

GRANTOR has agreed to grant to **GRANTEE** an easement for utilities and ingress and egress in, over, under, upon and through the Property for the sole purpose of construction, operation and maintenance of the underground electric utility facilities (including cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such Utilities, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **GRANTOR**, does hereby grant the following easement as hereinafter set forth:

1. **Recitals**. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. **Grant of Easement**. **GRANTOR** does hereby grant and convey to the **GRANTEE** and its licensees, agents, successors and assigns a non-exclusive, perpetual easement for utilities together with the right to permit any other person, firm or corporation to attach underground wires to any facilities hereunder and lay cable and conduit within the easement area and to operate the same for communications purposes; the right of ingress and egress to said premises at all times; the right to clear the land of obstructions within and outside the easement area which might interfere with Grantee's facilities; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property. **GRANTOR** also grants **GRANTEE** a license to temporarily locate its equipment on any property of **GRANTOR** adjoining the Property as may be necessary to perform the foregoing.

3. **Use of Easement**. **GRANTEE** shall have the right to do all things necessary, useful or convenient for the purposes outlined in Section 2 hereof. **GRANTOR** hereby covenants with **GRANTEE** that **GRANTEE** shall have quiet and peaceful possession, use and enjoyment of this Easement. Nothing contained herein shall be deemed as granting or dedicating the Property to public use.

4. **Representations**. **GRANTOR** does hereby represent to the **GRANTEE**, that it is lawfully seized and possessed of the Property, and that it has good and lawful right to enter into and convey this Easement.

5. **Covenants Running with the Land**. This Easement and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

http://mail.siegfriedlaw.com:8815/exchange/A6/Inbox/BAL_HARBOR_EASEMENT (2).doc.EML/BAL_HARBOR_EASEMENT (2).doc/C58EA28C-18C0-4a97-9AF2-036E93DDAFB3/BAL_HARBOR_EASEMENT (2).doc?attach=1

6. **Rights Reserved**. The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. **GRANTOR** shall have the right to use the Property, or any portion thereof, or any property of **GRANTOR** adjoining the Property for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of **GRANTEE**.

IN WITNESS WHEREOF, GRANTOR has caused theses presents to be executed by its duly authorized officer as of the day and year first above written.

WITNESSES: Signed, sealed and delivered in the presence of:

Angela P. Roughton

Angela P. Roughton
(Legibly Print/Type/or Stamp Name)

Michelle Nason

Michelle Nason
(Legibly Print/Type/or Stamp Name)

GRANTOR:

BAL HARBOUR CIVIC ASSOCIATION, INC.,
a Florida non-profit corporation

By: _____

Print Name/Title: Stuart Sobel
President

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 31 day of October 2007, by Stuart Sobel the President of **BAL HARBOUR CIVIC ASSOCIATION, INC.** a Florida non-profit corporation, on behalf of the corporation. S/he (check one) ( ) is personally known to me or ( ) has produced _____ (type of identification) as identification.

Marylou McKoy
Notary Public

_____
(Legibly Print/Type/or Stamp Name)

My Commission Expires: _____

MARYLOU MCKOY
MY COMMISSION EXPIRES
February 25, 2010
NOTARY PUBLIC, STATE OF FLORIDA
DD 508138
Bonded thru Notary Public Underwriters

http://mail.siegfriedlaw.com:8815/exchange/A6/Inbox/BAL_HARBOR_EASEMENT (2).doc.EML/BAL_HARBOR_EASEMENT (2).doc/C58EA28C-18C0-4a97-9AF2-036E93DDAFB3/BAL_HARBOR_EASEMENT (2).doc?attach=1

EXHIBIT "A"

Certain real property located in Dade County, Florida more particularly described as follows:

The streets designated "Bal Bay Drive," "Bal Cross Drive," "Park Drive," "Biscay Drive," "Camden Drive," "Balfour Drive," "Camden Court" and "Harbour Way" together with all areas designated "Park" as set forth on the **PLAT OF THE RESIDENTIAL SECTION OF BAL HARBOUR** according to the plat thereof as recorded in Plat Book 44, Page 98 of the Public Records of Dade County, Florida.

http://mail.siegfriedlaw.com:8815/exchange/A6/Inbox/BAL_HARBOR_EASEMENT (2).doc.EML/BAL_HARBOR_EASEMENT (2).doc/C58EA28C-18C0-4a97-9AF2-036E93DDAFB3/BAL_HARBOR_EASEMENT (2).doc?attach=1

CFN 2009R0512087
OR Bk 26940 Pgs 4680 - 4684; (5pgs)
RECORDED 07/15/2009 11:26:36
DEED DOC TAX 24.00
SURTAX 18.00
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Robert M. Haber, Esq.
Bal Harbour Quarzo, LLC
1000 Brickell Avenue, Suite 215
Miami, FL 33131

GRANT OF EASEMENT

THIS GRANT OF USE AND ACCESS AND LIMITED INGRESS AND EGRESS EASEMENT (this "Easement") is made this 2nd day of June , 2009, by **BAL HARBOUR CIVIC ASSOCIATION, INC.**, a Florida corporation not for profit, having an address at Post Office Box 54-6110, Bal Harbour, Florida 33154 (hereinafter referred to as the **"GRANTOR"**) to and in favor of **BAL HARBOUR QUARZO, LLC**, a Florida limited liability company, having an address at 1395 Brickell Avenue, Suite 1020, Miami, Florida 33131(hereinafter referred to as the **"GRANTEE"**).

RECITALS

The real property located in Miami-Dade County, Florida as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property") consisting of a portion of the street known as Bal Bay Drive, as shown on the Plat of the Residential Section of Bal Harbour as recorded in Plat Book 44, page 98 of the Public Records of Miami Dade County, Florida (the "Plat") was dedicated on the Plat for the "use and enjoyment of the owners of the lots of said subdivision, and to them only, so long as said streets shall remain in the corporate limits of Bal Harbour Village, Florida."

Miami Beach Heights, Inc. was the owner and developer of the residential section of Bal Harbour including the Property and assigned its rights therein to the Bal Harbour Club, Inc. by Assignment, dated February 23, 1952 and recorded March 18, 1952 in Deed Book 3567, Page 2, and an Assignment and Assumption dated August 2, 1954 and recorded December 31, 1954 in Deed Book 4022, Page 153, all in the Public Records of Dade County, Florida. Subsequently, the Bal Harbour Club, Inc. assigned its rights therein to the **GRANTOR** by Assignment and Confirmation of Assignment, dated January 29, 1992 and recorded February 6, 1992 in Official Records Book 15377, Page 3530 of the Public Records of Miami Dade County, Florida. Pursuant to the above referenced assignments, the **GRANTOR** has the authority to act on behalf of the owners of the lots within the residential section of Bal Harbour with regard to their common interest in and to the Property and to enter into and to consent to and convey this Easement.

GRANTOR has agreed to grant to **GRANTEE** an easement for ingress and egress in, over, under, upon and through the Property for the sole purpose of construction, operation and maintenance of the entryway feature and roundabout, both referred to as (the "Improvements") to be installed with the right to reconstruct, improve, repair, and replace such Improvements, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of an annual payment FOUR THOUSAND DOLLARS ($4,000.00) per year, paid on the execution of this Grant and on each anniversary thereafter, without demand, and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, **GRANTOR**, does hereby consent and grant the following easement as hereinafter set forth:

1. **Recitals.** The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. **Grant of Easement. Upon the timely payment of each annual installment of consideration for this Grant,** GRANTOR does hereby grant and convey to the **GRANTEE** and its licensees, agents, successors and assigns a non-exclusive, perpetual easement for ingress and egress in, over, under, upon and through the Property for the sole purpose of construction, operation and maintenance of the improvements to be installed, with the right to reconstruct, improve, repair and replace such improvements, on a portion of the Property. **GRANTOR** also grants **GRANTEE** a license to temporarily locate its equipment on any property of **GRANTOR** adjoining the Property (but outside the gate) as may be necessary to perform the foregoing. The Grant of Easement shall terminate upon the failure of GRANTEE or its successor, to make the payment required as consideration within ten (10) days of the due date, set forth above.

   GRANTEE acknowledges and warrants that the installation, construction, maintenance, repair and replacement of any Improvements it places in the Property shall be accomplished at no cost or expense to **GRANTOR** and **GRANTEE** shall, at its expense, be responsible for the entire expense of any such Improvements. **GRANTEE** shall, at its expense, maintain the street, sidewalk, landscaping and gate located on the Property. **GRANTEE** agrees to cooperate with **GRANTOR** in order to coordinate the timing of any installation, maintenance or repairs to the Improvements constructed within the Property.

   Neither the Improvements nor the use thereof, by Grantee shall interfere with the Grantor's and residents' ownership of, right of access, ingress or egress to and through the gate depicted in Exhibit A. **GRANTEE** shall furnish to **GRANTOR** a set of reproducible drawings which accurately depict any and all Improvements located in the Property within 60 days of the completion of said Improvements.

3. **Use of Easement.** **GRANTEE** shall have the right to do all things necessary, useful or convenient for the purposes outlined in Section 2 hereof. **GRANTOR** hereby **covenants** with **GRANTEE** that **GRANTEE** shall have quiet and peaceful possession, use and enjoyment of this Easement. As a condition of GRANTEE's right of use, GRANTEE shall, at all times, maintain casualty and liability insurance, with minimum limits of $1,000,000/$2,000,000 naming GRANTOR as an additional insured. Nothing contained herein shall be deemed as granting or dedicating the Property to public use.

4. **Representations.** **GRANTOR** does hereby represent to the **GRANTEE**, that it believes that it is lawfully seized and possessed of the Property, and that it has good and lawful right to enter into and convey this Easement.

5. **Covenants Running with the Land.** This Easement and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns, provided that, upon failure of payment, evidenced by an affidavit of the President of the Bal Harbour Civic Association, recorded in the Public Records of Miami-Dade County, Florida, the grant of easement shall terminate

6. **Rights Reserved.** The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. **GRANTOR** shall have the right to use the Property, or any portion thereof, or any property of **GRANTOR** adjoining the Property for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of **GRANTEE.**

7. **Indemnification.** Grantee shall indemnify and save harmless and defend Grantor, its agents, officers, directors, servants, and employees from and against any claim, demand, cause of action or proceeding arising out of error, omission or negligent act of Grantee, its agents, servants or employees relating to the construction, operation, maintenance, repair and replacement of the Improvements Grantee places in the Property; together with all costs, expenses, and liabilities incurred in connection with each such claim, demand, action or proceeding including, but not limited to, all reasonable attorney's fees and court costs at the trail and appellate levels.

IN WITNESS WHEREOF, GRANTOR and **GRANTEE** have caused these presents to be executed by their duly authorized officer as of the day and year first above written.

WITNESSES: Signed, sealed and delivered in the presence of:

Angela P. Roughton

Angela P. Roughton
(Legibly/Print/ Type/ or Stamp Name)

Liliana P. Reyes

ILIANA P. REYES
(Legibly/Print/ Type/ or Stamp Name)

BAL HARBOUR CIVIC ASSOCIATION, INC., a Florida corporation not for profit.

By: _____

Print Name/Title:
STUART OTTEN, PRES

WITNESSES: Signed, sealed and delivered in the presence of:

_____

ROBERT N. HABER
(Legibly/Print/ Type/ or Stamp Name)

_____

Tatiana Areille
(Legibly/Print/ Type/ or Stamp Name)

GRANTEE:
BAL HARBOUR QUARZO, LLC., a Florida limited liability company.

By: _____

Print Name/Title:
Juan Acila - Managing Member

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 22nd day of JUNE 2009, by STUART SOBEL the PRES. of BAL HARBOUR CIVIC ASSOCIATION, INC. a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or ( ) has produced _____(type of identification) as identification.

Iliana P. Reyes
Notary Public

ILIANA P. REYES
(Legibly Print/Type/or Stamp Name)

My Comission Expires: _____

ILIANA P. REYES
MY COMMISSION # DD 809252
EXPIRES: July 28, 2012
Bonded Thru Notary Public Underwriters

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 16 day of JUNE 2009, by IVAN ARCILA the Managing Member of BAL HARBOUR QUARZO, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or ( ) has produced _____(type of identification) as identification.

Tatiana Aveille
Notary Public

Tatiana Aveille
(Legibly Print/Type/or Stamp Name)

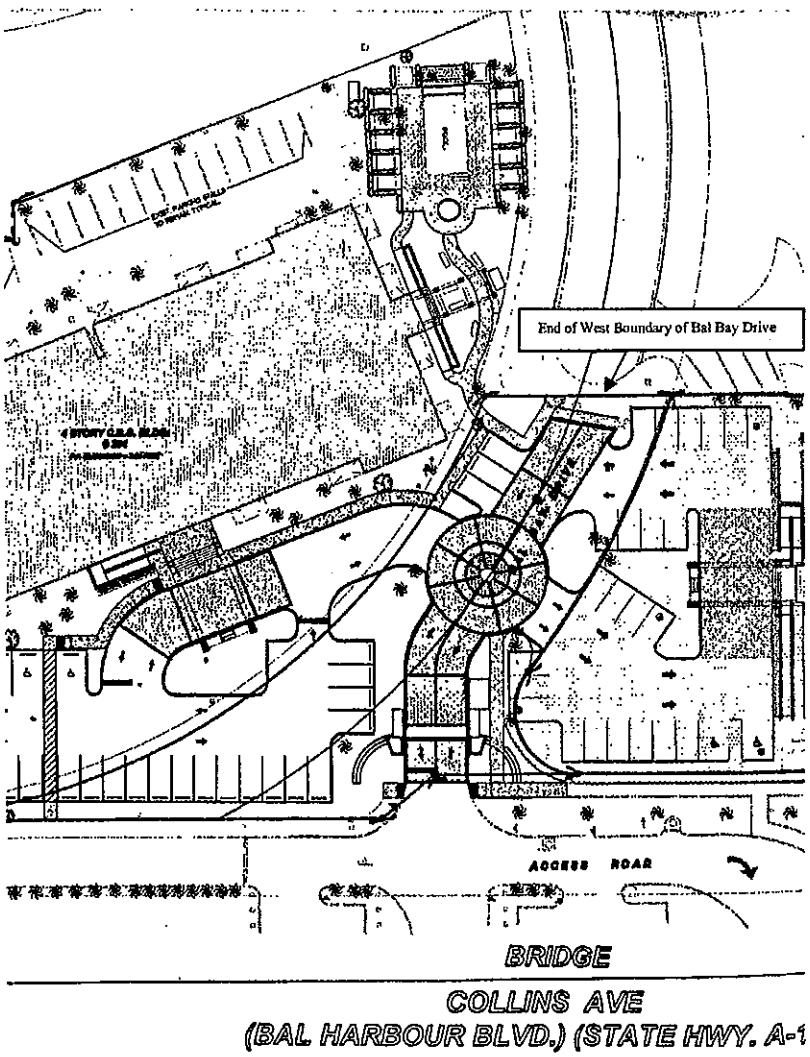
My Comission Expires: _____

TATIANA AVEILLE
MY COMMISSION # DD 696466
EXPIRES: October 31, 2010
Bonded Thru Notary Public Underwriters

EXHIBIT "A"

Certain real property located in Miami Dade County, Florida more particularly described as follows:

A portion of the street designated "Bal Bay Drive" as set forth on the **PLAT OF THE 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; and depicted hereinbelow.



TITLE SEARCH REPORT

Fund File Number: 01-2010-011108

Effective Date of approved base title information: February 17, 1972

Effective Date of Search: September 12, 2010 ***at*** 11:00 PM

Apparent Title Vested in:

Village of Bal Harbour(Parcel 1);
Bay Colony of Bal Harbour, Inc., a Florida non profit corporation (Parcel 2)

Description of real property to be insured/foreclosed situated in Miami-Dade ***County, Florida.***

Parcel 1:
Lots 1 and 2, Block 1, Residential Section of Bal Harbour, according to the plat thereof as recorded in Plat Book 44, Page(s) 98, Public Records of Miami-Dade County, Florida.

Parcel 2:
Lot 3, Block 12A, of Resubdivision of Lot 21, Block 12 & Tract F, Residential Section of Bal Harbour, according to the plat thereof as recorded in Plat Book 53, Page(s) 15, Public Records of Miami-Dade County, Florida.

Muniments of Title, including bankruptcy, foreclosure, quiet title, probate, guardianship and incompetency proceedings, if any, recorded in the Official Records Books of the county:

Parcel 1:

1. Warranty Deed from Florence Schick Gifford to Village of Bal Harbour, recorded June 3, 1965, in Clerk's File Number 65R-88141, Public Records of Miami-Dade County, Florida.

Parcel 2:

2. Warranty Deed from John Lang Looby to Bay Colony of Bal Harbour, Inc., a Florida non profit corporation, recorded February 17, 1972, in Clerk's File Number 36610, Public Records of Miami-Dade County, Florida.

3. Special Warranty Deed from John Lang Looby to Bay Colony of Bal Harbour, Inc., recorded February 17, 1972, in Clerk's File Number 36611, Public Records of Miami-Dade County, Florida.

4. Assignment of Developer's Rights executed by John Lang Looby to Bal Harbour Quarzo, LLC, a Florida limited liability company recorded in O.R. Book 26140, Page 4373, Public Records of Miami-Dade County, Florida.

5. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4293, Public Records of Miami-Dade County, Florida.(Unit 101)

6. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4297, Public Records of Miami-Dade County, Florida.(Unit 103)

7. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4301, Public Records of Miami-Dade County, Florida.(Unit 104)

8. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4305, Public Records of Miami-Dade County, Florida.(Unit 105)

9. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4309, Public Records of Miami-Dade County, Florida.(Unit 106)

10. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4313, Public Records of Miami-Dade County, Florida.(Unit 107A)

11. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4317, Public Records of Miami-Dade County, Florida.(Unit 107B)

12. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4321, Public Records of Miami-Dade County, Florida.(Unit 108)

13. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4325, Public Records of Miami-Dade County, Florida.(Unit 201)

14. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4329, Public Records of Miami-Dade County, Florida.(Unit 203)

15. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4333, Public Records of Miami-Dade County, Florida.(Unit 205)

16. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4337, Public Records of Miami-Dade County, Florida.(Unit 206)

17. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4341, Public Records of Miami-Dade County, Florida.(Unit 207)

18. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4345, Public Records of Miami-Dade County, Florida.(Unit 208)

19. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4349, Public Records of Miami-Dade County, Florida.(Unit 301)

20. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4353, Public Records of Miami-Dade County, Florida.(Unit 303)

21. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4357, Public Records of Miami-Dade County, Florida.(Unit 305)

22. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4361, Public Records of Miami-Dade County, Florida.(Unit 306)

23. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4365, Public Records of Miami-Dade County, Florida.(Unit 307)

24. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Bal Harbour Quarzo, LLC recorded in O.R. Book 26140, Page 4369, Public Records of Miami-Dade County, Florida.(Unit 308)

25. Assignment of Ownership in Proprietary Lease from Robert F. Herr to Andre Simard Bourassa recorded in O.R. Book 15159, Page 302, Public Records of Miami-Dade County, Florida.(Unit 102)

26. Assignment of Ownership in Proprietary Lease from Andre Simard Bourassa to Louise Delafontaine recorded in O.R. Book 17848, Page 4523, Public Records of Miami-Dade County, Florida.(Unit 102)

27. Termination of Proprietary Lease from Bay Colony of Bal Harbour, Inc and Gedes, Inc. and Gedes, Inc recorded in O.R. Book 13113, Page, 3967, Public Records of Miami-Dade County, Florida.(Unit 204)

28. Assignment and Transfer of Ownership from Gedes, Inc. to Lise Deslongchamps recorded in O.R. Book 13113, Page, 3969, Public Records of Miami-Dade County, Florida.(Unit 204)

29. Assignment and Transfer of Ownership from Lise Deslongchamps et al to Michele Lemire recorded in O.R. Book 16066, Page, 3088 Public Records of Miami-Dade County, Florida.(Unit 204)

30. Assignment and Transfer of Ownership from Bay Colony of Bal Harbour, Inc to Jonathan Glasser recorded in O.R. Book 21605, Page 1125, Public Records of Miami-Dade County, Florida.(Unit 204)

31. Assignment and Transfer of Ownership from Jonathan Glasser unto AKOUKA, LLC recorded in O.R. Book 23431, Page 4351, Public Records of Miami-Dade County, Florida.(Unit 204)

32. Assignment and Transfer of Ownership from Agnes Mackenzie to Andre Lachapelle, et al recorded in O.R. Book 17290, Page 547, Public Records of Miami-Dade County, Florida.(Unit 202)

33. Assignment and Transfer of Ownership from Andre Lachapelle, et al unto Isaak Akouka recorded in O.R. Book 20017, Page 1998, Public Records of Miami-Dade County, Florida.(Unit 202)

34. Assignment and Transfer of Ownership from Isaak Akouka unto AKOUKA, LLC recorded in O.R. Book 23431, Page 4347, Public Records of Miami-Dade County, Florida.(Unit 202)

35. Memorandum of Proprietary Lease Agreement of Bay Colony of Bal Harbour, Inc with Pauline Curd recorded in O.R. Book 17317, Page 750, Public Records of Miami-Dade County, Florida.(Unit 304)

36. Assignment and Transfer of Ownership from Dennis O'Leary and Mario T. Noto et al recorded in O.R. Book 15474, Page 1053 Public Records of Miami-Dade County, Florida.(Unit 302)

Mortgages, Assignments and Modifications:

1. Mortgage to Mercantil Commerce Bank, N.A., mortgagee(s), recorded under O.R. Book 26140, Page 4401, modified in O.R. Book 26140, Page 4442,O.R. Book 27234, Page 2744, O.R. Book 27234, Page 2751, Public Records of Miami-Dade County, Florida.(Parcel 2)

2. Assignment of Leases, Rents and Profits filed January 3, 2008, in O.R. Book 26140, Page 4430, Public Records of Miami-Dade County, Florida. (Parcel 2)

Other Property Liens:

1. Taxes and assessments for the year 2009 are exempt. (Parcel 1)

2. Taxes and assessments for the year 2009 are paid.(Parcel 2)

3. UCC Financing Statement between Bal Harbour Quarzo, LLC and Mercantil Commercebank, N.A. as recorded in O.R. Book 26140, Page 4439, Public Records of Miami-Dade County, Florida.(Parcel 2)

4. 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 recorded October 28, 2009, under O.R. Book 27064, Page 1784, of the O.R. Book 27064, Page 1785, O.R. Book 27064, Page 1786, O.R. Book 27064, Page 1787, O.R. Book 27064, Page 1788, O.R. Book 27064, Page 1789, O.R. Book 27064, Page 1790, O.R. Book 27064, Page 1791, O.R. Book 27064, Page 1792, O.R. Book 27064, Page 1793, O.R. Book 27064, Page 1794, O.R. Book 27064, Page 1795, O.R. Book 27064, Page 1796, O.R. Book 27064, Page 1797, O.R. Book 27064, Page 1798, O.R. Book 27064, Page 1799, O.R. Book 27064, Page 1800,

O.R. Book 27064, Page 1801, O.R. Book 27064, Page 1802, O.R. Book 27064, Page 1803, O.R. Book 27064, Page 1804, O.R. Book 27064, Page 1805, O.R. Book 27064, Page 1806, O.R. Book 27064, Page 1807, O.R. Book 27064, Page 1808, O.R. Book 27064, Page 1809, O.R. Book 27064, Page 1810, O.R. Book 27064, Page 1811, O.R. Book 27064, Page 1812, O.R. Book Public Records of Miami-Dade County, Florida.(Parcel 2)

5. 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 recorded March 10, 2010, under O.R. Book 27209, Page 512, of the Public Records of Miami-Dade County, Florida. (Parcel 2)

Restrictions/Easements:

Parcel 1:

1. All matters contained on the Plat of Residential Section of Bal Harbour, as recorded in Plat Book 44, Page 98, Public Records of Miami-Dade County, Florida.

2. Covenants, conditions and restrictions recorded January 9, 1948, in D.B.. Book 2961, Page 515; Deed Book 3437, Page 310, Deed Book 3567, Page 2, O.R. Book 11640, Page 137, O.R. Book 11672, Page 267, O.R. Book 11686, Page 931, O.R. Book 15377, Page 3530 Public Records of Miami-Dade County, Florida.

3. Resolutions recorded in O.R. Book 11640, Page 137, O.R. Book 11672, Page 267, O.R. Book 11686, Page 931 Public Records of Miami-Dade County, Florida.

4. Leases recorded in O.R. Book 15730, Page 2729, O.R. Book 17496, Page 4973, O.R. Book 21961, Page 1912 Public Records of Miami-Dade County, Florida.

5. Easement recorded in O.R. Book 16806, Page 3330, Public Records of Miami-Dade County, Florida.

6. Easements recorded in O.R. Book 26293, Page 2194, Public Records of Miami-Dade County, Florida.

Parcel 2:

7. All matters contained on the Plat of Residential Section of Bal Harbour, as recorded in Plat Book 44, Page 98, Public Records of Miami-Dade County, Florida.

8. All matters contained on the Plat of Resubdivision of Lot 21, Block 12 and Tract F Residential Section of Bal Harbour, Bal Harbour Village, as recorded in Plat Book 53, Page 15, Public Records of Miami-Dade County, Florida.

9. Covenants, conditions and restrictions recorded January 9, 1948, in D.B.. Book 2961, Page 515; Deed Book 3437, Page 310, Deed Book 3567, Page 2, O.R. Book 11640, Page 137, O.R. Book 11672, Page 267, O.R. Book 11686, Page 931, O.R. Book 15377, Page 3530 Public Records of Miami-Dade County, Florida.

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10. Quit Claim Deed recorded in O.R. Book 6280, Page 733, Public Records of Miami-Dade County, Florida

11. Grant of Easement recorded in O.R. Book 7109, Page 959, Public Records of Miami-Dade County, Florida.

12. Proprietary Agreement recorded in O.R. Book 15474, Page 1056, Public Records of Miami-Dade County, Florida.

13. Affidavit with additional documents recorded in O.R. Book 26140, Page 4377, Public Records of Miami-Dade County, Florida.

14. Assignment recorded in O.R. Book 15377, Page 3530, Public Records of Miami-Dade County, Florida.

15. Resolutions recorded in O.R. Book 11640, Page 137, O.R. Book 11672, Page 267, O.R. Book 11686, Page 931 Public Records of Miami-Dade County, Florida.

16. Easement recorded in O.R. Book 16806, Page 3330, Public Records of Miami-Dade County, Florida.

17. Easements recorded in O.R. Book 26293, Page 2194, Public Records of Miami-Dade County, Florida.

18. Easement recorded in O.R. Book 26940, Page 4680, Public Records of Miami-Dade County, Florida.

Other Encumbrances:

None

REAL PROPERTY TAX INFORMATION ATTACHED

Proposed Purchaser/Mortgagor:

The name of the proposed purchaser/mortgagor was searched for the past twenty years for unsatisfied judgments and tax liens (state, federal and other liens for the recovery of money) and personal names were checked for unrestored incompetency and for guardianship proceedings. The following matters appeared of record and copies are attached for evaluation by the agent:

TITLE SEARCH REPORT

Fund File Number: 01-2010-011108

STANDARD EXCEPTIONS

Unless satisfactory evidence is presented to the agent eliminating the need for standard exceptions, the following should be made a part of any commitment or policy.

1. *Taxes for the year of the effective date of this policy and taxes or special assessments which are not shown as existing liens by the public records.*

2. *Rights or claims of parties in possession not shown by the public records.*

3. *Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.*

4. *Easements or claims of easements not shown by the public records.*

5. *Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.*

6. *Any owner policy issued pursuant hereto will contain under Schedule B the following exception: Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*

7. *Federal liens and judgment liens, if any, filed with the Florida Department of State pursuant to Sec. 713.901, et seq., F.S., and Sec. 55.201, et seq., F.S., respectively, which designate the Florida Department of State as the place for filing federal liens and judgment liens against personal property. For insuring purposes:*

   (a) *Pursuant to Sec. 713.901, et seq., F.S., personal property includes, but is not limited to, mortgages, leaseholds, mortgages on leaseholds, interests in cooperative associations, vendees' interests, and options when those interests are held by a partnership, corporation, trust or decedent's estate; and*

   (b) *Pursuant to Sec. 55.201, et seq., F.S., personal property includes, but is not limited to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)*

8. *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 services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.*

The report does not cover bankruptcies or other matters filed in the Federal District Courts of Florida.

Fund File Number: 01-2010-011108

In foreclosure proceedings, title should be examined between the effective date of this report and the recording of the lis pendens to assure that all necessary and proper parties are joined. Consideration should be given to joining as defendants any persons in possession, other than the record owner, and any parties, other than those named herein, known to the plaintiff or the plaintiff's attorney and having or claiming an interest in the property.

Prior to issuance of any policy of title insurance underwritten by Old Republic National Title Insurance Company, the agent must obtain and evaluate a title search for the period between the effective date of this Title Search Report and the recording date(s) of the instrument(s) on which the policy is based.

If this product is not used for the purpose of issuing a policy, then the maximum liability for incorrect information is $1,000.

Note: The Agent is responsible for obtaining underwriting approval on any commitment prepared from this product in the amount of $1,000,000.00 or more.

TITLE SEARCH REPORT

Fund File Number: [redacted]

The information contained in this title search is being furnished by Attorneys' Title Fund Services, LLC. If this report is to be used by a title insurance agent for evaluation and determination of insurability by the agent prior to the issuance of title insurance, then the agent shall have liability for such work.

Provided For: Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. ***Agent's File Reference:*** BAL HARBOUR

After an examination of this search the Agent must:

A. ***Evaluate all instruments, plats and documents contained in the report.***

B. ***Include in the Commitment under Schedule B, any additional requirements and/or exceptions you find necessary from your analysis of the surveys, prior title evidence or other relevant information from the transaction.***

C. ***Verify the status of corporations and limited partnerships and other business entities with the appropriate governmental agency or other authority.***

D. ***Determine whether the property has legal access.***

E. ***Determine if any unpaid municipal taxes or assessments exist, which are not recorded in the Official Records Books of the county.***

F. ***Determine whether any portion of the property is submerged or artificially filled, if the property borders a body of water, and if riparian or littoral rights exist.***

G. ***The information provided herein does not include a search of federal liens and judgment liens filed with the Florida Department of State pursuant to Sec. 713.901, et seq., F.S., and Sec. 55.201, et seq., F.S., respectively, which designate the Florida Department of State as the place for filing federal liens and judgment liens against personal property. For insuring purposes:***

(a) Pursuant to Sec. 713.901, et seq., F.S., personal property includes, but is not limited to, mortgages, leaseholds, mortgages on leaseholds, interests in cooperative associations, vendees' interests, and options when those interests are held by a partnership, corporation, trust or decedent's estate; and

(b) Pursuant to Sec. 55.201, et seq., F.S., personal property includes, but is not limited to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)

Prepared this 27th day of September, 2010. ***Attorneys' Title Fund Services, LLC***

Prepared by: Anthony Harris/Senior Title Examiner
Phone Number: 800-432-0094

First American Issuing Office:

First American Title Insurance Company
13450 West Sunrise Blvd.,
Suite 300
Sunrise, FL 33323

File No.: **1062- 2445808**

Prepared For: Weiss Serota Helfman Pastoriza Cole and Boniske, P.A
2525 Ponce De Leon Blvd ., Suite.700
Coral Gables, FL 33134

Legal Description:

Streets and Parks 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.

1. **Grantee(s) In Last Deed of Record:**

As to the Parks:

Miami Beach Heights, Inc., in deeds recorded in Deed Book 1318, page 174, Deed Book 1328, page 325, Deed Book 2501, page 340 and Deed Book 2747, page 281. Miami Beach Heights, Inc., was voluntary dissolved on May 20, 1955, we conclude that title to the Parks is vested in the Last Board of Directors of Miami Beach Heights, Inc., a dissolved Florida corporation, as trustees for the benefit of the creditors and shareholders of said corporation.

As to the Streets:

In order to establish that the ownership of the streets is vested in the abutting lot owners it is necessary to review the deeds out of the original developer to ascertain whether these deeds explicitly exclude or reserve the developer's interest in the abutting streets. Since the RESIDENTIAL SECTION OF BAL HARBOUR contains approximately 240 Lots plus various Tracts in lieu of reviewing every deed out of the developer, we have reviewed a random sampling of the deeds out of the developer of the Residential Section of Bal Harbour subdivision, Miami Beach Heights, Inc., of lots and tracts lying within the plat thereof recorded in Plat Book 44 at page 98 (the recording information for said deeds is shown in the table below) and none of them purported to reserve or exclude the grantor's interest in the abutting streets. Therefore in accordance with Florida law holding that when a party conveys a platted lot that absent an explicit reservation or exclusion of the grantor's interest in an abutting street that as a matter of legal construction, the description in said deed of the property to be conveyed by said deed is deemed to include the grantor's interest to that portion of an abutting street lying adjacent to the lot conveyed (or to the centerline of the adjacent street if the abutting street is an interior street on the plat with lots lying on both sides of said street) we conclude that title to the streets shown on the plat of Residential Section of Bal Harbour recorded in Plat Book 44, at page 98, is vested in the abutting lot owners.

Book	Page	Book	Page	Book	Page	Book	Page
2772	44	2836	38	3419	101	3828	204
2776	501	2836	42	3419	97	3828	206

2777	225	2836	46	3505	170	3828	562
2781	420	2866	464	3588	200	3849	30
2782	122	2866	468	3634	213	3877	11
2782	144	2866	488	3668	377	3968	442
2784	11	2921	61	3711	158		
2784	538	3261	399	3730	61		
2787	357	3407	170	3780	237		
2789	1	3407	230	3828	200		

2. **Encumbrances/Matters Affecting Title** (Includes only mortgages, liens and claims of lien (if not specifically affecting other property only), judgments (certified only), federal tax liens, bankruptcy petitions, death certificates, court orders and decrees, divorce decrees, property settlement agreements, tax warrants, incompetency proceedings and probate proceedings which may affect the title to the property described above (attach an exhibit, if necessary)):

() Exhibit Attached () Exhibit Not Attached.

Type of Instrument	Plat Book	Page
RESIDENTIAL SECTION OF BAL HARBOUR Plat	44	98

Copies of the Encumbrances/Matters Affecting Title (x) are () are not included with this Report.

Ad Valorem Real Estate Taxes for Folio Number Not Assessed ( ) Paid ( ) Not Paid. Unpaid Taxes for Prior Years (if none, state "none"): None

Map Code: Assessment:

Certificate

This Ownership and Encumbrance Report ("Report") is a search limited to the Official Records Books as defined in Sections 28.001(1) and 28.222, Florida Statutes, from Earliest Public Records to October 16, 2010 at 8:00 a.m.. The foregoing Report accurately reflects matters recorded and indexed in the Official Records Books of Miami-Dade County, Florida, affecting title to the property described therein. Liability for any incorrect information contained in this Report is limited (1) to the person or entity to whom the Report is directed, and (2) to a maximum of $1,000.00 pursuant to Section 627.7843(3), Florida Statutes. This Report is not an opinion of title, title insurance policy, warranty of title, or any other assurance as to the status of title and shall not be used for the purpose of issuing title insurance.

First American Title Insurance Company

By: _____

Glenn M. Lee. Associate Counsel - Underwriting

Date: December 3, 2010

1989 OCT -2 PM 3:25 89R355020

OFF. REC. 14277PG 592

State of Florida

Department of State

I certify from the records of this office that MIAMI BEACH HEIGHTS INC was a corporation organized under the laws of the State of Florida, filed on June 11, 1929.

The document number of this corporation is 120164.

I further certify that said corporation was voluntarily dissolved on May 20, 1955.

RECORDED IN OFFICIAL RECORDS
OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
RICHARD P. BRINKER
CLERK CIRCUIT COURT

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
30th day of August, 1989.

Jim Smith
Secretary of State

CR2EO22 (6-88)

State of Florida

Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation, as amended to date, of BAL HARBOUR CLUB, INC., a corporation organized under the laws of the State of Florida, as shown by the records of this office.

The document number of this corporation is 768740.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Seventh day of July, 2010

Dawn K. Roberts

Dawn K. Roberts
Secretary of State

CR2E022 (01-07)

768740

ARTICLES OF REINCORPORATION

OF

BAL HARBOUR CLUB, INC.

ARTICLE I
Name

The name of this corporation shall be BAL HARBOUR CLUB, INC., and its location shall be in the County of Dade and State of Florida.

ARTICLE II
Purpose of Corporation

The general nature and object of this corporation shall be as follows:

> To establish, maintain and operate a social club not for profit, for the benefit, amusement, recreation and entertainment of its members.

ARTICLE III
Members

Section 1. Qualifications

The qualifications for membership in this corporation shall be that the member be compatible with present members, of good moral character, and shall not have been convicted of a felony; subject, however, to such additional qualifications as shall be prescribed by the By-Laws.

Section 2. Classes of Membership

(a) The membership of this corporation shall consist of Proprietary Members and such other classes of members as may be established in the By-Laws. Initiation fees for membership and annual dues and assessments may be charged and collected. Provision therefor may be prescribed in the By-Laws of the corporation.

(b) Under the Charter of the corporation prior to the adoption of these Articles of Reincorporation provision was made for Regular Members. Upon these Articles of Reincorporation becoming effective by filing the same in the Office of the Secretary of the State of Florida, the classification of Regular Members shall no longer exist, but Regular Members shall become Pro-

prietary Members if each such member is current in payment of dues and charges at that time or becomes current within a period of time determined by the Board of Governors. Each Proprietary Member shall hold a number of Proprietary Memberships equal to the number of residential lots in the Residential Section of Bal Harbour, owned by such Regular Member at that time. Among the lots in that subdivision there are 14 cooperative apartments on 16 lots, and 13 rental apartments located on 14 lots, for a total of 30 lots. There are 134 owners of single lots, 1 owner of 4 (4) lots, 6 owners of 3 (18) lots; 17 owners of 2 (34) lots and 14 owners of 1½ (21) lots, for a grand total of 241 lots. There are two lots owned by the Town of Bal Harbour as to which there is to be no membership issued. In addition to the Regular Members owning lots, there are eleven regular Members who do not own lots in that subdivision, each of whose memberships shall automatically convert to Proprietary Memberships. The total of all of the foregoing memberships is two hundred fifty-two and that shall be the maximum number of Proprietary Memberships which the Club may have at any one time.

Title to a Proprietary Membership may be held by the husband, by the wife, or by both jointly with a right of survivorship. No Proprietary Member can ever hold more memberships than he receives upon these Articles becoming effective. Nor can any Proprietary Member ever increase the number of memberships he holds. This does not preclude a person from acquiring one Proprietary Membership upon becoming a member.

(c) There are some instances in which Regular Members hold half of a lot in said subdivision and those members will hold one-half of a Proprietary Membership in addition to the membership associated with the whole lot. Only a person who holds one or more full Proprietary Memberships may hold one-half of a Proprietary Membership.

Section 3. Proprietary Members

(a) Only Proprietary Members shall be entitled to vote, but regardless of how many Proprietary Members are held by one person, he shall be entitled to only one vote. If title to a Proprietary Membership is held jointly by husband and wife, either may cast the vote, but only one vote for the membership shall be cast. Each Proprietary Member shall be entitled to a Certificate of Membership certifying his membership which shall be valid only when held by and registered in the name of a Proprietary Member of the Club and shall be subject to the By-Laws then in existence and thereafter made and such By-Laws shall be considered as and shall be an essential part of the contract between the Club and such member.

(b) Regardless of the number of Proprietary Memberships held by any one member, that member shall be required to pay

fees and assessments on only one Club membership. Whether husband and wife are joint or individual members, fees and assessments on only one membership shall be required to be paid.

(c) No membership or Certificate of Membership may be sold, assigned or transferred voluntarily or involuntarily or by will or by operation of law to a corporation, association, partnership or concern unless so provided in the By-Laws. No membership may be sold, assigned or transferred voluntarily or involuntarily to any person unless such person has been approved for membership in the Club in the manner provided in these Articles and in the By-Laws. When a Proprietary Membership or any interest therein owned by the Proprietary Member shall pass by death or otherwise in any manner whatsoever the interest of the Proprietary Member in the Club shall cease and terminate unless it is transferred to a new Proprietary Member approved by the Board of Governors in the manner provided in these Articles and the By-Laws. The surviving spouse of a deceased Proprietary Member shall automatically become a Proprietary Member, without the need for application or initiation, if such spouse receives the Proprietary Certificate by devise or descent.

(d) A corporation, partnership or association may become a Proprietary Member of the Club, but it will be entitled to no privileges except to name a representative and such representative must be approved in accordance with the procedure for approving an individual member in order to be entitled to the use of Club facilities and in order to be entitled to vote on behalf of that membership. Both the member and the representative will be responsible for all dues and charges. No corporation, partnership or association may name more than one representative regardless of how many Proprietary Memberships it may own.

Section 4. Non-Resident Guests

Any former Regular or Proprietary Member whose membership was terminated without prejudice and who is not a resident of Dade County and who now is acceptable to the Admissions Committee may obtain a "Non-Resident Guest Card" which shall entitle him and his or her immediate family to the use of all of the facilities and services of the Club for a period of thirty days out of each calendar year. The Board of Governors shall determine the fee to be charged for each "Non-Resident Guest Card."

Section 5. Season Members and Special Members

When these Articles of Reincorporation have been filed in the Office of the Secretary of State, there shall no longer be any Season Members or Special Members.

Section 6. Proprietary Members and Other Members

The By-Laws may provide for other members, but no members of any kind other than Proprietary Members shall be entitled to vote or to any share of assets upon liquidation of the Club.

Section 7. Termination of Membership

When any member resigns or is dropped from membership in the corporation, he shall thereafter have no interest of any kind in the corporation. In the event any member who is dropped from membership in accordance with this Section and the By-Laws shall refuse to surrender his Certificate of Membership, then such membership shall be marked cancelled on the records of the corporation and thereafter the outstanding and unsurrendered membership shall be void.

Section 8. Admission to Membership

(a) Members of this Corporation shall be those persons who may be elected to membership in the manner provided from time to time by the By-Laws.

(b) The By-Laws may provide for division of members into classes, but there shall not at any time be more than 252 Proprietary members entitled to vote and to share in the assets of the corporation upon dissolution.

Section 9. Suspension and Expulsion

Any member may be suspended or expelled for cause or for non-payment of dues, fees, assessments, house account, and other indebtedness of Proprietary or other member by a vote of the majority of the members of the Board of Governors, provided fifteen (15) days previous notice in writing shall have been given to the member of the charges preferred or the amounts which are delinquent, and an opportunity has been given the member to appear in person, or by counsel, or both, before the Board of Governors and present his defense thereto. Any member so expelled shall be dropped from membership in the Club and therefore shall have no interest in the assets of the Club or any right to the use of the facilities and services of the Club.

ARTICLE IV
Term of Corporation

This corporation shall have perpetual existence.

ARTICLE V
Title to Property

Title to all property of the corporation, both real and personal, shall be vested in the corporation, to-wit: BAL HARBOUR CLUB, INC.

ARTICLE VI
Management of Corporation

(a) The affairs of this corporation shall be managed by a Board of Governors, which shall have all of the powers of a Board of Directors, and a President, one or more Vice Presidents, a Secretary and Treasurer, and such other officers as may be provided for in the By-Laws. The offices of the Secretary and Treasurer maybe held by the same person. The number of Governors shall be not less than three (3); nor more than fifteen (15). There are fifteen (15) Governors at the time of filing of these Articles, who shall hold office until their successors are elected.

(b) The Board of Governors shall be elected by and from the Proprietary Members for such term as the By-Laws may provide at an annual meeting to be held each year on the second Tuesday in March, or at such other time as the By-Laws may fix; and the Board of Governors shall elect the officers of the corporation. The President and the number of Vice Presidents provided for in the By-Laws shall be elected by the Board of Governors from their number at the annual meeting of the Board, and at the same meeting a Secretary and a Treasurer or Secretary and Treasurer and such other officers as the By-Laws may provide for shall be elected. Only the President and Vice President need be members of the Board of Governors or members of the corporation.

(c) Removal of Officers or Members of the Board of Governors. Any member of the Board of Governors may be removed from office by either: (a) affirmative vote of a majority of the Proprietary Members of the Club at any annual or special meeting of the membership called for such purpose; or (b) the affirmative vote of a two-thirds (2/3) majority of the members of the Board of Governors at any regular meeting or special meeting of the Board called for such purpose.

ARTICLE VII
Present Board and Officers

The present Board of Governors for this corporation and the names of the officers, all of whom shall serve until their successors shall have been elected and shall have qualified, are as follows:

Board of Governors

Joseph V. Archdeacon
Eleene Bonin
John J. Brunetti
Thomas J. Carney
A. Paul Cresci
Philip R. Debert
Lewis R. Elias
Edward G. Knobloch
John Lang Looby
William P. May
Walter F. Mullady, Jr.
Charles B. McKeehan
Charlene Reynolds
Hugo R. Scala
Thomas P. Welstead

Officers

President	John J. Brunetti 84 Bal Bay Drive Bal Harbour, Florida
First Vice President	Hugo R. Scala 286 Bal Bay Drive Bal Harbour, Florida
Second Vice President	Lewis R. Elias 255 Bal Bay Drive Bal Harbour, Florida
Secretary	Barbara Knobloch 247 Bal Bay Drive Bal Harbour, Florida
Treasurer	Charles B. McKeehan 101 Harbour Way Bal Harbour, Florida

ARTICLE VIII
Distribution of Assets on Liquidation

In the event of liquidation of this corporation, all of its assets shall be distributed ratably to the Proprietary Members in accordance with the percentage of Proprietary Memberships held by a member to the total of all Proprietary Memberships then outstanding.

ARTICLE IX

These Articles may be amended by the vote of a two-thirds (2/3) of the Proprietary Members of the corporation in the manner provided in the By-Laws.

ARTICLE X
Amendment of By-Laws

The By-Laws of the corporation are to be made and adopted by the present Board of Governors, and they may be amended by the Board of Governors or the members of the corporation as may be provided in said By-Laws.

STATE OF FLORIDA)
)
COUNTY OF DADE) SS

I, RICHARD P. BRINKER, Clerk of the Circuit and County Courts, in and for the County of Dade, State of Florida, DO HEREBY CERTIFY that there was filed for Record on July 15, 1946 and recorded in Corporation Book 57 at Page 90 a Charter dated July 11, 1946 entitled " BAL HARBOUR CLUB, INC. ."

I FURTHER CERTIFY that I have made a search of the Public Records from July 15, 19 46, through May 16, 19 83, for AMENDMENTS TO CHARTER and the aforedescribed recording appears to be the only recorded document on record Referring to said Charter during said search period.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal at Miami, Florida, this the 1 day of June A.D. 19 83.

RICHARD P. BRINKER, Clerk
Circuit and County Courts
In and for Dade County, Florida

CIRCUIT AND COUNTY COURTS SEAL

CIRCUIT & COUNTY COURTS CLERK IN GOD WE TRUST Dade County, Florida

D. Curry, Jr.
Deputy Clerk

CERTIFICATE DESIGNATING REGISTERED AGENT
AND REGISTERED OFFICE

In compliance with Florida Statutes Section 48.091 and 617.023, the following is submitted:

BAL HARBOUR CLUB, INC., desiring to reincorporate under the laws of the State of Florida pursuant to the provisions of Florida Statutes Section 617.012 has designated 10201 Collins Avenue, Miami Beach, Florida 33154 as its Registered Office and has named Nancy C. Peck located at 10201 Collins Avenue, Miami Beach, Florida 33154 as its Registered Agent

Having been named Registered Agent for the above stated corporation, at the designated Registered Office, the undersigned hereby accepts said appointment, and agrees to comply with the provisions of Florida Statutes Section 48.091 relative to keeping open said office.

Nancy C. Peck

CERTIFICATE OF REINCORPORATION
OF
BAL HARBOUR CLUB, INC.

The undersigned President and Secretary of BAL HARBOUR CLUB, INC., a Florida corporation, duly incorporated under the laws of the State of Florida by Judge Charles A. Carroll, Circuit Judge of the Circuit Court of the 11th Judicial Circuit of Florida in and for Dade County, on July 15, 1946, hereby certify that by unanimous action of the Board of Governors of said Club, and by action of two-thirds of the Regular Members of said Club it was determined to reincorporate the Club as provided in Chapter 617.012, Laws of Florida.

We further certify that by the same action the Board of Govenors and the Members adopted Articles of Reincorporation which are attached hereto and made a part hereof.

We attach hereto a copy of the Charter of the Club granted on July 15, 1946 by Charles A. Carroll, Circuit Judge, together with all amendments thereto.

This Certificate is filed for the purpose or reincorporating the said Club in accordance with the provisions of Chapter 617.012, Laws of Florida.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 27th day of July, 1983.

Notary Public, State of Florida at Large
My Commission Expires Dec. 2, 1983

BAL HARBOUR CLUB, INC.

By: _____
President

By: _____
Secretary

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

IN RE:

APPLICATION OF
BAL HARBOUR CLUB, INC.
FOR CHARTER

ORDER

The proposed charter of Bal Harbour Club, Inc., having been presented to me for approval in conformity with Sections 617.01 and 617.10 Florida Statutes 1941, and it appearing that said proposed charter is in proper form, and is for an object authorized by said law, it is

ORDERED that the proposed charter of BAL HARBOUR CLUB, INC., be and the same is hereby approved.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of July, A. D. 1942.

Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

IN RE:

APPLICATION OF

DAL HARBOUR CLUB, INC.

FOR CHARTER

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY:

We, the undersigned, desiring to form a social club or society not for profit, under the authority of Sections 617.01 and 617.10 Florida Statutes 1941, do hereby present to one of the Judges of the above named Court a proposed Charter subscribed by five of the intended incorporators, as follows:

ARTICLE I.

The name of this corporation shall be

DAL HARBOUR CLUB, INC.

and its location shall be in the County of Dade and State of Florida.

ARTICLE II.

The general nature and object of this corporation shall be as follows:

(a) To establish, maintain and operate a social club not for profit, for the benefit, amusement, recreation and entertainment of its members.

(b) To promote a united effort of the members in advancing the civic welfare of the community in which the club is located, to wit: DAL HARBOUR and particularly in protecting the value of the property of the members of the corporation in the Residential Section of Dal Harbour.

(c) To see that the deed restrictions and all zoning ordinances existing in Dal Harbour are duly enforced.

ARTICLE III.

The qualifications for membership in this corporation shall be that the member be of the Caucasian race, of good moral character, and shall not have been convicted of a felony; subject, however, to such additional qualifications as shall be prescribed by the by-laws or by the Board of Governors.

The membership of this corporation shall consist of regular members, and such other classes of members as the Board of Governors shall from time to time establish. [illegible] of the admission of members and the terms and conditions of [illegible] shall be as provided herein and in the by-laws. Initiation [illegible] for membership and annual dues and assessments may be charged and collected, and provision therefor may be prescribed in the by-laws of the corporation or by such by-laws the Board of Governors may be empowered to determine and collect such fees, [illegible] assessments.

All voting power shall be vested exclusively in the regular members, who shall be known as "members", the number of whom shall not exceed five hundred (500), and each of whom shall be entitled to one vote, in person or by proxy, at all meetings of the membership.

Each regular member shall be entitled to a certificate of membership certifying his membership, which shall be signed by the President or a Vice-President and by the Secretary or an Assistant Secretary of the Club. Each such certificate shall be valid only when held by and registered in the name of a regular member of the Club, and shall be subject to the by-laws then made and thereafter to be made, and such by-laws shall be considered as and shall be an essential part of the contract between the Club and such member. No membership or certificate of membership may be sold, assigned or transferred, voluntarily or by will or by operation of law to any corporation, association, partnership or concern, unless so provided in the by-laws.

When a regular member dies, or whenever the interest owned by the regular member shall pass from him, voluntarily or involuntarily, in any manner whatsoever, the interest of such regular member in the Club shall cease and terminate.

When any regular member is dropped from membership in the corporation, his membership shall cease and terminate and he shall thereafter have no interest in the corporation. In the event any member who is dropped from membership in accordance with this section and the by-laws shall refuse to surrender his certificate of membership, then such membership shall be marked cancelled on the records of the corporation and thereafter the outstanding and unsurrendered membership shall be void.

ARTICLE IV.

This corporation shall have perpetual existence.

ARTICLE V.

The names and addresses of the subscribers hereto are as follows:

Names	
Robert C. Graham	608 Lincoln Road, Miami Beach, Florida
J. Julian Southerland	608 Lincoln Road, Miami Beach, Florida
Glenn E. Hassmick	608 Lincoln Road, Miami Beach, Florida
Russell T. Pancoast	821 - 41st Street, Miami Beach, Florida
C. L. Clements	1111 Lincoln Road, Miami Beach, Florida

ARTICLE VI.

Title to all property of the corporation, both real and personal, shall be vested in the corporation, to wit: PAL MADRON CLUB, INC.

ARTICLE VII.

The affairs of the corporation shall be managed by a Board of Governors, which shall have all the powers and authority of a board of directors and which shall consist of not less than three (3) nor more than five (5) members, the number of Governors to be fixed by the by-laws of the corporation

and to be changed at any time as the by-laws may provide; and by a President, one or more Vice-Presidents, a Secretary and a Treasurer, and such other officers as may be provided for in the by-laws. The offices of Secretary and Treasurer may be held by the same person.

The Board of Governors shall be elected by the members from their membership for such term as the by-laws may provide, at an annual meeting of the members to be held each year on the second Tuesday in March, or at such other time as the by-laws may fix; and the Board of Governors shall elect the officers of the corporation. The President and the number of Vice-Presidents provided for in the by-laws shall be elected by the Board of Governors from their number at the annual meeting of the Board, and at the same meeting a Secretary and a Treasurer or Secretary and Treasurer and such other officers as the by-laws may provide for shall be elected. Only the President and Vice-President need be members of the Board of Governors or members of the corporation.

ARTICLE VIII.

The first Board of Governors for this corporation, and the names of the officers, all of whom shall serve until their successors shall have been elected and shall have qualified, are as follows:

Board of Governors	Officers
Robert C. Graham	President: Robert C. Graham
J. Julien Southerland	Vice-President: Harry H. Sisson
Russell T. Pancoast	Secretary: J. Julien Southerland
Harry H. Sisson	Treasurer: Glenn B. Massnick
G. L. Clements	
Robert C. Graham, Jr.	
Charles R. Graham	
Glenn B. Massnick	

ARTICLE IX.

The by-laws of the corporation are to be made and [illegible] of Governors; and they

may be amended by the Board of Governors or the members of the corporation as may be provided in said by-laws.

ARTICLE X.

The highest amount of indebtedness or liability which this corporation at any time may subject itself is One Million Dollars ($1,000,000.00).

ARTICLE XI.

The amount and value of the real estate which the corporation may hold, subject to the approval of the Circuit Court, is Two Million Dollars ($2,000,000.00).

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 11th day of July, 1960.

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Robert C. Graham, being first duly sworn, says:

That he is one of the subscribers to the foregoing charter of BAL HARBOUR CLUB, INC.; that he has read the same and knows the contents thereof and that the matters and things therein stated are true, and that it is intended in good faith by all the subscribers to the foregoing charter to carry out the purposes and objects set forth therein.

Robert C. Graham

SUBSCRIBED AND SWORN TO before me
this 11th day of July, 1946.

Thomas E. Dunn
Notary Public State of Florida at Large
My Commission Expires November 12, 1949

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Before me, a Notary Public in and for the State of Florida at large, this day personally appeared Robert C. Graham, one of the subscribers to the foregoing charter of BAL HARBOUR CLUB, INC., to me personally known, and acknowledged before me that executed the same for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Miami Beach, Florida, this 11th day of July, 1946.

Thomas E. Dunn
Notary Public State of Florida at Large
My Commission Expires November 12, 1949

NOTARY

State of Florida, County of Dade.
This instrument was filed for record the [illegible] day of July
[illegible] and duly recorded in [illegible]
Book [illegible] on Page [illegible] File No. [illegible]
[illegible]
[illegible]
[illegible]

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, RICHARD P. BRINKER, Clerk of the Circuit Court of the Eleventh Judicial Circuit, and County Recorder in and for the County of Dade and State of Florida DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of a Charter

FILED in my office this 15th day of July, A.D., 19 46 and recorded in Corporation Book Book 57 at Page 90.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal of said Court, this 1st day of June, A.D., 19 83.

RICHARD P. BRINKER
Clerk Circuit Court
& County Recorder

By D. Curry Jr.
Deputy Clerk

CT. CT.
Seal

CIR/CT/REC 32

ARTICLES OF AMENDMENT
to
BAL HARBOUR CLUB, INC.

Pursuant to the provisions of Chapter 617, Florida Statutes, the undersigned corporation adopts the following articles of amendment to its articles of incorporation.

FIRST: The name of the corporation is the BAL HARBOUR CLUB, INC.

SECOND: The following amendment to the articles of incorporation was adopted by the corporation:

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE VIII
Distribution of Assets

In the event of a partial or total liquidation of the assets of this corporation, the proceeds shall be distributed to the Proprietary Members in accordance with the percentage of Proprietary Memberships held by a member to the total of all Proprietary Memberships then outstanding.

THIRD: The members of the Board of Governors are:

Joseph Imbesi	Ralph Gerber	Kay Lee
Anthony Lang	Richard H. Olsen	Phyllis A. Gray
Paul M. Marriott	Vincent G. Santucci	Grete McLaney
Gaspar Stillone	George E. Studdle	Antonio B. Pomerleau
Dudley A. Whitman	Angela Whitman	Charles Venturi

The Resolution adopting the change in the Charter was adopted at a Board of Governors meeting held in the 1st day of June, 1996.

FOURTH: The Ballot for voting on the proposed charter change was mailed to the Proprietary Members, by certified mail, return receipt, on the 14th day of June, 1996 and an affirmative vote of more than 2/3rds of the members authorized to vote were received by July 10th, 1996.

Dated this 23rd day of July, 1996.

BAL HARBOUR CLUB, INC.

By _____
President

By _____
Secretary

STATE OF FLORIDA

COUNTY OF DADE

Before me, the undersigned authority, personally appeared Richard H. Olsen and Charles Venturi, to me well known to be the persons who executed the foregoing article of amendment to articles of incorporation and acknowledged before me, according to law, that they made and subscribed the same for the purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of July, 1996.

Peggy Di Frisco
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
PEGGY DI FRISCO
My Commission CC432848
Expires Jan 10 1999

ARTICLES OF AMENDMENT
OF
BAL HARBOUR CLUB, INC.,
a Florida corporation not for profit

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1. The name of the corporation is Bal Harbour Club, Inc. (the "Corporation").

2. The first sentence of Section 3(a) of Article III of the Articles of Reincorporation of the Corporation is amended in its entirety to read as follows:

> "Only Proprietary Members shall be entitled to vote, but regardless of the number of Proprietary Memberships held by any one member, that member shall be entitled to only one vote; provided, however, that any member holding the 58 Membership Certificates shall be entitled to one vote for each such Certificate held by such member and each of the 58 Membership Certificates shall have the same rights, including the right to receive dividends and other distributions which pertain to all other active proprietary memberships."

3. The first sentence of Section 3(b) of Article III of the Articles of Reincorporation of the Corporation is amended in its entirety to read as follows:

> "Regardless of the number of Proprietary Memberships held by any one member, that member shall be required to pay fees and assessments on only one Proprietary Membership; provided, however, that as of the beginning of the Corporation's next fiscal year following the the delivery from escrow of the 58 Membership Certificates, any member then holding original 58 Membership Certificates shall pay the fees and assessment attributable to the number of such Certificates held by such member."

4. The following Section 3(e) is hereby inserted at the end Article III of the Articles of Reincorporation of the Corporation:

> " (e) The term "58 Membership Certificates" shall mean those fifty-eight (58) Certificates of Membership which, as of the date hereof, are held in the name of Charles B. Johnson, as Trustee of the Committee to Save the Bal Harbour Club, and which were the subject of litigation in Dade County Circuit Court Case No. 95-06485-CA-10 styled, Bal Harbour Club, Inc. v. Johnson and have been placed in escrow with Weil, Gotshal & Manges LLP."

5. On September 6, 1996, these Articles of Amendment were approved by two-thirds of the Proprietary Members, the only class of members entitled to vote thereon, and the number of votes cast in favor of these Articles of Amendment was sufficient for approval.

6. On September 10, 1996, the Board of Governors adopted these Articles of Amendment.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment this ____ day of _____, 1996.

BAL HARBOUR CLUB, INC., a Florida corporation not for profit

By: _____
Vice President

By: _____
Assistant Secretary

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ARTICLES OF AMENDMENT
OF
BAL HARBOUR CLUB, INC.,
a Florida Corporation Not-For-Profit

WHEREAS, The Bal Harbour Club, Inc. (the "Corporation") currently has outstanding both non-voting Proprietary Memberships and voting Proprietary Memberships;

WHEREAS, the Proprietary Members desire to amend the Articles of Reincorporation of the Corporation so that all currently outstanding Proprietary Memberships retain their respective non-voting or voting status; and

WHEREAS, the Proprietary Members desire to amend the Articles of Reincorporation of the Corporation in order to permit a business entity to hold 54 or more of the Proprietary Memberships and for such business entity holder to have one vote for each voting Proprietary Membership it holds.

NOW, THEREFORE, the Proprietary Members desire to amend the Articles of Reincorporation as set forth below:

1. The name of the Corporation is Bal Harbour Club, Inc.

2. The second and third sentence of Section 2(b) of Article III of the Articles of Reincorporation are hereby deleted in their entirety.

3. The first sentence of Section 3(a) of Article III of the Articles of Reincorporation of the Corporation is hereby deleted and replaced with the following:

(a) Only Proprietary Members shall be entitled to vote but regardless of the number of Proprietary Memberships held by any one member, that member shall be entitled to only one vote; provided, however, that any member holding the 58 Membership Certificates shall be entitled to one vote for each such Certificate held by such member and each of the 58 Membership Certificates shall have the same rights, including the right to receive dividends and other distributions which pertain to all other Proprietary Memberships; and, further provided that a business entity including, but not limited to, a corporation, a limited liability company or partnership, may hold 54 or more of the Proprietary Memberships and the business entity holding 54 or more of the Proprietary Memberships shall have one vote for each Proprietary Membership it holds which is entitled to vote as of the date of these Articles of Amendment, and all of such business entity's Proprietary Memberships shall have the same rights, including the right to receive dividends and other distributions, which pertain to

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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PREPARED BY: William E. Davis, Esquire
Buchanan Ingersoll, P.C., 100 S.E. Second Street, #2100
Miami, Florida 33131
Tel: (305) 347-4080
Florida Bar No. 191688

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all Proprietary Memberships.

4. The first sentence of Section 3(b) of Article III of the Articles of Reincorporation of the Corporation is hereby deleted and replaced with the following:

> Regardless of the number of Proprietary Memberships held by any one member, that member shall be required to pay fees and assessments on only one Proprietary Membership; provided, howver, that as of the beginning of the Corporation's next fiscal year following the delivery from escrow of the 58 Membership Certificates, any member then holding the 58 Membership Certificates shall pay the fees and assessments attributable to the number of such certificates held by such member; and further provided, that a business entity holding 54 or more of the Proprietary Memberships shall pay the fees and assessments attributable to each Proprietary Membership it holds.

5. The following sentence is hereby inserted as the last sentence of Article III of the Articles of Reincorporation:

> Notwithstanding the foregoing, a business entity may become a Proprietary Member of the Club if it holds 54 or more of the Proprietary Memberships and such business entity shall be entitled to the same privileges as an individual member and shall pay the dues and assessments attributable to each Proprietary Membership it holds.

6. Article IX of the Articles of Reincorporation of the Corporation is hereby deleted in its entirety.

On MARCH 16, 1999, these Articles of Amendment were approved by two-thirds of the Proprietary Members, the only class of members entitled to vote thereon, and the number of votes cast in favor of these Articles of Amendment was sufficient for approval.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment this 16th day of MARCH, 1999.

BAL HARBOUR CLUB, INC., a Florida corporation not-for-profit

SECRETARY:
Pierre Gundin M.D.
attest

By: William Beckham, PRES.
Name: WILLIAM BECKHAM
Title: PRESIDENT

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BAL HARBOUR CLUB, INC.

Pursuant to the provisions of the Florida Not For Profit Corporation Act, the undersigned Corporation adopts the following Amended and Restated Articles of Incorporation:

ARTICLE I

NAME

The name of the Corporation is: BAL HARBOUR CLUB, INC.

ARTICLE II

COMMENCEMENT OF EXISTENCE

The Corporation commenced existence under a charter of the Corporation on July 15, 1946, and filed Articles of Reincorporation with the Secretary of State on June 3, 1983, which Articles have been amended, from time to time.

ARTICLE III

DURATION

The duration of the Corporation will be perpetual.

ARTICLE IV

PURPOSE

The general purpose or purposes for which the Corporation is organized is to transact any and all lawful activities and business for which a corporation may be incorporated under the Florida Not For Profit Act, including but not limited to:

A. To establish, maintain and operate a social club not for profit, for the benefit, amusement, recreation and entertainment of its members;

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B. To purchase, take, receive, lease, or otherwise acquire, own, hold, maintain, improve, develop, use or otherwise deal in and with real or personal property, or any interest therein, wherever situated; and

C. To sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of all or part of the Corporation's property and assets.

ARTICLE V

PRINCIPAL OFFICE AND MAILING ADDRESS

The street address and mailing address of the principal office of the Corporation is:

10201 Collins Avenue
Bal Harbour, Florida 33154

ARTICLE VI

MEMBERS

A. The membership of the Corporation shall consist of proprietary members and such other classes of members as may be established by the bylaws.

B. Only proprietary members shall be entitled to vote and each proprietary membership shall be evidenced by a membership certificate, entitling the holder thereof to one vote for each proprietary membership interest held by such member.

C. Membership interests, including proprietary membership interests, may be held by individuals and business entities, including but not limited to, corporations, limited liability companies and partnerships. Such business entities shall be entitled to the same privileges as an individual member.

ARTICLE VII

REGISTERED OFFICE AND AGENT

The street address of the registered office of the Corporation is 10201 Collins Ave., Bal Harbour, FL 33154, and the name of the Corporation's registered agent at that address is Pat Nelson.

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ARTICLE VIII

MANAGEMENT OF THE CORPORATION

The affairs of the Corporation shall be managed by a board of directors or such officers as shall be provided for in the bylaws. The number of directors shall be at least three (3), which number may be increased or decreased, from time to time, as provided in the bylaws, but never below three (3). The method of selecting directors shall be provided for in the bylaws. The names and addresses of the directors serving on the date of these Amended and Restated Articles of Incorporation are:

Name	Address
Joseph Imbesi	175 Camden Drive Bal Harbour, FL 33154
Orla Imbesi	175 Camden Drive Bal Harbour, FL 33154
Lawrence Imbesi	10150 Collins Avenue Bal Harbour, FL 33154
Mark Imbesi	Cumberland Avenue Estell Manor, NJ 08319

ARTICLE IX

DISTRIBUTION OF ASSETS

In the event of a partial or total liquidation of the assets of the Corporation, the Corporation may make distributions to the proprietary members, in proportion to their outstanding proprietary membership interests.

ARTICLE X

INDEMNIFICATION

To the extent permitted by law, the Corporation shall indemnify any person who was or is a party to any proceeding by reason of the fact that he or she is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, limited liability company, trust or other enterprise against

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liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The Corporation shall reimburse each person for all costs and expenses, including attorneys' fees, reasonably incurred by him or her in connection with any such liability in the manner provided for by law or in accordance with the Corporation's bylaws.

The rights accruing to any person under the foregoing provision shall not exclude any other right to which he or she may be lawfully entitled, nor shall anything therein contain or restrict the right of the Corporation to indemnify or reimburse such person in any proper case even though not specifically provided for herein.

On December 18, 2002, these Amended and Restated Articles of Incorporation were approved by the proprietary members, the only class of members entitled to vote, and the number of votes cast in favor these Amended and Restated Articles was sufficient for approval.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation this 18th day of December, 2002.

JOSEPH IMBESI, President

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State of Florida

Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BAL HARBOUR CIVIC ASSOCIATION, INC., a corporation organized under the laws of the State of Florida, filed on February 10, 1984, as shown by the records of this office.

The document number of this corporation is N01399.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Seventh day of July, 2010

Dawn K. Roberts

Dawn K. Roberts
Secretary of State

CR2E022 (01-07)

ARTICLES OF INCORPORATION

OF

BAL HARBOUR CIVIC ASSOCIATION, INC.

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

WE, THE UNDERSIGNED, desiring to form a corporation pursuant to the Corporations Not-for-Profit Law of the State of Florida, do hereby make, subscribe, and acknowledge this certificate, as follows:

1. NAME. The name of the Corporation shall be BAL HARBOUR CIVIC ASSOCIATION, INC.

2. NONPROFIT PURPOSE. The Corporation is formed exclusively for purposes for which a corporation may be formed under the Corporations Not-for-Profit Law and not for pecuniary profit or financial gain. No part of the assets, income, or profit of the Corporation shall be distributable to, or inure to the benefit of, its members, directors, or officers except to the extent permitted under the Corporations Not-for-Profit Law. The Corporation shall not operate any listing service for its members, or take steps which will serve to facilitate the transaction of specific business by its members or promote the private interest of any member, or engage in any activities which would constitute a regular business of a kind ordinarily carried on for profit.

3. PURPOSES. The purposes for which the Corporation is organized are: To exercise, promote and protect the security, privileges and interests of the residents, lot and home owners of the residential area of Bal Harbour, Florida; to foster a healthy interest in the civic affairs of the community; to acquire, manage and supervise the common real property and related facilities located within the residential area of Bal Harbour; to establish facilities for the mutual security and safety of its members; to develop good citizenship; and to inquire into civic abuses and to seek reformation thereof.

In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in Chapter 617 of the Corporations Not-for-Profit Law of the State of Florida.

4. SCOPE OF ACTIVITY. The Corporation shall have the power, either directly or indirectly, either alone or in conjunction or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable, or proper for the furtherance, accomplishment, fostering, or attainment of any or all of the purposes for which the Corporation is organized,

and to aid or assist other organizations whose activities are such as to further, accomplish, foster, or attain any of such purposes. Notwithstanding anything herein to the contrary, the Corporation shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in Section 501(c) of the Internal Revenue Code of 1954 and the Regulations thereunder as . . . same now exist or as they may be hereafter amended from time to time.

5. **INCOME AND DISTRIBUTION.** No part of the income of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

6. **PROHIBITED ACTIVITIES.** No part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

7. **QUALIFICATION.** All persons who own real property within the residential area of Bal Harbour, either in their name alone or jointly with any other person, or residents who lease property within said area for a term in excess of one year, shall be qualified for membership in this Corporation. Provided however, voting on all matters pertaining to assessments against real property shall be restricted to the owners of real property as more specifically set forth in the By-Laws. The term "Real Property," shall include one or more residential lots whether improved or not, and a condominium unit. The residential area of Bal Harbour shall include all that land described as the Residential Section of Bal Harbour according to the plat thereof; recorded in Plat Book 44, at Page 98, of the Public Records of Dade County, Florida.

8. **ADMISSION TO MEMBERSHIP.** All qualified persons desiring to become a member of this Corporation, shall be admitted upon their written application and the payment of the application fee and the current annual dues.

9. **TERM.** This Corporation shall have perpetual existence.

10. **INCORPORATORS.** The name and residence of the Incorporator is:

T. J. SHEIL — 128 Camden Drive, Bal Harbour, Florida 33154

11. **MANAGEMENT OF CORPORATE AFFAIRS.** The affairs of the Corporation shall be managed by a Board of Directors, consisting of not less than three (3) nor more than seven (7) members, and such other officers as are provided for hereinafter.

12. **ELECTION.** The Board of Directors shall be elected by and from the members at an annual meeting of the entire membership, to be held on the first Tuesday in February each year. The Board of Directors, at their annual meeting, shall elect a President, one or more Vice Presidents, a Secretary and Treasurer, all of whom shall be members of the Corporation. The positions of Secretary and Treasurer may be held by the same person.

13. **OFFICERS.** The following officers shall serve until the initial annual meeting of members, which meeting shall be held no later than June 1, 1984:

President	VINCENT G. SANTUCCI
Vice President	WILLIAM F. WHITMAN
Secretary	ANAMARIE STOPPA
Treasurer	ALBERT F. ZANGER

14. **BOARD OF DIRECTORS.** The first Board of Directors shall consist of the following five persons, who shall serve until the initial annual meeting of members:

NAME	ADDRESS
VINCENT D. SANTUCCI	100 Bal Bay Drive Bal Harbour, Florida 33154
WILLIAM F. WHITMAN	189 Bal Bay Drive Bal Harbour, Florida 33154
ANAMARIE STOPPA	77 Camden Drive Bal Harbour, Florida 33154
ALBERT F. ZANGER	175 Bal Cross Drive Bal Harbour, Florida 33154

15. **INITIAL REGISTERED OFFICE AND AGENT.** The street address of the initial principal registered office of this Corporation is 77 Camden Drive, Bal Harbour, Florida 33154; and the name of the initial registered agent of this Corporation at that address is: ANAMARIE STOPPA.

Having been named Initial Registered Agent to accept service of process on the Corporation at the Initial Principal Registered Office designated in these Articles of Incorporation, I hereby accept such status and consent to act in this capacity and agree to comply with all the requirements of law pertaining thereto.

Anamarie Stoppa
ANAMARIE STOPPA, Registered Agent

16. BY-LAWS. The By-Laws of the Corporation are to be made, altered or rescinded by a vote of a majority of the members of the Corporation in the manner provided in the By-Laws.

17. ARTICLES OF INCORPORATION. Amendments to the Articles of Incorporation may be prepared and adopted by a vote of a majority of the members of the Corporation in the manner provided in the By-Laws.

IN WITNESS WHEREOF, I have hereunto set my hands and seal this 7th day of February, 1984.

Incorporator:

THEUS J. SHEIL

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BEFORE ME, a Notary Public authorized to take acknowledgments in the State and County set forth above, personally appeared THEUS J. SHEIL, known to me and known by me to be the person who executed the foregoing Articles of Incorporation; and he acknowledged before me that he executed those Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County aforesaid this 7th day of February, 1984.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT 24 1984
BONDED THRU GENERAL INS., UNDERWRITERS

NOTARY PUBLIC,
STATE OF FLORIDA AT LARGE

D57-1417A/T2S/vab/as
02/03/84

LAW OFFICES
BOSTON, CONN., CAMBRIA, HAUPMAN & SCHANTZ, P.A.

BY-LAWS OF

THE BAL HARBOUR CIVIC ASSOCIATION, INC.

ARTICLE I.

NAME AND OBJECT OF CORPORATION

Section 1. NAME This Corporation shall be known as THE BAL HARBOUR CIVIC ASSOCIATION, INC. (hereinafter called the "Association").

Section 2. PURPOSE The purpose of the Association is to provide for security and to protect the interests of the residents of the Residential Section of Bal Harbour, all as more fully stated in the Articles of Incorporation.

ARTICLE II.

MEMBERSHIP

Section 1. MEMBERS. The membership of the Association shall consist of those persons who have signed the Articles of Incorporation as subscribers together with all persons who own real property within the residential area of Bal Harbour Village more fully defined as property owners of lots in Blocks 1, 2, 3, 4, 5, 6, 9, 10, 11 and 12, Residential Section Bal Harbour, Plat Book 44 at page 98 and Lots 1 and 2 Block 12A, Resubdivision of Residential Section of Bal Harbour, Plat Book 53 at page 15, either in their name or jointly with any other person and residents who lease property, for 12 months or more, within the above described residential area.

Section 2. VOTING. Except as otherwise restricted herein, each member shall have one vote, either in person or by proxy, at a regular or special meeting of members. Provide, however, voting in person or

by proxy on all matters which may directly or indirectly establish, increase or decrease an assessment against the real property and condominium units within the residential area of Bal Harbour shall be restricted to those members who are the owners of the real property and condominium units, as shown on the Dade County tax rolls. The Owners shall be entitle to one vote only, irrespective of the number of lots or condominium unites owned; and joint owners of property, both or all of whom may be members, shall notify the Secretary in writing as to which joint owner shall vote on all such matters.

The Board of Directors, by a majority vote, shall determine those matters which shall be subject to restricted voting and their determination shall be conclusive.

A purchaser-owner-member, whose name has not yet been entered on the tax rolls at the time of a meeting wherein restricted voting will be conducted, shall be entitled to vote upon such restricted matters providing such owner, prior to any meeting, establishes to the satisfaction of the Secretary, that he or she is the current owner of real property or a condominium unit.

ARTICLE III.

GOVERNMENT

Section 1. BOARD OF DIRECTORS. The general management of the affairs of the Association shall be vested in the Board of Directors, who shall be elected as provided in Article V, Section 1, of these By-Laws. The number of directors shall be seven (7) and may be reduced to not less than three (3) by amendment of these By-Laws.

Section 2. OFFICERS. The officers of the Association shall consist of a President, a Vice President, a Secretary, a Treasurer and such other officers as may be selected by the Board of Directors, as provided in Article V, Section 3, of these By-Laws.

Section 3. PRESIDENT AS COMMITTEE MEMBER. The President shall be a member, ex officio, of all committees.

ARTICLE IV.

MEETINGS

Section 1. ANNUAL MEETING OF MEMBERS. The annual meeting of members of the Association shall be held in the month of March of each year, on a date to be chosen by the Board of Directors. Notice of the time and place of holding the annual meeting shall be mailed to each member at least ten (10) days prior thereto.

Section 2. SPECIAL MEETINGS OF MEMBERS. Special meetings of members may be called by the President at any time on his own initiative or by the President or Secretary upon request of twenty (20) members to such officer made in writing. Notice of the meeting shall be mailed to each member at least ten (10) days prior to the meeting, and at such special meeting there shall be considered only such business as is specified in the notice of meeting.

Section 3. QUORUM FOR MEMBERS' MEETING. At all meetings of the Association, either regular or special, a majority of all members in good standing present, either in person or by proxy, shall constitute a quorum.

Section 4. LACK OF QUORUM. If a quorum is not present, the presiding officer may adjourn the meeting to a day an hour fixed by him.

Section 5. ORDER OF BUSINESS. At all meetings of the Association, the order of business shall be as follows:

(a) Reading of minutes of immediate prior meeting for information and approval.

(b) Reports of officers.

(c) Reports of committees.

(d) Election of directors (annual meeting).

(e) Unfinished business.

(f) New business.

Section 6. MEETINGS OF BOARD. The Board of Directors shall meet on the first Saturday of each month except the months of July and August. Special meetings of the Board of Directors shall be called by the President on his own initiative whenever, in his judgment, it may be deemed necessary, or by the Secretary upon request of any three (3) members of the Board of Directors. Five (5) days' notice of meetings of the Board shall be given either by mail or telephone to all directors, and shall be deemed sufficient notice of such meetings.

Section 7. QUORUM FOR BOARD MEETING. A majority of the Board of Directors shall constitute a quorum.

ARTICLE V.

ELECTION OF DIRECTORS AND OFFICERS

Section 1. ELECTION OF DIRECTORS. The directors of the Association shall be elected at the annual meeting. Each member in

good standing shall be entitled to one vote for each Director to be elected and the candidate receiving a majority of the votes cast shall be declared elected.

Section 2. TERM. All directors shall be elected for a term of one (1) year. No Director shall serve more than three (3) consecutive elected terms.

Section 3. SELECTION OF OFFICERS. The officers of the Association shall be selected at the organizational meeting of the Association and at the Board of Directors meeting immediately following each annual meeting thereafter.

ARTICLE VI.

VACANCIES IN OFFICE

If a vacancy occurs among the officers or in the Board of Directors, the vacancy shall be filed for the unexpired term by the Board of Directors.

ARTICLE VII.

DUTIES OFFICERS

Section 1. PRESIDENT. The President shall preside at all meetings of the Association and of the Board of Directors and shall appoint such committees as he or the Association shall consider expedient or necessary.

Section 2. VICE PRESIDENT. In the absence of the President, the Vice President shall perform his duties, and , in the absence of both the President and Vice President, the Treasurer shall preside and assume the duties of the President.

Section 3. SECRETARY. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; shall, if requested, read such minutes at the close of each meeting for approval; and shall mail out all notices for meetings of the Association or the Board of DIrectors. He shall keep accurate account and collect all application fees, dues, and charges due from members, and perform such other duties as may be required by him by the By-Laws, the President, or the Board of Directors.

Section 4. TREASURER. The Treasurer shall have charge of all receipts and moneys of the Association, deposit them in the name of the Association in a bank approved by the Board of Directors, and disburse funds as ordered or authorized by the Board of Directors. He shall keep regular accounts of his receipts and disbursements, submit his records when requested, and give an itemized statement at regular meetings of the Association. The Treasurer, and/or the President, shall sign checks and withdrawal slips on behalf of the Association upon any of its bank accounts, but limited to a maximum of $ 1,000 per check or withdrawal slip, and the same should be honored on either signature alone. Checks and withdrawal slips drawn for amounts in excess of $ 1,000 shall be signed by the Treasurer and countersigned by the President, Vice President or Secretary.

Section 5. ASSISTANT OFFICERS. The Board of Directors may appoint Assistant Secretaries to serve in the absence of the Secretary and an Assistant Treasurer to serve in the absence of the Treasurer.

Section 6. EXECUTION OF INSTRUMENTS. The President and the Secretary or the Treasurer shall, on being directed by the Board, sign all leases, contracts, or other instruments in writing.

ARTICLE VIII.

DUTIES AND POWERS OF BOARD OF DIRECTORS

Section 1. MANAGEMENT OF ASSOCIATION. The Board of Directors shall have general charge and management of the affairs, funds and property of the Association. The Board shall have full power, and it shall be the Boards's duty, to carry out the purposes of the Association according to its Articles of Incorporation and By-Laws; to determine whether the conduct of any member is detrimental to the welfare of the Association; and to fix the penalty for such misconduct or any violation of the By-Laws.

Section 2. RULE-MAKING. The Board of Directors may make rules for the conduct of the members and the use of the Association property, not inconsistent, however, with anything set forth, in these By-Laws.

Section 3. APPOINTMENT OF COMMITTEES. The Board of Directors may appoint such committees as it deems necessary; it may vote the expenditure of moneys as it deems necessary or advisable; and it may contract for the lease, purchase, acquisition or disposition in the name of the Association of properties or facilities for the use of the members.

Section 4. NO AUTHORITY TO IMPOSE LIABILITY ON MEMBERS. The Board of Directors shall not impose any liability or levy any assessment upon the members.

Section 5. PLACE OF DIRECTORS' MEETINGS. The meetings of the Directors may be held in any convenient location within Dade County, FLorida.

ARTICLE IX.

MONIES RECEIVED BY ASSOCIATION

Any and all monies received by the Association by contribution, grant or otherwise shall be expended only for such reasons and purposes which are consistent and in the furtherance of the objectives of the Association and set forth in the By-Laws and Articles of Incorporation and for such administrative expenses necessary to carry on the regular business of the Association.

ARTICLE X.

NOTICES

All notices to members shall be mailed or delivered to their addresses as given on the books of the Association, and such mailing or delivery shall constitute presumptive evidence of service thereof.

ARTICLE XI.

AMENDMENTS

These By-Laws may be amended only by a majority of all the members, voting either in person or by proxy, at a regular or special meeting of the Association, provided notice of the proposed amendment has been stated in the call for the meeting.

* * * * * * * * * *

REV 3/90

Bal Harbour Village

INCORPORATED 1946

VILLAGE ATTORNEY
ALAN S. GOLD
PENTHOUSE I
1401 BRICKELL AVENUE
MIAMI, FLORIDA 33131

655 NINETY-SIXTH STREET
BAL HARBOUR, FLORIDA 33154

May 26, 1978

RECEIVED
FEB 1 1985
JOEL K. GUSTAFSON

To the Honorable Mayor and Members
of the Bal Harbour Village Council
c/o Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154

Re: Request for Legal Opinion on Ownership of Residential Streets in Bal Harbour Village

Gentlemen:

You have requested a legal opinion concerning whether the streets designated as "Bal Bay Drive", "Bal Cross Drive", "Park Drive", "Biscay Drive", "Camden Drive", "Balfour Drive", "Camden Court" and "Harbour Way", hereinafter referred to as "Streets", are held in public or private ownership. In my opinion, the streets are held in private ownership, subject, however, to the police powers of Bal Harbour Village as reserved thereto by Plat 44-98 and by the Bal Harbour Village Code and Ordinances.

In 1944, Miami Beach Heights, Inc., a Florida corporation, duly filed and recorded of record a subdivision plat (hereinafter referred to as "Plat 44-98") with the following dedications and reservations:[1]

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[1] Over the years, the lot owners within the residential section, acting through the Bal Harbour Club, have closed the streets once a year for a 24-hour period. Although the Village has on occasion undertaken major repairs and resurfacing of the streets, all costs thereof have been specially assessed to the lot owners within the residential area. The Village has also swept the streets and intermittently performed minor repairs, the cost of which has been paid from the general ad valorem tax fund of the Village. Each lot owner within the residential area is assessed by the County for his respective interest in common elements not dedicated to the public in accordance with Plat 44-98. Upon inquiry, the Tax Assessor's office advises that such common elements includes the streets.

"Collins Ave. & 96th St. as shown on said plat together with existing planting, both trees and shrubbery are hereby dedicated to the perpetual use of the public for proper purposes, reserving however to the Miami Beach Heights, Inc., its successors and assigns, the reversion or reversions thereof whenever discontinued by law or otherwise.

The streets designated "Bal Bay Drive", "Bal Cross Drive", "Park Drive","Biscay Drive", "Camden Drive", "Balfour Drive", "Camdon Court" and "Harbour Way", together with all areas designated "Park" on said plat are hereby dedicated to the use and enjoyment of the owners of the lots in said subdivision, and to them only, so long as said streets or parks remain in the corporate limits of Bal Harbour Village, Florida, or in the limits of any town or municipality which directly succeeds said Bal Harbour Village, Florida. In the event any of the streets or parks referred to in this paragraph are taken out of the corporate limits of Bal Harbour Village or any village or municipality, which directly succeeds Bal Harbour Village, then in that event said streets and parks are thereupon dedicated to the perpetual use of the public for proper purposes, reserving, however, to Miami Beach Heights, Inc., its successors and assigns the reversion or reversions thereof whenever discontinued by law or otherwise. So long as the streets and parks described in this paragraph shall remain dedicated to the use and enjoyment of the owners of the lots in said subdivision, the County of Dade, the State of Florida, the United States of America (or any political subdivision of any of them) shall have the right at all times to use said streets in the performance of their official functions."

Although Plat 44-98 uses the word "dedicated", which usually implies an intent to dedicate for public use, the remaining language in the "dedication and reservation" section of the plat clearly evidences an intent not to dedicate the streets to the public. By contrast, Collins Avenue, according to the terms of the plat, was expressly dedicated to the perpetual

use of the public for proper purposes, subject to certain reservation or reversion rights. With regard to the residential streets, the actual language appears to grant a perpetual easement to all lot owners to the use and enjoyment of the streets although title thereto may actually have been retained by Miami Beach Heights, Inc. and later conveyed to the Bal Harbour Club by assignment. Regardless of who now holds fee simple title (i.e., Club or individual lot owners), ownership of the streets is not in the public as a result of the so-called dedication.

The question next arises as to the extent of the power and right of Bal Harbour Village over the streets even though ownership thereof is not in the public. Pursuant to Section 8 of the Bal Harbour Village Charter, the Village has the right to establish, lay-out, open, grade, pave, curb, widen, maintain and keep clean and sanitary, and otherwise improve, and to abandon or vacate, streets, alleys, bridges, sidewalks, parks, parkways, promenades, bathing beaches; to prevent obstructions in and regulate travel, trade and traffic income, over or upon any or all such ways, including the weight, equipment, operation and speed of motors and other vehicles using said ways, or any of them, or operating in or through the said municipality; and to require any and all wires, poles, pipes and other facilities to be placed and maintained underground. These powers, together with other specific powers reserved to the Village by Plat 44-98, permit the Village to exercise its police powers over the streets and to otherwise, pursuant to Section 16-16, Code of Bal Harbour Village, impose the cost of construction, reconstruction, repair, repaving and resurfacing of streets by special assessment against the properties deemed to be benefited thereby.

In issuing this opinion, I also must call your attention to Section 95.361, Florida Statutes (formerly Section 337.31, Florida Statutes), which provides as follows:

"95.361 Roads presumed to be dedicated

(1) When a road, constructed by a county, a municipality, or the Division of Road Operations, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or Division of Road Operations, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether the road has been formally established as a public highway or not. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the state highway system or state park road system, whether there is a record of a conveyance, dedication, or appropriation to the public use or not.

(2) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or by any other means of acquisition, duly certified by:

(a) The secretary of the department of transportation, if the road is a road in the state highway system or state park road system;

(b) The chairman and clerk of the board of county commissioners of the county, if the road is a county road; or

(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be."

This section, however, does not appear applicable to the instant situation since the streets, according to the Village Manager, were constructed by the original developer of the Village, and not by the County, the Village or the Division of Road Operations, jointly or severally. Furthermore, in light of the closing of the streets once each year, there is a serious factual question as to whether the Village has maintained or repaired the streets "continuously and uninterruptedly" for a four year period.

Finally, since I am of the opinion that the streets are held in private ownership, I call your attention to Attorney General's Opinion 073-222, June 20, 1973, which states that a county cannot legally provide minor work or repairs on private roads and cannot expend County funds therefor. Applying that Opinion, the Village may not expend ad valorem tax dollars for minor repair work or maintenance of the streets. It may be possible for the streets to be leased to the Village and thereafter, the Village may use ad valorem tax funds for minor maintenance and repair in order to properly care for its leasehold interest. Under these circumstances, however, the private streets may be granted an exemption from ad valorem taxation. See Overstreet v. Indian Creek Village, 239 So. 2d 149 (Fla. 3rd DCA 1970); affirmed 248 So. 2d 2 (Fla. 1971).

For your information, I am attaching an opinion letter from Mr. Graham C. Miller, dated April 19, 1978, on behalf of the Bal Harbour Club, relative to the ownership of the streets.

Sincerely,

ALAN S. GOLD

ASG:blg
Enclosures

BILL OF SALE

THIS BILL OF SALE is made by **BAL HARBOUR CIVIC ASSOCIATION INC.**, a Florida non-profit corporation ("Grantor"), to **BAL HARBOUR VILLAGE**, a Florida municipal corporation ("Grantee").

Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration paid to Grantor by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby assign, grant, bargain, sell, convey and transfer to Grantee and Grantee's heirs, successors and assigns, all of Grantor's right, title and interest in and to the following:

> Water transmission and distribution facilities, sewage transmission and collection facilities, surface and stormwater drainage systems and all conveyances, equipment and appurtenances related thereto, all as located on the real property more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof within the corporate limits of Bal Harbour Village.

To Have And To Hold the same unto Grantee and Grantee's heirs, successors and assigns forever.

Grantor has caused these presents to be executed by its President as of ~~May~~ June 3, 1995.

WITNESSES: Signed, sealed and delivered in the presence of:

_____

IRA S. LELCHUK V.P.
(Legibly Print/Type/or Stamp Name)

_____

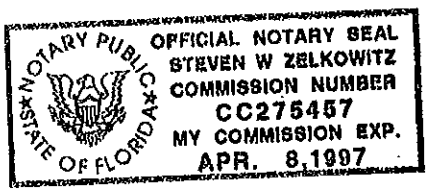
CHARLES VENTURI TRES.
(Legibly Print/Type/or Stamp Name)

BAL HARBOUR CIVIC ASSOCIATION, INC., a ~~Florida~~ non-profit corporation

By: _____
Charles G. Brown, President

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 3rd day of ~~May~~ June, 1995, by Charles G. Brown, the President of **BAL HARBOUR CIVIC ASSOCIATION, INC**, a Florida non-profit corporation on behalf of the corporation. He/she (check one) [✓] is personally known to me or [ ] has produced _____ (type of identification) as identification.



Notary Public

STEVEN W. ZELKOWITZ
(Legibly Print/Type/or Stamp Name)

My Commission Expires:

EXHIBIT "A"

Certain real property located in Dade County, Florida more particularly described as follows:

> The streets designated "Bal Bay Drive," "Bal Cross Drive," "Park Drive," "Biscay Drive," "Camden Drive," "Balfour Drive," "Camden Court" and Harbour Way" together with all areas designated "Park" as set forth on the **PLAT OF THE RESIDENTIAL SECTION OF BAL HARBOUR** according to the plat thereof as recorded in Plat Book 44, Page 98 of the Public Records of Dade County, Florida.

Mr. Alfred Treppeda
Village Manager
655 96th Street
Bal Harbour Village, Fl 33154

January 12, 2004

Dear Mr. Treppeda:

As you are aware, in 1986, the Bal Harbour Civic Association and the Village of Bal Harbour entered into an agency agreement whereby the Civic Association was designated as the Village's agent in the administration of security within the residential area of Bal Harbour as more specifically defined in the written agreement. The Civic Association indeed embraced that role given the obvious interest the association has in the security of its residents.

However, in recent times, it has become increasingly difficult for the Association to conduct the security affairs of the community. While the Association still has the same motivation to ensure that the neighborhood achieves the highest level of security possible, it is the administration of the agency agreement, its purpose, and its scope that has become the subject of some contention between some of the residents and the board.

Accordingly, the Board has determined that it wishes to terminate the agency agreement, and this letter serves as 30 day notice of same. As we have been advised, the termination of the agency agreement will have no effect and will in no way alter the existing post orders or any of the current protocols for access to the security area through the guard gates. Furthermore, it is the Association's understanding that the Village will continue to operate the Security District with the same high standards of security and safety in conformity with the existing Post Orders .

I want to emphasize that the association intends to perform all of the security functions it has performed within the agency agreement for the past 17 years, with the exception that the board's actions will not be pursuant to the agency agreement. The association intends to continue to work with the Village as it has in the past, and sincerely appreciates the good work and cooperation between the Village of Bal Harbour and the Civic Association.

Sincerely,

Sandra Dunn
President

cc: Board of Directors, Civic Association

Ignacio G. del Valle

From: Ellisa Horvath [ehorvath@balharbour.org]
Sent: Tuesday, September 14, 2010 11:28 AM
To: Ignacio G. del Valle
Cc: Lillian M. Arango; Richard Jay Weiss; David M. Wolpin
Subject: RE: Security Program
Attachments: image001.gif; Civic Assoc Agency Agt Cancellation Ltr.pdf

Ignacio:

The letter is attached.

Ellisa

Ellisa L. Horvath, MMC, Village Clerk
Bal Harbour Village Hall
655 - 96th Street
Bal Harbour, Florida 33154
(305) 866-4633, #318
clerk@balharbour.org
www.balharbour.org

From: Ignacio G. del Valle [mailto:IDelValle@wsh-law.com]
Sent: Monday, September 13, 2010 6:13 PM
To: clerk@balharbourflorida.com
Cc: Lillian M. Arango; Richard Jay Weiss; David M. Wolpin
Subject: Security Program

Hi Lisa:
Several weeks ago you sent to Lily copies of Resolution No.'s 303 (Jan. 28, 1986); 304 (Feb. 25, 1986); 316 (Sept. 30, 1986); and 464 (Sept 15, 1992) which created, terminated and re-created the "Bal Harbour Village Security Program Special Taxing District".
Also, pursuant to said Resolutions the Security Program was to be administered by the Bal Harbour Civic Association, Inc., pursuant to a written management agreement attached as Exhibit "B" to said Resolutions.
A couple of weeks ago or so ago while discussing with Richard Weiss and David Wolpin issues related to the Security Program and other issues concerning the Residential Section of Bal Harbour, Richard and David mentioned to me that the Security Program management agreement with the Civic Association had been terminated some time ago and that the Village had assumed the administration of said Security Program.
Therefore, please send me copies of the Resolution(s), Civic Association termination agreement or letter, or any other document which evidences the (i) termination of the Civic Association's management agreement and (ii) the assumption by the Village of the administration of the Security Program.
Regards
Ignacio

WEISS SEROTA HELFMAN PASTORIZA COLE &

Ignacio G. del Valle, Esq.
Partner

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
www.wsh-law.com

Sept. 14, 2010

BAL HARBOUR SECURITY DISTRICT RESEARCH

June 6, 1950 — The Council approved money to be used to install sprinkler systems in the various parks in Bal Harbour along Harbour Way from Collins Avenue to the Yacht Basin.

January 29, 1951 — The subject of closing off the Village streets to eliminate sightseers and people using the streets for short cuts was discussed. Since Mr. Whitaker had already prepared the drawings for Miami Beach Heights, Inc. for the turn-arounds at the street ends the matter would be discussed at a subsequent meeting.

February 27, 1951 — Mr. Graham showed the Council a sketch of the turn-around for the south end of Bal Bay Drive prepared by Zurwelle-Whittaker for Miami Beach Heights, Inc.

June 18, 1951 — Village Manager Webb asked Miami Beach Heights permission to construct temporary turn-arounds at Bal Bay Drive and 96th Street and Camden Drive at Park Drive, which was granted. Zurwelle-Whttaker (Village Engineers) were preparing plans for the turn-arounds. Mr. Stokely brought up the point of whether or not it was proper to spend the Village money on something they had nothing to do with. Mr. Webb reported that at the annual meeting of the Bal Harbour Club the members had authorized the streets closed, and that the Camden entrance was really a private street owned by Miami Beach Heights and they had authorized it closed. The Village Council authorized the Villate Manager to use money from surplus to close the undedicated opening (Camden Drive) and Bal Bay Drive at 96th Street.

The Village Manager reported that this time last year the Council has approved the placing of sprinklers in the parks along Harbour Way and asked for money from surplus to install sprinklers in the park behind the apartments in Block 7. The Council requested definite figures for the job.

Mr. Simons asked if as long as the Village streets were private property if they couldn't be taxable. Mr. Webb reported that this had been discussed with Mr. Lummus, County Assessor, when the plat was recorded and he had agreed to accept the dedication and not tax them. The only stipulation was that if for any reason Bal Harbour Village would be dissolved the streets would revert to the County.

July 9, 1951	Mr. Webb had not yet received official permission from Miami Beach Heights for the street closing turn-arounds. The Council requested that the traffic survey report be sent to the property owners.
	The Council approved (3-1) to approve money from surplus to install sprinklers in the park in Block 7.
December 17, 1951	Mr. Webb had a letter from Mr. Robert Graham regarding Miami Beach Heights' permission to construct the turn-arounds at Camden Drive and Bal Bay Drive. The council accepted the agreement of Miami Beach Heights.
June 16, 1952	The Council approved money from surplus to install a sprinkler system in the Park in Block 8.
1953	The Council approved surplus money to install sprinkler systems in the following parks: at the s.w. and n.w. corners of Park Drive and Bal Cross Drive; Bal Bay Drive and Sewer Station Property and across the street. It was the policy of the Council to use some of any surplus that is accumulated during that tax year in improvements.
April 19, 1954	The Village Manager requested an opinion from the Council as to whether or not the children in the Village should be allowed to use the Village parks for baseball and football fields. The Council voted that all organized ball games be played at the Club or other designated area.
June 20, 1955	Mr. Broeman was asked by the Board of Governors of the Bal Harbour Club to ascertain if the Council would be agreeable to closing the streets in the residential section. Mr. Webb explained that function was not in the Village powers and would have to be done by the Club itself. Mr. Beatty appointed Mr. Broeman and Mr. Landis as a committee to meet with the Bal Harbour Club Board of Governors on the matter.
November 21, 1955	Mr. Landis reported that he met with Mr. Webb regarding amending the Zoning Ordinance to include wall heights in the business section and that it was their opinion to carry on with the height limitation behind the apartments.

	Ordinance No. 45 to include a section that the maximum height of boundary wall in the business section of 8 feet.
December 19, 1955	The Bal Harbour Club Board of Governors requested the Village to assist them in closing off the private streets in the Village. Mr. Webb was directed to contact Bal Harbour Club Attorney Mr. Catchings to explain that the Village of Bal Harbour could not take part in the street closing program.
January 19, 1957	painting was needed on the park wall in Block 8. Mr. Broeman said that the painting of the park wall brought up again the problem of who was to maintain the parks. Mr. Webb was directed to contact Mr. Coogan and the Bal Harbour Club Board of Governors to meet with the Council at the next meeting.
June 22, 1957	Village resident Harmon Swart requested that the sea grape trees be removed from the Village park across the street from his home. The Council agreed to do so if Mr. Swart submit a petition in his immediate neighborhood that the trees be removed with the understanding that no replacement be made in that park.
September 28, 1957	Bal Harbour Club Attorney Mr. E. S. Quick wrote an opinion that the municipal police do have the authority to regulate traffic and the operation and speed of vehicles in the Residential Section. (regarding the authority the Village had in enforcing reasonable rules and regulations pertaining to vehicular traffic over the streets of the Residential Section of Bal Harbour). Mr. Adnerson concurred with the opinion and the Council requested that Mr. Webb acknowledge the letter.
November 23, 1957	Bal Harbour Club Inc. President David W. Exley submitted a letter to Mayor Brown stating the many residents living in Bal Harbour had indicated their desire to have the approaches to all the private streets completely closed to both car and foot traffic, with the exception of one where a police officer could be stationed. The letter stated further that possibly the new taxing districts recently created could accomplish financing for the project under a special assessment. Per the recommendation of Mr. Anderson, Mayor Brown appointed a committee to meet with Dr. Exley on the issue.
May 2, 1959	The Council approved money and Village labor to paint the park wall along Park Drive

1960	The Council approved surplus funds in the Park Dept. budget to whitewash the wall on Park Drive at the rear of the apartment houses facing Collins Avenue.
February 28, 1978	Petition to the Village Council to request the Bal Harbour Club to grant Bal Harbour Shops permission to landscape the Club property on Park Drive and Bal Bay Drive Mr. Whitman offered to plant trees on Park Drive on the north side of his wall and read letters from the Bal Harbour Club declining his offer.
April 25, 1978	Village Attorney Mr. Alan Gold read a memo regarding the ownership status of the streets in the Residential District and "Camden Drive extended" in the Business District.
May 30, 1978	Village Attorney Gold presented his opinion that the residential streets are privately owned, but subject to municipal police powers. Ad valorem taxes should not be used for street maintenance in the district. The possibility of the Village leasing the streets from the Bal Harbour Club will be explored. Village Attorney Alan Gold reported that after review of the abstract of the Camden Drive Extended portion of the business district and the record plats that the street was never public and is owned by the Bal Harbour Shops.
June 27, 1978	The Club declined the option of leasing the streets to the Village and preferred that the Village create a separate tax district for caring for the private street.
September 26, 1978	Uniform signs on the west side of Collins Avenue for the apt. buildings was discussed.
December 19, 1978	The council vote was tied on a request from the Water's Edge Apartments requesting that the Village allow them to mark off and utilize the end of Bay Drive for parking. It will be considered in January.
January 30, 1979	A Councilmember reported that the Water's Edge would not stripe the street in front of their building for parking, but would just use the street as needed.

The Village Manager would like the Village Attorney to look into a separate tax district for the Residential District. It was too late to have the County implement split tax bills for last year.

The Bal Harbour Club asked the Village to enter into a contract with the Shops for maintaining the landscaping along Park Drive. The Council decided that was not necessary.

February 27, 1979 — The Council agreed that portions of the east side of the park wall behind the apartments would be painted on request.

August 28, 1979 — Village Attorney Alan Gold advised that the Council could expend general funds to repair municipally owned street lights in the residential section based on the Charter and General laws. The Council had the option of creating a special tax district for the work.

March 30, 1982 — The Bal Harbour Shops discussed plans to move the main entrance from Collins Avenue to Bal Cross Drive (east of Park Drive). The proposal was opposed by the Balmoral, Fairfield Manor Apartments, Tahoma Apartments. In answer to a question of who owned Bal Cross Drive, Village Attorney Alan Gold referred to his May 1978 opinion that he felt that all owners have the right to use the streets. The item was deferred until the Shops made a formal request.

April 27, 1982 — The Council discussed the proposed relocation of the main entrance of the Bal Harbour Shops. A traffic engineer was hired to study the area for impact and access.

June 29, 1982 — Resolution No. 279

Assessing Cost for Local Improvements for Bal Harbour Residential District R-1

June 29, 1982 — Resolution No. 280

Pursuant to Resolution No. 279 Establishing a Public Hearing date

Village traffic engineers reported that the proposed new entrance/exit drives for the Bal Harbour Shops would generate commercial traffic on Bal Cross Drive, in conflict with the Village's Comprehensive Plan.

July 27, 1982	Resolution No. 281 Confirming Special Assessment Roll for Bal Harbour Residential Improvement District R-1
November 9, 1982	The Council requested that no building permit be issued for the installation of a "tire stop" to be located on South Harbour Way until a hold harmless was received from the Club.
January 31, 1984	Village Manager Maley explained that the streets in the single family Residential area owned by the property owners and that property ownership is no longer related to the Bal Harbour Club. Mr. Maley was approached by members of the Civic Association regarding a special taxing district to provide security guard services, which were previously furnished by the Club. He outlined a procedure, per county code, which would be followed. This includes a petition and an election, possibly by mail ballot. The Council approved the concept.
February 10, 1984	Bal Harbour Civic Association, Inc. filed Articles of Incorporation Bal Harbour Civic Association, Inc. By-Laws
March 1, 1984	Assignment and Confirmation of Assignment between the Bal Harbour Club, Inc. and the Bal Harbour Civic Association
November 27, 1984	Mr. McKeehan discussed the action of the Bal Harbour Civic Association denying ingress and egress at the 96th Street gate to anyone not paying their "imposed assessment", which he didn't feel was legal. Village Manager Maley explained that after the Bal Harbour Club gave up the responsibility for the security guard, the Civic Association attempted to create a special taxing district to assess all property owners in the Residential Section for the additional security. This was not permitted by Dade County because of the private street dedication. Since that time, the Association has asked for contributions from the residents. Vincent Santucci, President of the Civic Association, advised that they were trying a voluntary or contractural agreement with the residents to maintain the gate and security at the guard house. If there weren't enough donations then the gate could not be maintained. Village Manager Maley did not believe that homeowners should be denied access. Mr. McKeehan reported that Village Attorney Gold had told him that they could not deny access to anyone living there. Resident Mr. Bruno tried

to discuss the matter with the Association unsuccessfully. Mayor Sherman suggested that Village Manager Maley meet with Mr. Santucci and try to solve the problem and to get a legal position from Village Attorney Gold.

January 29, 1985 — Civic Association Attorney Shiel did not believe the issue was a public matter and if the Council had a legal opinion the Association would challenge it. Resident Gavigan reported that the Association policy was an intrusion on his rights as a property owner since the deeds gave all property owners common rights to the streets. Mr. Valardo, One Harbour Way Apartments Presidents, said that their owners had bought under certain conditions and had always enjoyed the use of the 96th Street gate. Now, the Civic Association says they cannot have access to the gate. Village Manager Maley reported that One Harbour Way apartments were part of the residential section and had paid a street assessment. Village Attorney Gold reported that if the people wanted security in the residential section it was a problem of how to pay for it. He explained that the Association was a non-profit corporation and the street were not public, so they could not create a special taxing district. The Association determined the way to make residents pay was to deny them partial ingress and egress. Mr. Santucci reported that the Association would discuss the issue.

April 30, 1985 — The Bal Harbour Civic Association had asked the Village to operate the security, but under Dade County Code it could not be done on a county assessment basis due to the private streets. Village Attorney Gold suggested that in order for the Village to be able to take over the security that an amendment be prepared to the local improvement section of the Village Code to provide for security purposes. An amendment to the Village Code would be presented at the next meeting.

May 28, 1985 — Ordinance passed first reading amending the Village Code (local improvements)

June 25, 1985 — Ordinance No. 264 – Civic Association had requested the Village to take over the security gate and guard house at the entrances to the residential section of the Village. The Ordinance provided for assessments for security purposes.

October 29, 1985 — Village Attorney Alan Gold resigned effective January 1, 1986.

November 26, 1985 — Bal Harbour Shops relocation of main entrance from Collins Avenue to Bal Cross Drive denied. Building Official George Desharnais cited the reasons as: proposed entrance was inconsistent with the Comp Plan as Bal Cross Drive is a private street for residential use; lack of a traffic signal plan; violation of Section 7-5H of the Code which states that a driveway must be on the lot it serves; it would cause noise and air-pollution; and would prohibit the future use of Bal Cross as a through street.

December 10, 1985 Richard Weiss hired

January 28, 1986 Resolution No. 303 Passed

Creating a Special Taxing District to assess certain lots for the cost of providing a security program within the District

The Village Clerk reported 206 petitions (75%) of the property owners in the assessment district.

February 25, 1986 Resolution No. 304 Passed

Confirming Special Assessment Roll Pursuant to Resolution No. 303

Village resident Gavigan had complained to Governor Graham's office that the petitions were impromper, the assessment unfair, and that due to the nature of the service it should be included in the budget and done on an ad valorem tax basis. The Governor's office told Mayor Sherman that they found nothing illegal.

Village Manger Louise Miller spoke to the Civic Association regarding access through the gate for the residents of One Harbour Way at the request of Mr. Burroughs, the condo president. The Civic Association said that their residents would be given stickers for their cars. Also residents at the Bal Harbour Manor will have to be provided for as they must pass through the gate to reach their property.

Mayor Sherman advised Mr. Gavigan that Mrs. Rodriguez, from Governor Graham's office advised that Bal Harbour was not in violation of any State law.

March 1, 1986 Pursuant to Resolution No. 303

Special Assessment for Security Purposes within the Residential Area

Retaining the Civic Association to act as the Village's Agent in the administration of security

Term – until terminated in writing

July 29, 1986 A Resolution regarding the Special Taxing District was referred back to a committee for further study. Legal fess for the William Gavigan suit were discussed. Mr. Olsen, Civic Association member, asked if they could represent themselves on a voluntary basis.

August 26, 1986	The Council voted to turn the security district assessment problem over to the Civic Association for them to meet with the owners. If all concerned could agree on an assessment method then the Association could present it to the Village to prepare an assessment roll.
September 11, 1986	The Gavigan suit against the Village was heard before Judge Shapiro and was dismissed.
September 30, 1986	Resolution No. 316 Passed Terminating Special Taxing District created by Resolution No. 303 Creating Special Taxing District to assess certain lost for the cost of a security program within the District Vincent Santucci, President of the Bal Harbour Civic Association noted that the residents of the Village wished to keep the security system intact. He noted that 80% of the Village residents wanted security services. Mr. Santucci and Dr. Hirschl outlined other changes being considered within the district including another automatic gate arm at the Collins Avenue entrance and for gate cards and remote controls to be distributed through Village Hall. Bill Gavigan spoke against the security district and the basis on which it was established (the original petition). He added that he had not yet determined whether or not he would appeal the court's recent decision against him on this issue.
October 1, 1986	Pursuant to Resolution No. 316 Agreement between Bal Harbour Village and Bal Harbour Civic Association Term – until terminated in writing
May 27, 1988	Bal Harbour Village Agreement with Bal Harbour Civic Association For Additional Police and Security Functions within Residential Area $100 Per year Term – until terminated in writing

September 15, 1992	Resolution No. 464 Terminating the Special Taxing District for Security Purposes created by Resolution No. 316. (Original Taxing District) Creating a Special Taxing District for the purposes of assessing certain lots for a security program within the District.
January 12, 2004	Termination of the 1986 Agency Agreement by the Bal Harbour Civic Association. The Agreement had designated the Civic Association as the Village's agent in the administration of security within the residential area.

Memorandum

To: Honorable Mayor & Council

From: Alfred J. Treppeda, Village Manager

Ellisa L. Horvath, Village clerk

Date: November 1, 2010

Subject: Research Regarding History of Gated Residential Area

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In response to a request by the Village Council, Village Staff has reviewed minutes of Bal Harbour Village Council meetings, beginning in 1946, to attempt to determine the progression of events that led up to the current day Security District and maintenance of open spaces by the Village in the gated area. The concrete wall that separates the Security District from the west side apartment buildings was also of special interest.

Miami Beach Heights

According to Council meeting minutes, Miami Beach Heights was the owner of the property which was developed and incorporated as Bal Harbour Village.

Bal Harbour Club

According to the Assignment and Confirmation of Assignment document, Miami Beach Heights assigned certain rights to the Bal Harbour Club concerning the residential area. It is common knowledge that potential purchasers of property in the residential district had to be approved as members of the Bal Harbour Club first. The Bal Harbour Club seemed to be the fund-raising mechanism for dealing with issues in the single family residential area. The Bal Harbour Club funded part-time guards at the Harbour Way entry gate. On March 1, 1984, the **Assignment and Confirmation of Assignment between the Bal Harbour Club, Inc. and the Bal Harbour Civic Association (TAB A)** was executed by the two parties.

On December 21, 1952, Mr. Stokely (Councilman) said he thought that Village Manager Webb should separate from the Club entirely and the Village should meet his combined salary. Mr. Webb said that some time ago he had sent a letter to the Club asking that he be relieved of these duties, but the Board hadn't seen fit to act on it. It was suggested by Mr. Beatty (Councilman) that Council get together after the first of the year and work out the problem.

Research Regarding History of Gated Residential Area

Bal Harbour Civic Association

After court rulings removed the Bal Harbour Club's power to require membership for those seeking to purchase properties, the Bal Harbour Club assigned certain rights to the Bal Harbour Civic Association. Unfortunately, the powers of the Bal Harbour Civic Association do not include the ability to assess property owners. The Association has no power to raise funds whatsoever. On February 10, 1984, the Bal Harbour Civic Association, Inc. filed **Articles of Incorporation (TAB B)** and **By-Laws (TAB C)**. On March 1, 1984, the **Assignment and Confirmation of Assignment between the Bal Harbour Club, Inc. and the Bal Harbour Civic Association (TAB A)** was executed by the two parties.

Formation of Special Assessment for Security

At the November 27, 1984 Council meeting, Village Manager Maley explained that after the Bal Harbour Club gave up the responsibility for the security guard, the Civic Association attempted to create a special taxing district to assess all property owners in the Residential Section for the additional security. This was not permitted by Dade County because of the private street dedication. Since that time, the Association has asked for contributions from the residents. Vincent Santucci, President of the Civic Association, advised that they were trying a voluntary or contractual agreement with the residents to maintain the gate and security at the guard house. If there weren't enough donations, then the gate could not be maintained. Village Manager Maley did not believe that the homeowners should be denied access. Mr. McKeehan (Councilman) reported that Village Attorney Gold had told him that they could not deny access to anyone living there. Resident Mr. Bruno tried to discuss the matter with the Association unsuccessfully. Mayor Sherman suggested that Village Manager Maley meet with Mr. Santucci and try to solve the problem and to get a legal position from Village Attorney Gold.

On January 31, 1984, Village Manage Fred Maley explained that the streets in the single family residential area are owned by the property owners, and that property ownership is no longer related to the Bal Harbour Club. Mr. Maley was approached by members of the Civic Association regarding a Special Taxing District to provide security guard services, which were previously furnished by the Club. He outlined a procedure, per county code, which would be followed. This includes a petition and an election, possibly by mail ballot. The Council approved the concept.

On November 27, 1984, Mr. McKeehan discussed the action of the Bal Harbour Civic Association denying ingress and egress at the 96th Street gate to anyone not paying their "imposed assessment," which he didn't feel was legal.

On January 29, 1985, Civic Association Attorney Shiel did not believe that the issue of access to the private area was a public matter and felt that if the Council had a legal opinion, the Association would challenge it. Resident Gavigan reported that the

Association policy was an intrusion on his rights as a property owner since the deeds gave all property owners common rights to the streets. Mr. Valardo, One Harbour Way Apartments President, said that their owners had bought under certain conditions and had always enjoyed the use of the 96th Street gate. Now, the Civic Association says they cannot have access to the gate. Village Manager Maley reported that One Harbour Way apartments were part of the residential section and had paid a street assessment. Village Attorney Gold reported that if the people wanted security in the residential section, it was a problem of how to pay for it. He explained that the Association was a non-profit corporation and the streets were not public, so they could not create a special taxing district. The Association determined the way to make residents pay was to deny them partial ingress and egress. Mr. Santucci reported that the Association would discuss the issue.

On April 30, 1985, it was discussed that the Civic Association had asked the Village to operate the security, but under Dade County Code it could not be done on a county assessment basis due to the private streets. Village Attorney Gold suggested that in order for the Village to be able to take over the security, an amendment must be prepared to the local improvement section of the Village code to provide for security purposes. An amendment to the Village code would be presented at the next meeting.

On May 28, 1985, the ordinance amending the Village Code (local improvements) passed first reading.

On June 25, 1985, **Ordinance #264 (TAB D)** passed providing for assessments for security purposes (Security District).

On January 28, 1986, **Resolution #303 (TAB E)** passed creating a Special Taxing District to assess certain lots for the cost of providing a security program within the District. The Village clerk reported 206 petitions (75%) of the property owners in the assessment district.

On February 25, 1986, **Resolution #304 (TAB F)** passed confirming special assessment roll pursuant to resolution #303.

Village resident Gavigan had complained to Governer Graham's office that the petitions were improper, the assessment unfair, and that due to the nature of the service, it should be included in the budget and done on an ad valorem tax basis. The Governor's office told Mayor Sherman that they found nothing illegal.

Village Manager Louise Miller spoke to the Civic Association regarding access through the gate for the residents of One Harbour Way at the request of Mr. Burroughs, the condo president. The Civic Association said that their residents would be given stickers for their

cars. Also, residents at the Bal Harbour Manor will have to be provided for as they must pass through the gate to reach their property.

Mayor Sherman advised Mr. Gavigan that Mrs. Rodriguez, from Governor Graham's office advised that Bal Harbour was not in violation of any State law.

On March 1, 1986, pursuant to resolution 303 (Special Assessment for Security Purposes within the Residential Area), the Village retained the Civic Association to act as the Village's agent in the administration of security. The term goes until terminated in writing.

On July 29, 1986, a resolution regarding the Special Taxing District was referred back to a Committee for further study. Legal fees for the William Gavigan suit were discussed. Mr. Olsen, Civic Association member, asked if they could represent themselves on a voluntary basis.

On August 26, 1986, the Council voted to turn the security district assessment problem over to the Civic Association for them to meet with the owners. If all concerned could agree on an assessment method, then the Association could present it to the Village to prepare an assessment roll.

On September 11, 1986, the Gavigan suit against the Village was heard before Judge Shapiro and was dismissed.

On September 30, 1986, resolution #316 passed terminating the special taxing district created by resolution #303. It created a special taxing district to assess certain lots for the cost of a security program within the District.

Vincent Santucci, President of the Bal Harbour Civic Association noted that the residents of the Village wished to keep the security system intact. He noted that 80% of the Village residents wanted security services. Mr. Santucci and Dr. Hirschl outlined other changes being considered within the district including another automatic gate arm at the Collins Avenue entrance and for gate cards and remote controls to be distributed through Village Hall.

Bill Gavigan spoke against the security district and the basis on which it was established (the original petition). He added that he had not yet determined whether or not he would appeal the court's recent decision against him on this issue.

On October 1, 1986, pursuant to **Resolution #316 (TAB G)**, an agreement between Bal Harbour Village and Bal Harbour Civic Association was approved with a term until terminated in writing.

Research Regarding History of Gated Residential Area

On May 27, 1988, an **Agreement between Bal Harbour Village and the Bal Harbour Civic Association (TAB H)** was approved for additional police and security functions within the Residential Area with a term until terminated in writing.

On September 15, 1992, **Resolution 464 (TAB I)** terminated the Special Taxing District for Security purposes created by resolution #316, and created a Special Taxing District for the purposes of assessing certain lots for a security program within the District.

On January 12, 2004, the 1986 Agency Agreement between Bal Harbour Village and the Bal Harbour Civic Association was canceled at the request of the Civic Association. As a result, the Village, not the Association, administers the Security District. The Civic Association is no longer the Village's agent. **(TAB J)**

Concrete Wall Separating West Side Apartments from Single Family Home District
We were not able to determine through Council meeting minutes or records who built the concrete wall that runs between Park Drive and the west side apartment buildings. There are some references in the minutes indicating that the Village painted the wall upon the request of the apartment owners. Recent inquiries about repairing the wall behind the Lanai Apartment building seem to indicate through a survey that the concrete wall is on Civic Association property. Additional research by the Village Attorney revealed that the wall is not on the property of the apartment buildings adjacent to the Lanai building. **(TAB K)**

At the Council meeting on November 21, 1955, the Village Engineer Mr. Landis reported that he met with Village Manager Webb regarding amending the Zoning Ordinance to include wall heights in the business section and that it was their opinion to carry on with the height limitation behind the apartments with a maximum height of 8 feet.

At a Council meeting on January 19, 1957, the issue of who should maintain the park wall was brought up since the wall needed painting. Village Manager Webb was directed to contact Mr. Coogan and the Bal Harbour Club Board of Governors to meet with the Council at the next meeting.

On May 2, 1959, the Council approved money and Village labor to paint the park wall along Park Drive.

In 1960, the Council approved surplus funds in the Park Dept. budget to whitewash the wall on Park Drive at the rear of the apartment houses facing Collins Avenue.

On July 31, 1962, Mr. Stanley Whitman stated the Bal Harbour Shops were willing to construct a buffer wall on Park Drive as suggested by the apartment house owners. The Village Manager advised the Council that the adjoining property owners had been notified on the proposed changes of the set-back along Collins Avenue and along Park Drive.

On February 27, 1979, the Council agreed that portions of the east side of the park wall behind the apartments would be painted upon request.

Maintenance/Use of Open Spaces in Single Family Home District

We were unable to locate any specific mention of when the Village started maintaining the open space areas in the single family district. It is assumed that it was done from the very beginning of the incorporation of Bal Harbour Village. It is assumed that the open spaces were initially available for use by those residing both inside and outside of the single family home district. At a meeting on June 6, 1950, the Council approved money to be used to install sprinkler systems in the various park areas along Harbour Way from Collins Avenue to the Yacht Basin. The Village Manager requested to use Village funds to install sprinklers in the park area behind the apartments in Block 7(open space along Park Drive). The Council requested definite figures for the job, and later approved the expenditure at a meeting on July 19, 1951. The Council approved money from surplus to install a sprinkler system in the Park in Block 8 on June 16, 1952. In 1953, the Council approved funds to install sprinkler systems in the following parks: S. W. and N. W. corners of Park Drive and Bal Cross Drive; Bal Bay Drive and sewer station property, and across the street.

On August 24, 1953, Village Manager Webb informed the Council that some of the residents had purchased athletic equipment for the Village children and inasmuch as the Village did not have any land that could be used for a playground, he suggested he would ask the Board of Governors of the Bal Harbour Club if a portion of the Club grounds could be used. It was unanimously voted that Mr. Webb be authorized to contact the Directors of the Club and, if permission was granted, the Village could erect goal posts and a baseball stop.

On December 21, 1953, Village Manager Webb explained that all trees in the parkways in Bal Harbour were placed according to a landscape plan.

At the Council meeting on April 19, 1954, the Village Manager requested an opinion from the Council as to whether or not the children in the Village should be allowed to use the Village parks for baseball and football fields. The Council voted that all organized ball games be played at the Club or other designated area.

On January 17, 1955, Dr. David Exley, Mr. George Walter, and Mr. Dudley Whitman appeared before the meeting as the Bal Harbour Club Recreation Committee to discuss

the program they had instituted for the children on Saturdays and Sundays. Village Manager Webb told the Committee that the Council had voted in April that the Village parks were not to be used for organized ball playing. Mr. Walter said that the same park would not be used every week and, that when used, would be for only a short period of time. Dr. Exley explained that the children were being kept on the west side of Collins Avenue due to the heavy traffic over the winter months. It was decided that Village Manager Webb would make a study of the problem for the next meeting.

At the June 22, 1957 Council meeting, resident Harmon Swart requested that the sea grape trees be removed from the Village park across the street from his home. The Council agreed to do so if Mr. Swart submitted a petition to his immediate neighborhood that the trees be removed with the understanding that no replacement be made in that park.

On February 28, 1978, a petition was submitted to the Council requesting that the Bal Harbour Club grant the Bal Harbour Shops permission to landscape the Club property on Park Drive and Bal Bay Drive. Mr. Whitman offered to plant trees on Park Drive on the north side of his wall and read letters from the Bal Harbour Club declining his offer.

Streets in Single Family Home District

On January 29, 1951, the subject of closing off the Village streets to eliminate sightseers and people using the streets for short cuts was discussed. On June 18, 1951, the Council authorized the Village Manager to use money from surplus funds to close the undedicated opening (Camden Drive) and Bal Bay Drive at 96th Street. Village Manager Webb reported that at the annual meeting of the Bal Harbour Club, the members had authorized the streets closed, and that the Camden entrance was really a private street owned by Miami Beach Heights.

At a Council meeting on June 18, 1951, Village Manager Webb reported that the issue of taxability of the private streets was discussed with the County Assessor, Mr. Lummus, when the plat was recorded and he had agreed to accept the dedication and not tax them. The only stipulation was that if for any reason Bal Harbour Village would be dissolved, the streets would revert to the County.

At the Council meeting on June 20, 1955, the Council was asked if they would be agreeable to closing the streets in the residential section. Village Manager Webb explained that the Village did not have the power to do so and that the Club would have to do it.

At the Council meeting on December 19, 1955, the Bal Harbour Club Board of Governors requested that the Village assist them in closing off the private streets in the Village.

Research Regarding History of Gated Residential Area

Village Manager Webb was directed to contact Bal Harbour Club Attorney Mr. Catchings to explain that the Village of Bal Harbour could not take part in the street closing program.

On September 28, 1957, Bal Harbour Club Attorney E. S. Quick wrote an opinion that the municipal police have the authority to regulate traffic and the operation and speed of vehicles in the Residential Section. (Regarding the authority the Village had in enforcing reasonable rules and regulations pertaining to vehicular traffic over the streets of the Residential Section of Bal Harbour). Village Attorney Anderson concurred with the opinion and the Council requested the Village Manager Webb acknowledge the letter.

At the Council meeting on November 23, 1957, Bal Harbour Club, Inc. President David W. Exley submitted a letter to Mayor Brown stating that many residents living in Bal Harbour had indicated their desire to have the approaches to all private streets completely closed to both car and foot traffic, with the exception of one where a police officer could be stationed. The letter stated further that possibly the new taxing districts recently created could accomplish financing for the project under a special assessment. Per the recommendation of Village Attorney Anderson, Mayor Brown appointed a committee to meet with Dr. Exley on the issue.

On April 25, 1978, Village Attorney Alan Gold read a memo regarding the ownership status of the streets in the Residential District and "Camden Drive extended" in the Business District. On May 30, 1978, Village Attorney Gold presented his opinion that the residential streets are privately owned, but subject to municipal police powers. Ad valorem taxes should not be used for street maintenance in the district. The possibility of the Village leasing the streets from the Bal Harbour Club will be explored. He reported that after review of the abstract of the Camden Drive Extended portion of the business district and the record plats, the street was never public and is owned by the Bal Harbour Shops.

On June 27, 1978, the Bal Harbour Club declined the option of leasing the streets to the Village and preferred that the Village create a separate tax district for caring for the private streets.

On January 30, 1979, The Village Manager asked the Council to have the Village Attorney look into a separate tax district for the Residential District. It was too late to have the County implement split tax bills for last year.

On August 28, 1979, Village Attorney Gold advised that the Council could expend general funds to repair municipally owned street lights in the residential section based on the Charter and General laws. The Council had the option of creating a special tax district for the work.

Research Regarding History of Gated Residential Area

On March 30, 1982, at the Council meeting, the Bal Harbour Shops discussed plans to move the main entrance from Collins Avenue to Bal Cross Drive (east of Park Drive). The proposal was opposed by the Balmoral, Fairfield Manor Apartments, and Tahoma Apartments. In answer to a question of who owned Bal Cross Drive, Village Attorney Alan Gold referred to his May 1978 opinion that he felt that all owners have the right to use the streets. The item was deferred until the Shops made a formal request. On April 27, 1982, the Council discussed the proposed relocation of the main entrance of the Bal Harbour Shops. A traffic engineer was hired to study the area for impact and access.

On June 29, 1982, **Resolutions 279 (TAB L) & 280 (TAB M)** were passed to assess the cost for storm drainage improvements and road resurfacing and to establish a public hearing date. Village traffic engineers reported that the proposed new entrance/exit drives for the Bal Harbour Shops would generate commercial traffic on Bal Cross Drive, in conflict with the Village's Comprehensive Plan.

On July 27, 1982, **Resolution 281 (TAB N)** was passed confirming the Special Assessment Roll for Bal Harbour Residential Improvement District R-1.

On November 9, 1982, the Council requested that no building permit be issued for the installation of a "tire stop" to be located on South Harbour Way until a hold harmless was received from the Club.

On November 26, 1985, the Bal Harbour Shops request for relocation of the main entrance from Collins Avenue to Bal Cross Drive was denied. Building Official George Desharnais cited the reason as: proposed entrance was inconsistent with the Comp Plan as Bal Cross Drive is a private street for residential use; lack of a traffic signal plan; violation of Section 7-5H of the Code which states that a driveway must be on the lot it serves; it would cause noise and air-pollution; and would prohibit the future use of Bal Cross as a through street.

Village Attorney
Village Attorney Alan Gold resigned effective January 1, 1986.
Village Attorney Richard Weiss was hired December 10, 1985.

Summary
From our review of Council minutes, there is no clear indication of when the Village began maintaining the open areas in the residential district. It is presumed that the Village began maintaining the areas upon being incorporated in 1946.

There is no clear indication in the minutes of who built the wall that separates the west side apartments from the gated residential area. Recent research by the Village Attorney shows that the wall is on Civic Association Property.

Research Regarding History of Gated Residential Area

The minutes show that Miami Beach Heights was the original owner of the property that was later developed and incorporated as Bal Harbour Village. The Bal Harbour Club was assigned certain rights by Miami Beach Heights. These rights were subsequently assigned to the Bal Harbour Civic Association.

The Bal Harbour Civic Association has no power to assess, so there was a dilemma of how to pay for expenses in a private area with no enforceable assessment mechanism.

The mechanism for generating funds for security was created by Bal Harbour Village as a Special Assessment, which is still collected today.

There were no provisions made to pay for the maintenance of the open spaces in the residential district other than through ad valorem taxes, as continues to be the case today.

Maintenance of the private streets (resurfacing) has been funded by special assessments administered by Bal Harbour Village.

Due to the fact that the residential area is totally private property, including the streets, and since there is no way for the Civic Association to make assessments, there are a number of issues that need to be settled which have been unclear for many years. It would appear that legal opinions on these issues need to be provided so that Bal Harbour Village is clear on what may be handled by the Village using general tax funds, and what must be funded by property owners in the residential area.

In addition, since the Village's police department oversees the private security company at the guard house, the issue of exactly which property owners have the right of access to the gated residential area is important to have the answer to. In the event that west side apartment owners do have the right to access the gated area, are they obligated to pay a share of the maintenance expenses in the gated area?

Attached is a chronological list of excerpts from official Council meeting minutes, which are also included above under the appropriate topic categories. (TAB O)

Research Regarding History of Gated Residential Area

Questions

Following are the questions that staff would like answers to in order to insure that the Village is acting properly with regard to issues in the gated residential area:

1. Are owners of apartment units on the west side of Collins Avenue entitled to the use of the open lands and streets in the gated residential area? If so, are they joint owners and are they obligated to pay for expenses such as street paving, gate entry passes, and landscape maintenance? Are they liable for any possible judgments against owners of such lands?

2. Who owns the four streets which are outside of the gates that connect the gated area to Collins Avenue and 96th Street? The four streets are:

   a) Bal Bay Drive by Village Hall
   b) Bal Cross Drive east of pedestrian gate
   c) Bal Bay Drive (north end) east of pedestrian gate
   d) Harbour Way east of Park Drive outside the gate

3. Are the property owners in the gated area responsible for paying for all of the costs associated with maintenance of the open spaces? Are the west side apartment owners responsible for such maintenance costs? These costs are currently paid for through regular ad valorem taxes. If so, can this be through an assessment administered by Bal Harbour Village?

4. Who is the owner of the concrete wall that separates the Security District from the west side apartments? Who is responsible for maintenance of the wall?

5. Are there any easements between the Bal Harbour Civic Association and any other entities, including the Village, regarding any land in the gated area?

6. The Civic Association currently has no fund raising mechanism. In order to pay for liability insurance to cover their streets and open spaces, can this be collected through an assessment administered by Bal Harbour Village?

7. Is it appropriate for Bal Harbour Village to pay for the costs associated with the storm drainage system in the gated area? Should curb and gutter replacement be paid only by assessment funds, or could the Village pay for this from ad valorem taxes when the streets

are repaved in the gated area? There is some thought that the curbs and gutters are part of the storm drainage system.

8. The Village owns the water and sewer lines and provides service in the gated area. Is it appropriate for the Village to maintain the water/sewer system in the gated area from ad valorem taxes?

9. Is it appropriate for Bal Harbour Village to impose special assessments on homeowners in a private area for security and landscape maintenance in the private area?

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Property Information Map

Aerial Photography - 2009 0 305 ft

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Summary Details:

Folio No.:	12-2226-002-2370
Property:	
Mailing Address:	BAL HARBOUR CIVIC ASSOC PO BOX 54-6110 BAL HARBOUR FL 33154-0110

Property Information:

Primary Zone:	0100 SINGLE FAMILY RESIDENCE
CLUC:	0081 VACANT LAND
Beds/Baths:	0/0
Floors:	0
Living Units:	0
Adj Sq Footage:	0
Lot Size:	1 SQ FT
Year Built:	0
Legal Description:	BAL HARBOUR RESIDENTIAL SEC PB 44-98 ALL PRIVATE ROADS DESIGNATED AS BAL BAY DR BAL CROSS DR PARK DR BISCAY DR BALFOUR DR & HARBOUR WAY TOGETHER WITH ALL

Assessment Information:

Year:	2010	2009
Land Value:	$768	$1,097
Building Value:	$0	$0
Market Value:	$768	$1,097
Assessed Value:	$768	$1,097

Taxable Value Information:

Year:	2010	2009
Taxing Authority:	Applied Exemption/ Taxable Value:	Applied Exemption/ Taxable Value:
Regional:	$0/$768	$0/$1,097
County:	$0/$768	$0/$1,097
City:	$0/$768	$0/$1,097
School Board:	$0/$768	$0/$1,097

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Prior Years Taxes Due
2010 Ad Valorem
2010 Non-Ad Valorem
2010 Back Assessments
2010 Enterprise Folio
2010 Historical Abatements
2011 Quarterly Payments
2010 Tax Notice/Memorandum

Real Estate Tax Information

Today's Date: 01/12/2011 **Last Update:** 01/10/2011 **Tax Year:** 2010

Folio Number: 12 22260022370 BAL HARBOUR
Owner's Name: BAL HARBOUR CIVIC ASSOC
Property Address:

****** Prior Years Taxes Due ******

Mailing Information :	**Legal Description :**
BAL HARBOUR CIVIC ASSOC	BAL HARBOUR RESIDENTIAL SEC
PO BOX 54-6110	PB 44-98
BAL HARBOUR FL	ALL PRIVATE ROADS DESIGNATED AS
331540110	BAL BAY DR BAL CROSS DR PARK DR

To view 2010 Tax Notice/Memorandum click here

2010 Taxes are in paid status.

Amounts due if paid by 01/12/2011 in U.S. funds

*** Prior Years Taxes**	**$ 60.47**
Total Amount	**$ 60.47**

If payment is not received by the specified date the total amount due is subject to change.

E-check payment option is not available for properties with delinquent amounts due.

* Prior years taxes must be paid by cashier's check, money order or certified check in U.S. funds.

Amounts due are subject to change without notice.

Contact Information
E-Mail:
proptax@miamidade.gov

(305) 270-4916

Downtown Office:
140 W Flagler St.,
Room 101
Miami, FL 33130

Office Hours:
Mon - Fri
8:00 AM - 4:30 PM

Related Links:
Tax Collector
Property Appraiser
Florida State Dept of Revenue

Property Tax Home | Real Estate Tax Info | 2010 Taxes | Prior Years | 2010 Non-Ad Valorem
2010 Back Assessments | 2010 Enterprise Folio | 2010 Historical Abatements | 2011 Quarterly Payments |
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2010 Tax Notice/Memorandum

2010 REAL ESTATE PROPERTY TAXES

NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

FOLIO NUMBER	MUNICIPALITY	MILL CODE
12 22260022370	BAL HARBOUR	1200

Owner's name & billing address:
BAL HARBOUR CIVIC ASSOC
PO BOX 54-6110
BAL HARBOUR FL
331540110

for a change of billing address form click here

Property address:

Exemptions:
NONE

****** Prior Years Taxes Due Not Included In These Amounts ******

Ad Valorem Taxes

Taxing Authority	Assessed Value	Millage rate per $1,000 of Taxable Value	Taxes Levied	
Miami-Dade School Board				
SCHOOL BOARD OPERATING	768	7.86400	768	6.04
SCHOOL BOARD DEBT SERVICE	768	.38500	768	.30
State and others				
FLORIDA INLAND NAVIGATION DISTRICT	768	.03450	768	.03
SOUTH FLORIDA WATER MGMT DISTRICT	768	.53460	768	.41
EVERGLADES CONSTRUCTION PROJECT	768	.08940	768	.07
CHILDRENS TRUST AUTHORITY	768	.50000	768	.38
Miami-Dade County				
COUNTY WIDE OPERATING	768	5.42750	768	4.17
COUNTY WIDE DEBT SERVICE	768	.44500	768	.34
FIRE RESCUE OPERATING	768	2.57530	768	1.98
FIRE RESCUE DEBT SERVICE	768	.02000	768	.02
Municipal Governing Board				
VILLAGE OF BAL HARBOUR OPERATING	768	2.55670	768	1.96

Non-Ad Valorem Assessments

Levying Authority	Rate	Footage/Units	Amount

Combined taxes and assessments (gross amount) for 2010 : $15.70

Amount due if paid by
November 30 2010 : $15.07
December 31 2010 : $15.23
January 31 2011 : $15.39
February 28 2011 : $15.54
March 31 2011 : $15.70

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Property Tax Home | Real Estate Tax Info | 2010 Taxes | Prior Years | 2010 Non-Ad Valorem
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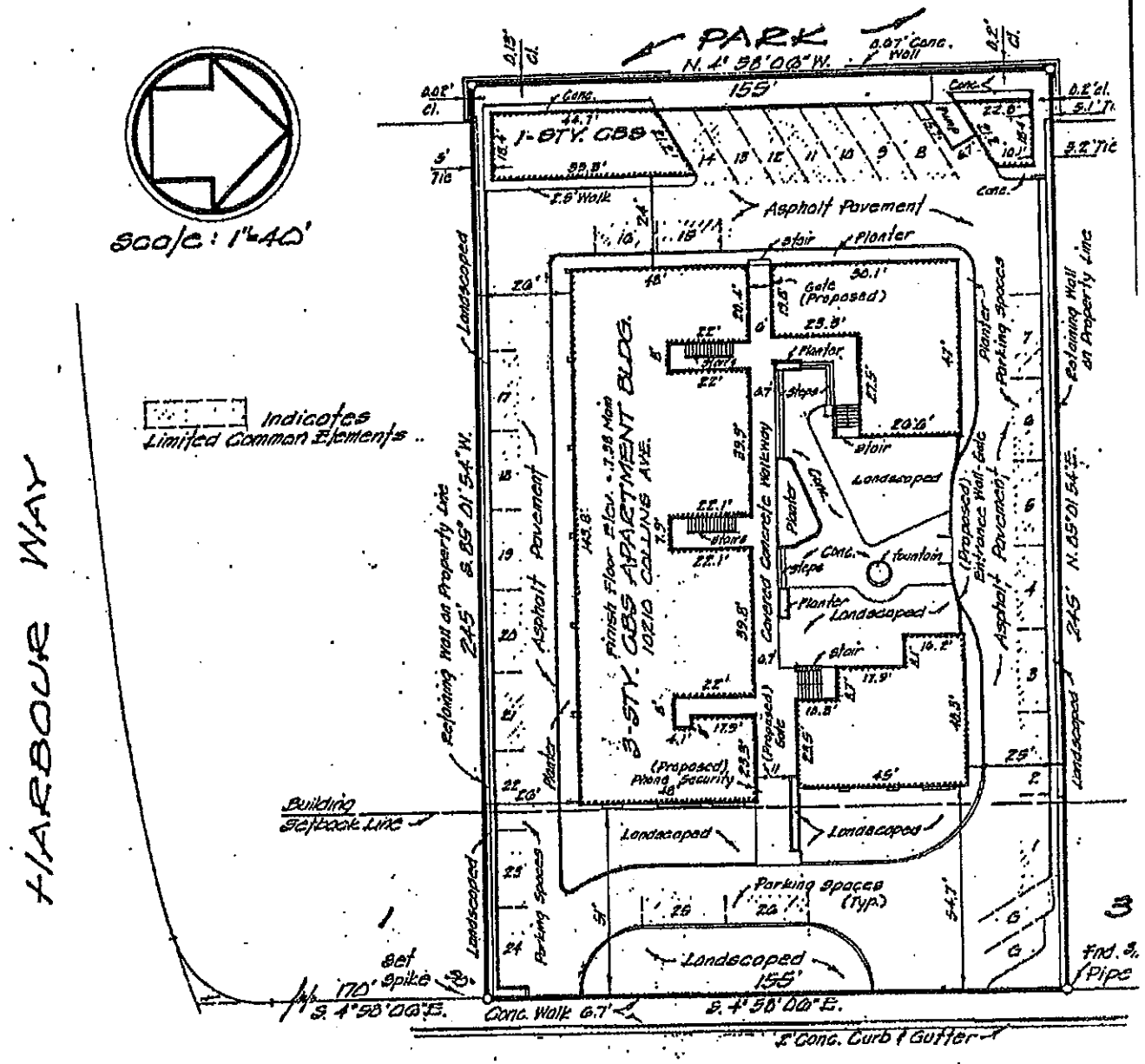
Survey for:

10210 LANAI CONDOMINIUM, A CONDOMINIUM



TO ALL PARTIES INTERESTED IN TITLE TO PREMISES SURVEYED:

I, JAMES W. LEAVY, hereby certify that I have made a recent survey of the above described property as indicated, and that there are no above ground encroachments except as shown. I further certify that the survey represented hereon meets the requirements of the Florida Land Title Association and that this survey is true and correct.

The 2010 Florida Statutes

95.361 Roads presumed to be dedicated.—

(1) When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

(2) In those instances where a road has been constructed by a nongovernmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, a municipality, or the Department of Transportation, whether jointly or severally, such road shall be deemed to be dedicated to the public to the extent of the width that actually has been maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. This subsection shall not apply to an electric utility, as defined in s. 366.02(2). The dedication shall vest all rights, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(3) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or subsection (2) or by any other means of acquisition, duly certified by:

(a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park Road System;

(b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or

(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property affected by subsection (2) shall have and is hereby allowed a period of 1 year after the effective date of this

subsection, or a period of 7 years after the initial date of regular maintenance or repair of the road, whichever period is greater, to file a claim in equity or with a court of law against the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property. Such timely filed and adjudicated claim shall prevent the dedication of the road to the public pursuant to subsection (2).

(5) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

History.—s. 110, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 23, ch. 74-382; s. 1, ch. 77-174; s. 3, ch. 88-168; s. 529, ch. 95-147; s. 54, ch. 2003-286; s. 14, ch. 2004-366.

Note.—Former s. 337.31.

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The 2010 Florida Statutes

Title XII MUNICIPALITIES | Chapter 170 SUPPLEMENTAL AND ALTERNATIVE METHOD OF MAKING LOCAL MUNICIPAL IMPROVEMENTS | View Entire Chapter

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.–

(1) Any municipality of this state may, by its governing authority:

(a) Provide for the construction, reconstruction, repair, paving, repaving, hard surfacing, rehard surfacing, widening, guttering, and draining of streets, boulevards, and alleys; for grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and rehard surfacing of sidewalks; for constructing or reconstructing permanent pedestrian canopies over public sidewalks; and in connection with any of the foregoing, provide related lighting, landscaping, street furniture, signage, and other amenities as determined by the governing authority of the municipality;

(b) Order the construction, reconstruction, repair, renovation, excavation, grading, stabilization, and upgrading of greenbelts, swales, culverts, sanitary sewers, storm sewers, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, all or part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps;

(c) Order the construction or reconstruction of water mains, water laterals, alternative water supply systems, including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, and other water distribution facilities, including the necessary appurtenances thereto;

(d) Pay for the relocation of utilities, including the placement underground of electrical, telephone, and cable television services, pursuant to voluntary agreement with the utility, but nothing contained in this paragraph shall affect a utility's right to locate or relocate its facilities on its own initiative at its own expense;

(e) Provide for the construction or reconstruction of parks and other public recreational facilities and improvements, including appurtenances thereto;

(f) Provide for the construction or reconstruction of seawalls;

(g) Provide for the drainage and reclamation of wet, low, or overflowed lands;

(h) Provide for offstreet parking facilities, parking garages, or similar facilities;

(i) Provide for mass transportation systems;

(j) Provide for improvements to permit the passage and navigation of watercraft; and

(k) Provide for the payment of all or any part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property.

However, offstreet parking facilities, parking garages, or other similar facilities and mass transportation systems must be approved by vote of a majority of the affected property owners. Any municipality

which is legally obligated for providing capital improvements for water, alternative water supplies, including, but not limited to, reclaimed water, water from aquifer storage and recovery, and desalination systems, or sewer facilities within an unincorporated area of the county may recover the costs of the capital improvements by levying and collecting special assessments for the purposes authorized in this section on the specially benefited property; however, collections of the special assessment shall not take place until the specially benefited property connects to the capital improvement.

(2) Special assessments may be levied only for the purposes enumerated in this section and shall be levied only on benefited real property at a rate of assessment based on the special benefit accruing to such property from such improvements when the improvements funded by the special assessment provide a benefit which is different in type or degree from benefits provided to the community as a whole.

(3) Any municipality, subject to the approval of a majority of the affected property owners, may levy and collect special assessments against property benefited for the purpose of stabilizing and improving:

(a) Retail business districts,

(b) Wholesale business districts, or

(c) Nationally recognized historic districts,

or any combination of such districts, through promotion, management, marketing, and other similar services in such districts of the municipality. This subsection does not authorize a municipality to use bond proceeds to fund ongoing operations of these districts.

History.—s. 1, ch. 9298, 1923; CGL 3022; s. 1, ch. 59-396; s. 1, ch. 67-552; s. 1, ch. 78-360; s. 32, ch. 79-164; s. 1, ch. 82-198; s. 32, ch. 83-204; s. 1, ch. 83-337; s. 1, ch. 87-103; s. 39, ch. 91-45; s. 1, ch. 92-156; s. 2, ch. 94-344; s. 4, ch. 95-323.

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RESOLUTION NO. 279

A RESOLUTION OF THE BAL HARBOUR VILLAGE COUNCIL ORDERING LOCAL IMPROVEMENTS FOR BAL HARBOUR RESIDENTIAL IMPROVEMENT DISTRICT R-1; ASSESSING THE COST THEREOF; ESTABLISHING THE METHOD OF ASSESSMENT; PROVIDING FOR THE CREATION OF AN ASSESSMENT ROLL AND ESTABLISHING THE TERMS OF PAYMENT.

WHEREAS, the Bal Harbour Village Council hereby finds and determines that the improvements described in this Resolution are necessary and do serve a public purpose; and

WHEREAS, the Council hereby also finds and determines that "the unit method of assessment", as utilized in this Resolution, is proper and necessary in lieu of a "front-foot" method of assessment in order to avoid inequality in the assessment.

NOW, THEREFORE, BE IT RESOLVED BY THE BAL HARBOUR VILLAGE COUNCIL AS FOLLOWS:

Section 1. The findings stated above are hereby incorporated by reference.

Section 2. That a local improvement hereby described and designated as Residential Improvement District R-1, shall be made under the provisions of Chapter 170, Florida Statutes, and Article II, Chapter 16, of the Code of Bal Harbour Village, Florida, as hereinafter set forth:

(a) The nature of the proposed improvements shall be:

(i) Part I. The removal, replacement and reconstruction of approximately 1,894 linear feet of concrete curb and gutter, including drains, inlets, catch basins and manholes, of the street drainage and storm-water collection system in the Residential Section of Bal Harbour.

(ii) Part II. The repaving and resurfacing of streets, intersections and street returns in the Residential Section of Bal Harbour. The said work shall include the adjustment of utility valves and manholes, spot leveling and the resurfacing of streets with asphaltic concrete from curb to curb.

(b) The following streets in the Residential Section of Bal Harbour, as recorded on page 44, plat book 98 of the public records of Dade County, Florida, shall be repaved and resurfaced: Bal Bay Drive; Bal Cross Drive; Park Drive; Biscay Drive; Balfour Drive; Camden Drive; Camden Court; Harbour Way.

(c) All work shall be in accordance with the plans and specifications prepared by Ludovici and Orange, Consulting Engineers, Inc., Coral Gables, Florida, dated April, 1982 and designated as Engineer's Project No. 82-05A, as hereby approved by the Village Council.

(d) All of the cost for Part I of the proposed improvements shall be paid by Bal Harbour Village.

(e) All of the cost for Part II of the proposed improvements shall be paid by special assessment against the property benefitted, as hereinafter designated, and against which the special assessment is hereby levied.

(f) As provided for in Article II, Chapter 16 of the Code of Bal Harbour Village, the following lots and lands adjoining and contiguous or bounding and abutting upon such local improvements, are hereby designated as being specifically benefitted by the improvements described:

Lots 1 through 24, inclusive, Block 1, Res. Sec. of Bal Harbour
Lots 1 through 20, inclusive, Block 2, Res. Sec. of Bal Harbour
Lots 1 through 33, inclusive, Block 3, Res. Sec. of Bal Harbour
Lots 1 through 18, inclusive, Block 4, Res. Sec. of Bal Harbour
Lots 1 through 20, inclusive, Block 5, Res. Sec. of Bal Harbour
Lots 1 through 33, inclusive, Block 6, Res. Sec. of Bal Harbour
Lot 10 of Block 7, Res. Sec. of Bal Harbour
Lot 1 of Block 8, Res. Sec. of Bal Harbour
Lots 1 through 21, inclusive, Block 9, Res. Sec. of Bal Harbour
Lots 1 through 13, inclusive, Block 10, Res. Sec. of Bal Harbour
Lots 1 through 22, inclusive, Block 11, Res. Sec. of Bal Harbour
Lots 1 through 20, inclusive, Block 12, Res. Sec. of Bal Harbour
Lots 1 and 2, Block 12-A, Res. Sec. of Bal Harbour
Tract "E", Res. Sec. of Bal Harbour
Areas No. "3" and "4", Business Section of Bal Harbour

The method of assessment shall be on a unit basis per lot benefitted. The method of assessment shall combine several single-factor considerations including front-footage, land area, land value, zoning use, location and benefit received.

(g) The amount of each assessment is described on the assessment roll hereinafter provided for. All of the costs for Part II of said improvements assessed against the properties designated shall be paid in full within ninety (90) days from the date of final assessment, or in accordance with the following schedule:

> Not less than one-third (1/3) of the total amount of the assessment within ninety (90) days of the date of final assessment; and, not less than one-third (1/3) of the total amount of the assessment on the first anniversary of the date of final assessment; and, the remaining balance of the assessment on the second anniversary of the date of final assessment. Any unpaid balance after ninety (90) days from the date of final assessment shall bear interest at the rate of ten percent (10%) per annum, due and payable at the time of payment in accordance with the above schedule.

(h) The estimated cost of the improvements, including the cost of all labor and materials, the cost of all lands, property, rights and easements acquired, cost of plans and specifications, surveys, engineering and legal services, and all other expenses necessary or incidental to such construction and/or reconstruction is as follows:

Part I.	Storm-water drainage system:	$ 40,000.00
Part II.	Street repaving:	220,000.00

(i) For further particulars concerning said property and assessments, reference is hereby made to the Bal Harbour Residential Improvement District R-1 Assessment Roll dated June 29, 1982, showing the property to be assessed, the amount assessed against all lands benefitted, together with the plans, specifications and an estimate of the cost of said improvements, which assessment roll, plans, specifications and estimate are on file with the Village Clerk and open to inspection by the public.

PASSED AND ADOPTED this 29 day of June, 1982.

Mayor

ATTEST:

Village Clerk

BAL HARBOUR VILLAGE, FLORIDA

ORDINANCE NO: 264

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II ("LOCAL IMPROVEMENTS") BY ADDING A NEW SECTION 16-16A CREATING THE RIGHT TO ESTABLISH SPECIAL ASSESSMENTS FOR SECURITY PURPOSES UPON PETITION OF 75 PERCENT OF PROPERTY OWNERS WITHIN A TAXING DISTRICT; AMENDING BAL HARBOUR CODE SECTIONS 16-17, 16-18, 16-19, AND 16-23 TO CONFORM TO THE PROVISIONS OF SECTION 16-16A; CONTAINING A REPEAL PROVISION AND A SEVERABILITY CLAUSE; PROVIDING THAT THIS ORDINANCE TO BE CODIFIED AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, THE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA HEREBY ORDAINS AS FOLLOWS:

Section 1. Chapter 16, Article II, of the Code of Bal Harbour Village, Florida, is hereby amended to add a new section 16-16A, and to amend the enumerated sections below, as follows:*

a. Section 16-16A. Special assessment district for security purposes defined, adoption of procedure for special assessments.

The village council, upon petition by 75% of the owners of real property within any taxing district identified in Section 16-20 hereof, may establish a special assessment district for security purposes. For purposes of this ordinance, the phrase "owners of real property" shall include and refer to cooperative unit owners and condominium unit owners as well as lot owners. The nature and extent of the security to be provided by the village within the district shall be established in the enabling resolution. The procedure hereinafter prescribed shall be substantially followed in the making of special assessments to pay for such security benefits in cases where such assessments are to be levied therefor.

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* New additions are underscored.

b. Section 16-17A. Special Assessments; Method of Levy.

Special assessments against property deemed to be benefited by the improvements referred to in Section 16-16 or benefits referred to in Section 16-16A shall be assessed upon the property specially benefited thereby in proportion to the benefits to be derived therefrom, the said benefits to be determined and prorated according to the foot frontage of the respective properties specially benefited or by such other method as the village council may prescribe.

c. Section 16-18. Resolution Authorizing; Contents.

When the village council shall determine to make any public improvements or to establish security benefits and to defray the whole in part thereof by special assessment, it shall so declare by resolution, stating the nature of the improvement or benefit, designating the area to be improved or benefited, what part of the expense is to be paid by special assessment, the manner in which the assessment shall be made, when it is to be paid, what part shall be apportioned to be paid from the general fund and what lands (which shall be so designated) upon which the assessment is to be levied. In describing the land it shall be sufficient to describe the lots and lands deemed to be specially benefited abutting upon and contiguous to the described improvement as: "All lots and lands adjoining and contiguous or bounding and abutting upon such improvement." Such resolution shall also state the total estimated cost of the improvement or benefits.

d. Section 16-19. Plans and Specifications.

At the time of the adoption of the resolution provided for in Section 16-18, there shall be on file with the village clerk plans and specifications with the estimated cost of the proposed improvement or benefit, all of which shall be open for inspection to the public.

e. Section 16-23. Equalization of Assessments.

At the time and place specified in the notice provided for in Section 16-22, the Village Council shall meet as an equalizing board to hear and consider all complaints as to such assessment and shall adjust and equalize the assessment on a basis of justice and right. When so equalized and approved, the assessment shall stand confirmed and remain legal, valid and binding liens upon the property against which it is made until paid; provided, however, that upon the completion of the improvement, the Village shall rebate to the owner of any property which shall have been specially assessed, the difference between the assessment as originally made and confirmed and the proportionate part of the actual cost of the improvement or benefit to be paid by special assessment as finally determined upon the completion of the improvement or benefit, if any such difference shall exist.

Section 2. Severability.

If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 3. Ratification.

The amendments incorporated in this Ordinance shall be placed in the proper sections of Chapter 16, Article II ("Local Improvements").

Section 4. Effective Date.

This Ordinance shall take effect in accordance with law.

PASSED AND ADOPTED this 25 day of June, A.D., 1985.

APPROVED:

MAYOR

ATTEST:

Village Clerk

RESOLUTION NO. 303

Creates 1st special taxing District

RESOLUTION CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT. DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED: PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM: PROVIDING A METHOD TO LEVY SAID ASSESSMENTS: ESTABLISHING THE INITIAL ESTIMATED COST: APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES: PROVIDING FOR PUBLICATION OF THIS RESOLUTION: AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL.

WHEREAS, the Charter and Code of Bal Harbour Village, Florida provide a method for establishing special taxing districts in Bal Harbour Village; and

WHEREAS, in accordance with the provisions of the Charter and Code of Bal Harbour Village, a petition for the creation of a special taxing district to be known as the "Bal Harbour Village Security Program Special Taxing District" duly signed by 75% of the owners within the proposed district (the "Petition") was filed with the Village Clerk. Attached hereto as Exhibit "A" is a certified copy of said Petition which requested that the Village create a special taxing district for the purpose of providing a security program to be financed solely from special assessments levied and collected within the district herinafter described. No portion of the cost of security program shall be paid from the general fund or any other fund of Bal Harbour Village other than from said special assessments levied for that purpose; and

WHEREAS, at the time of the adoption of this resolution, there is on file with the Village Clerk, for inspection by the public, an assessment plat showing the area to be assessed and an estimate of the cost of the proposed security program.

NOW THEREFORE THE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA HEREBY RESOLVES AS FOLLOWS:

Section 1: In accordance with the provision of the Bal Harbour Village Charter and Code, there is hereby created and established a special taxing district in the Village of Bal Harbour, Florida to be known and designated as the "Bal Harbour Village Security Program Special Taxing District" (the "Taxing District").

Section 2: The Taxing District will encompass District 3, described in Section 16-26 of the Bal Harbour Village Code as:

Lots 1 thru 3,
Block 12A .....Resub. of Res. Sec. of
Bal Harbour, PB 53,
pg. 15
All of blocks 1, 2,
3,4,5 & 6 ..... Res. Sec. of Bal Harbour,
PB 44, pg. 98
All of Blocks 9, 10
11 & 12 ..... Res. Sec. of Bal Harbour,
PB 44, pg. 98
Tract "E" ..... Res. Sec. of Bal Harbour,
PB 44, pg. 98

However, Lots 1 and 2 of Block 1 and Lot 3 of Block 12A of District 3 will not be included in this Taxing District.

Section 3: The services to be provided within the Taxing District will consist of the following:

> A visible safety and passive security program initially to consist of one uniformed, unarmed security guard, 24 hours a day, 7 days a week, 365 days a year. The guard will be stationary, located in a guardhouse.

Section 4: It is hereby declared that said security program shall be a special benefit to all real property within the proposed Taxing District and the total amount of special assessments to be levied as aforesaid will not be in excess of such special benefit. The benefits to each real property within the Taxing District shall be determined and the special assessments levied shall be prorated among the lots within the legal description of the Taxing District in accordance with the benefit each lot receives. Each lot shall be assessed separately if it is assessed and taxed individually for ad valorem purposes by Dade County. Improved lots within the Taxing District shall be assessed a higher prorated tax share of the special assessments than unimproved lots within the Taxing District.

Section 5: The estimated cost to the property owners for the security program for the first fiscal year, which consists of 8 months, is $ 61,135. The cost for each succeeding fiscal year will be determined by the Village Manager or designee prior to the start of each fiscal year and said cost shall be transmitted to the Village Clerk promptly for preparation of the annual assessment roll. It is estimated that the cost per improved lot within the proposed Taxing District for the first year is $308.00. The estimated cost per unimporoved lot within the Taxing District for the first year is $154.00. The special assessments imposed on improved and unimproved lots in subsequent years shall be in the same

proportion as the first year.

Section 6: The agreement, in substantially the form attached hereto as Exhibit "B", between Bal Harbour Village and the Bal Harbour Civic Association, Inc. for administration of the security program is hereby approved subject to final review by the Village Attorney for execution by the Mayor or designee.

Section 7: The Village Clerk is directed to publish this resolution one time upon its adoption in a newspaper of general circulation published in Dade County.

Section 8: The Village Clerk is hereby authorized and directed to immediately prepare and make available for public inspection in the Village Clerk's office an initial assessment roll and annually thereafter prior to the start of the each fiscal year, showing the lots to be assessed, the amount of the benefit to be assessed against each lot , and the number of annual installments which shall be permitted. A copy of this assessment roll shall be published once a week for a period of two consecutive weeks in a newspaper published in Dade County and of general circulation therein. Attached to this copy shall be a notice directed to all property owners interested in the assessment, notifying them that complaints will be heard with reference to the assessment at a time and place to be specified therein, at which time the assessment roll shall be finally approved and confirmed.

PASSED AND ADOPTED THIS 28th day of January, 1986.

APPROVED:

Mayor

ATTEST:

VILLAGE CLERK

PETITION

Property Owners - Residential Area Bal Harbour

Pursuant to the provisions of Chapter 16, Article II, Section 16-16 A of the Bal Harbour Code, I, _____,
Name (please print)
the owner of _____,
address
Bal Harbour, Florida, do hereby petition the Bal Harbour Village Council to establish a special assessment district for security purposes, said district being the residential area of the Village of Bal Harbour desribed in Section 16-26 of the Bal Harbour Code as District 3, excluding Lot 3 of Block 12 A; the nature and extent of the security to be provided by the Village shall be established in the enabling resolution, which resolution shall embody the security requirements selected by the owners of real property within the residential area of Bal Harbour.

_____
signature

Date: _____

132-1/ww/0913,16

RETURN TO: BAL HARBOUR CIVIC ASSOCIATION, INC.
P.O. BOX 54-6220
SURFSIDE, FLORIDA 33154

Exhibit "A"

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

I, M. T. Wetterer, Village Clerk of Bal Harbour Village, Florida, do hereby certify that the attached is a true and correct copy of the petition used to request residential security, petitions were circulated by the Bal Harbour Civic Assoc., a copy of which is on file in the Village Hall.

Dated at Bal Harbour, this 24th day of February, 1986.

M. T. Wetterer, C.M.C.
Village Clerk

Re: Resolution #303

THIS AGREEMENT, made and entered into this _____ day of _____, 1986, by and between BAL HARBOUR VILLAGE, a Florida municipal corporation, with its principal office at 655-96th Street, Bal Harbour, Florida 33154 (hereinafter referred to as the "VILLAGE"), and BAL HARBOUR CIVIC ASSOCIATION, INC, a non-profit Florida corporation, with its Post Office address at P.O. Box 54-6220, Surfside, Florida 33154 (hereinafter referred to as the "AGENCY").

R E C I T A L S:

A. Through appropriate municipal ordinances, the VILLAGE has established a special assessment district for security purposes within the residential area of Bal Harbour.

B. The VILLAGE desires to employ the AGENCY as its agent in the administration of security, and the Agency accepts said employment, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

1. APPOINTMENT AND AUTHORIZATION OF AGENCY. The AGENCY is hereby retained and appointed to represent the VILLAGE in carrying out the security program within the residential area of Bal Harbour, described in Section 16-26 of the Bal Harbour Code as District 3,

Lots 1 thru 3
Block 12 A .....Resub. of Res. Sec. of Bal Harbour, PB 53, pg 15

All of Blocks 1, 2, 3,4,5, & 6 .....Res. Sec. of Bal Harbour PB 44, pg. 98

All of Blocks 9, 10 11 & 12 .....Res. Sec. of Bal Harbour PB 44, pg. 98

Tract E ..... Res. Sec. of Bal Harbour PB 44, pg 98

However, Lots 1 and 2 of Block 1 and Lot 3 of Block 12A of District 3 will not be included in this Taxing District. The AGENCY is authorized to enter into contracts with third parties to carry out the purposes of this AGREEMENT, but it shall not be liable to such parties for any payment. The AGENCY shall use its best efforts to prevent any loss to the VILLAGE from the failure of proper performance by any third party but the AGENCY shall not be liable or responsible to the VILLAGE for any such failure.

2. AGENCY SERVICES. The AGENCY shall act as the VILLAGE'S representative and perform, upon prior authorization by the VILLAGE, any or all of the following services to the extent necessary to meet the VILLAGE'S needs:

(a) Secure bids and proposal from qualified and recognized companies which offer security guard service.

(b) Select and contract with a guard service company ("Contractor") on the basis of cost, performance and other factors deemed relevant by the AGENCY.

(c) Review and analyze all invoices submitted by Contractor, verify their correctness and forward to VILLAGE for payment.

(d) Monitor the activities of Contractor, receive and act upon all inquiries, suggestions and complaints relating thereto from residents of the Security District.

(e) Contract for maintenance service on automatic gate located at 96th Street and Bal Bay Drive.

(f) Advise VILLAGE as to preferences and future security needs of the residents of the Security District.

(g) Advise and bill the VILLAGE for all remittances made by the AGENCY for the VILLAGE's account and maintain complete and accurate books and records in this regard.

(h) Cooperate with the VILLAGE to achieve a security system satisfactory to the residents of the Security District.

3. PRIOR APPROVAL OF VILLAGE. The AGENCY shall not incur any obligations or provide any services for the VILLAGE's account without first obtaining written approval from the Village Manager, or any other person or persons duly designated by the VILLAGE in writing. In order to obtain the VILLAGE's approval, the AGENCY shall submit written proposals to the VILLAGE containing full descriptions of the proposed obligations and estimates of the cost of the obligations or services involved.

4. COSTS AND EXPENDITURES. The VILLAGE shall reimburse the AGENCY for all costs incurred and expenditures made on behalf of the VILLAGE in performance of the services set forth above.

5. AGENCY'S COMPENSATION. The VILLAGE shall pay the AGENCY a flat fee of $10.00 per year in advance for services to be rendered pursuant to this Agreement.

6. INDEMNIFICATION. THE VILLAGE shall indemnify and hold the AGENCY harmless from and against any and all claims arising from contracts between the AGENCY and third parties made pursuant to this Agreement.

7. DURATION AND TERMINATION. This Agreement shall become effective on the _____ day of _____,1986, and shall continue in force for a period of twelve (12) months. The term of this Agreement shall extend for successive twelve (12) months period unless terminated by either party by written notice to the other

at least thirty (30) days prior to the end of the initial term or any successive twelve (12) month period.

8. ASSIGNMENT AND DELEGATION. Neither party may assign any rights or delegate any duties hereunder without the express prior written consent of the other.

9. MODIFICATION. This writing contains the entire agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. No agent, employee, or other representative for either party is empowered to alter any of the terms of this Agreement, unless done in writing and signed by an executive officer of the respective parties.

10. CONTROLLING LAW. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida.

11. WAIVER. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

12. NOTICES. All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the United States Post Office. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

VILLAGE OF BAL HARBOUR

By: _____
Mayor

ATTEST:

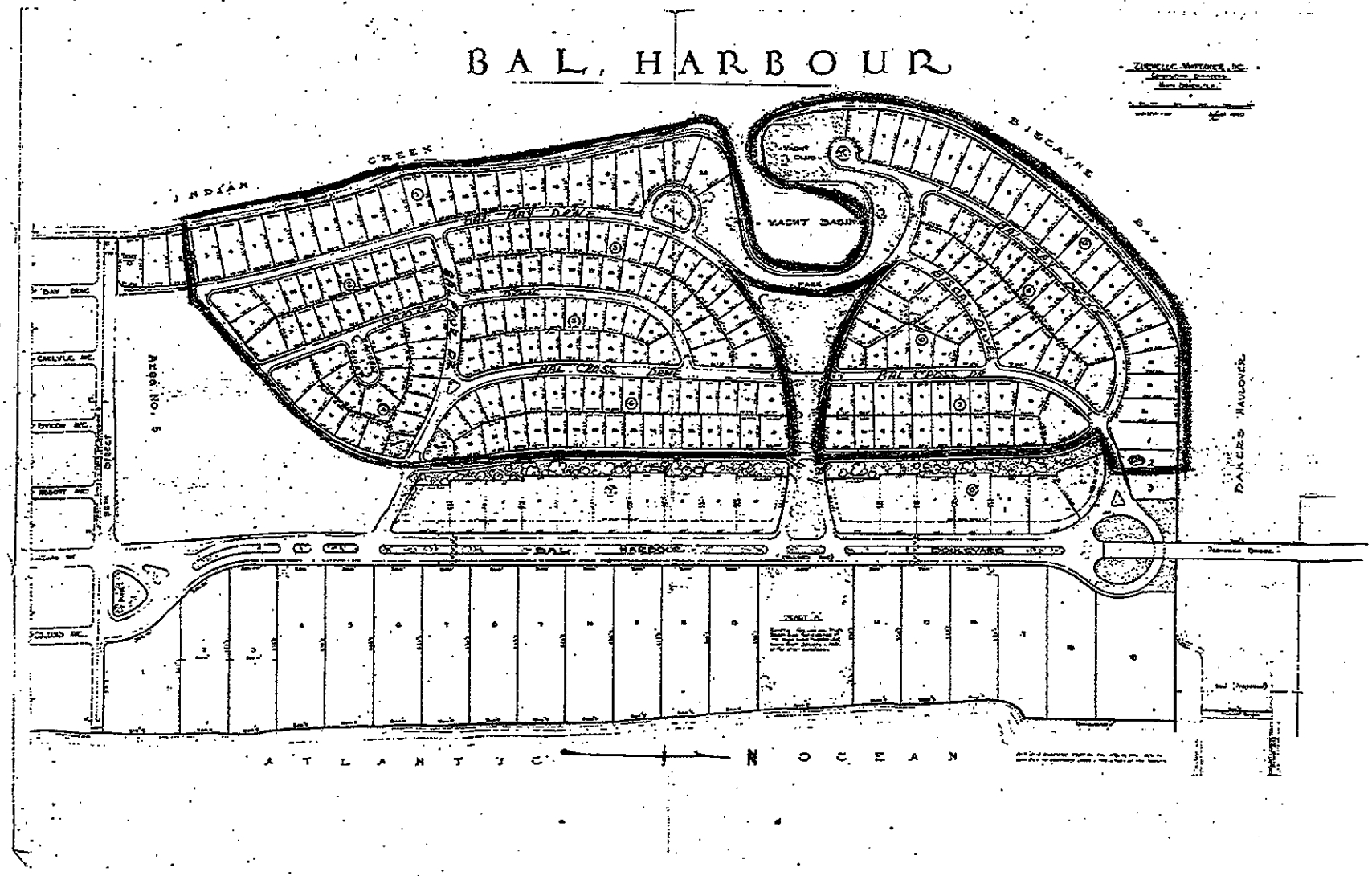
_____
Village Clerk

Attest:

_____
Secretary

BAL HARBOUR CIVIC ASSOCIATION, INC.

By: _____


BAL. HARBOUR
INDIAN CREEK
BISCAYNE BAY
YACHT BASIN
BAL BAY DRIVE
BAL CROSS DRIVE
BAL HARBOUR
BAKERS HAULOVER
ATLANTIC OCEAN

RESOLUTION NO. 304

Confirms Assessment Roll

RESOLUTION EQUALIZING AND ADJUSTING SPECIAL ASSESSMENTS FOR BAL HARBOUR SECURITY PROGRAM, SPECIAL TAXING DISTRICT 85-1; CONFIRMING SPECIAL ASSESSMENT ROLL; DIRECTING RECORDATION BY THE VILLAGE CLERK IN VILLAGE IMPROVEMENT LIEN BOOK; DECLARING SAID ASSESSMENTS TO BE LIENS CO-EQUAL WITH THE LIEN OF ALL STATE, COUNTY, DISTRICT AND MUNICIPAL TAXES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Council of the Village of Bal Harbour did pass and adopt Resolution No. 303 on January 28, 1986, ordering Residential security, assessing the cost thereof, establishing a method of assessment, providing for the creation of an assessment roll and established the terms of payment therefor, under and pursuant to Chapter 170, Florida Statutes and Article II, Chapter 16 of the Code of Bal Harbour Village Florida; and

WHEREAS, the Council of the Village of Bal Harbour did set February 25, 1986 at 9:30 A.M. as a date for public hearing where owners of the property to be assessed, or any other persons interested therein, could appear and be heard as to the propriety and advisability of making such assessments, as to the cost thereof, the manner of payment thereof, and as to the amount thereof to be assessed against each property; and

WHEREAS, an assessment roll was created by the Village pursuant to Resolution No. 303 and said assessment roll was completed and filed with the Village Clerk with plans, specifications and cost estimates for the subject project; and

WHEREAS, at the time and place fuly noticed, said public hearing was held and all interested parties were heard and considered.

BE IT RESOLVED BY THE COUNCIL OF BAL HARBOUR VILLAGE:

Section 1. The Assessment Roll for Bal Harbour Security Program, Special Taxing District 85-1 dated January 28, 1986, and created and authorized under Resolution No. 303 be and the same is hereby confirmed and determined, after conservation of justice and right, but shall be adjusted in subsequent years in the same proporation as the first year with the system contained within Resolution 303 and materials submitted by the Village Manager in conjunction therewith.

Section 2. The Clerk of the Village, upon the effective date hereof, is hereby directed to record said assessments in the Improvement Lien Book of the Village.

Section 3. Said special assessments, once recorded, are hereby declared to be liens against the improved properties, co-equal with the lien of all state, county, district, and municipal taxes and superior in dignity to all other liens, titles, and claims, until paid.

Section 4. The Village Manager and Village Attorney are hereby authorized to enforce payment of said special assessments, in the event that timely payment is not made, by appropriate legal or equitable proceedings and to seek such acceleration, interest, penalties, costs and attorney's fees as may be provided by law.

Section 5. This Resolution shall become effective upon completion of the project and the proparation of the revised Assessment Roll as noted in Section 1 hereof.

PASSED AND ADOPTED THIS 25th day of February, 1986.

Mayor

Attest:

Village Clerk

RESOLUTION NO. 316

Terminates District created by Reso. 303
Creates new #2 Special Taxing District - includes Condo & Apt. Bldgs.

RESOLUTION OF BAL HARBOUR VILLAGE TERMINATING A SPECIAL TAXING DISTRICT FOR SECURITY PURPOSES AS CREATED BY RESOLUTION NO. 303; CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT; DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED; PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM; PROVIDING A METHOD TO LEVY SAID ASSESSMENTS; ESTABLISHING THE INITIAL ESTIMATED COST; APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL.

WHEREAS, the Charter and Code of Bal Harbour Village, Florida provide a method for establishing special taxing districts in Bal Harbour Village; and

WHEREAS, a special taxing district was created in Bal Harbour Village for security purposes pursuant to Resolution No. 303, adopted January 28, 1986 (the "Original Taxing District"); and

WHEREAS, this Council wishes to terminate the Original Taxing District and create a new special taxing district for security purposes; and

WHEREAS, in accordance with the provisions of the Charter and Code of Bal Harbour Village, a petition for the creation of a special taxing district to be known as the "Bal Harbour Village Security Program Special Taxing District" duly signed by 75% of the owners within the proposed district (the "Petition") was filed with the Village Clerk. Attached hereto as Exhibit "A" is a certified copy of said Petition which requested that the Village create a special taxing district for the purpose of providing a security program to be financed solely from special assessments levied and collected within the district hereinafter described. No portion of the cost of security program shall be paid from the general fund or any other fund of Bal Harbour Village other than from said special assessments levied for that purpose; and

WHEREAS, at the time of the adoption of this resolution, there is on file with the Village Clerk, for inspection by the public, an assessment plat showing the area to be assessed and an estimate of the cost of the proposed security program.

NOW THEREFORE THE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA HEREBY RESOLVES AS FOLLOWS:

Section 1. The Original Taxing District shall terminate at the end of the 1986 fiscal year.

Section 2: In accordance with the provisions of the Bal Harbour Village Charter and Code, there is hereby created and established a new special taxing district in the Village of Bal Harbour, Florida to be known and designated as the "Bal Harbour Village Security Program Special Taxing District" (the "New Taxing District").

Section 3: The New Taxing District will encompass District 3, described in Section 16-26 of the Bal Harbour Village Code as:

Lots 1 thru 3, Block 12A	Resub. of Res.Sec. of Bal Harbour, PB 53, pg. 15
All of blocks 1, 2, 3, 4, 5 & 6	Res.Sec. of Bal Harbour PB 44, pg. 98
All of Blocks 9, 10 11 & 12	Res.Sec. of Bal Harbour, PB 44, pg. 98
Tract "E"	Res.Sec. of Bal Harbour, PB 44, pg. 98

However, Lots 1 and 2 of Block 1 and Lot 3 of Block 12A of District 3 will not be included in the New Taxing District.

Section 4: The services to be provided within the New Taxing District will consist of the following:

> A visible safety and passive security program initially to consist of one uniformed, unarmed security guard, 24 hours a day, 7 days a week, 365 days a year. The guard will be stationary, located in a guardhouse.

Section 5: It is hereby declared that said security program shall be a special benefit to all single family homes, condominium buildings, apartment buildings, cooperative

buildings and club buildings ("Primary Buildings") within the proposed New Taxing District and the total amount of special assessments to be levied as aforesaid will not be in excess of such special benefit. The benefits to Primary Buildings within the New Taxing District shall be determined and the special assessments shall be levied equally on the Primary Buildings within the legal description of the New Taxing District. Each Primary Building shall be assessed separately if it is assessed and taxed individually for ad valorem purposes by Dade County.

Section 6: The estimated cost to the property owners for the security program for the 1986-87 fiscal year is $93,365.00. The cost for each succeeding calendar year will be determined by the Village Manager or designee prior to the start of each calendar year and said cost shall be transmitted to the Village Clerk promptly for preparation of the annual assessment roll. It is estimated that each Primary Building within the New Taxing District will be assessed at $495.00 for the 1986-87 fiscal year.

Section 7: The agreement, in substantially the form attached hereto as Exhibit "B", between Bal Harbour Village and the Bal Harbour Civic Association, Inc. for administration of the security program is hereby approved subject to final review by the Village Attorney for execution by the Mayor or designee.

Section 8: The Village Clerk is directed to publish this resolution one time upon its adoption in a newspaper of general circulation published in Dade County.

Section 9: The Village Clerk is hereby authorized and directed to immediately prepare and make available for public inspection in the Village Clerk's office an initial assessment roll and annually thereafter prior to the start of the each calendar year, showing the lots to be assessed, the amount of the benefit to be assessed against each lot, and the number of annual installments which shall be permitted. A copy of this assessment roll shall be published once a week for a period of two consecutive weeks in a newspaper published in Dade County

and of general circulation therein. Attached to this copy shall be a notice directed to all property owners interested in the assessment, notifying them that complaints will be heard with reference to the assessment at a time and place to be specified therein, at which time the assessment roll shall be finally approved and confirmed.

PASSED AND ADOPTED this 30th day of September 1986, 1986.

APPROVED:

MAYOR

ATTEST:

VILLAGE CLERK

2413D
091986/8/RMD
04803.0003

PETITION

Property Owners - Residential Area Bal Harbour

Pursuant to the provisions of Chapter 16, Article II, Section 16-16 A of the Bal Harbour Code, I, _____,
Name (please print)

the owner of _____,
address

Bal Harbour, Florida, do hereby petition the Bal Harbour Village Council to establish a special assessment district for security purposes, said district being the residential area of the Village of Bal Harbour desribed in Section 16-26 of the Bal Harbour Code as District 3, excluding Lot 3 of Block 12 A; the nature and extent of the security to be provided by the Village shall be established in the enabling resolution, which resolution shall embody the security requirements selected by the owners of real property within the residential area of Bal Harbour.

_____
signature

Date: _____

132-1/ww/0913,16

RETURN TO: BAL HARBOUR CIVIC ASSOCIATION, INC.
P.O. BOX 54-6220
SURFSIDE, FLORIDA 33154

Exhibit "A"

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

I, M. T. Wetterer, Village Clerk of Bal Harbour Village, Florida, do hereby certify that the attached is a true and correct copy of a letter requesting special assessment for a Security District, a copy of which is on file in the Village Hall.

Dated at Bal Harbour, this 25 day of August, 1986.

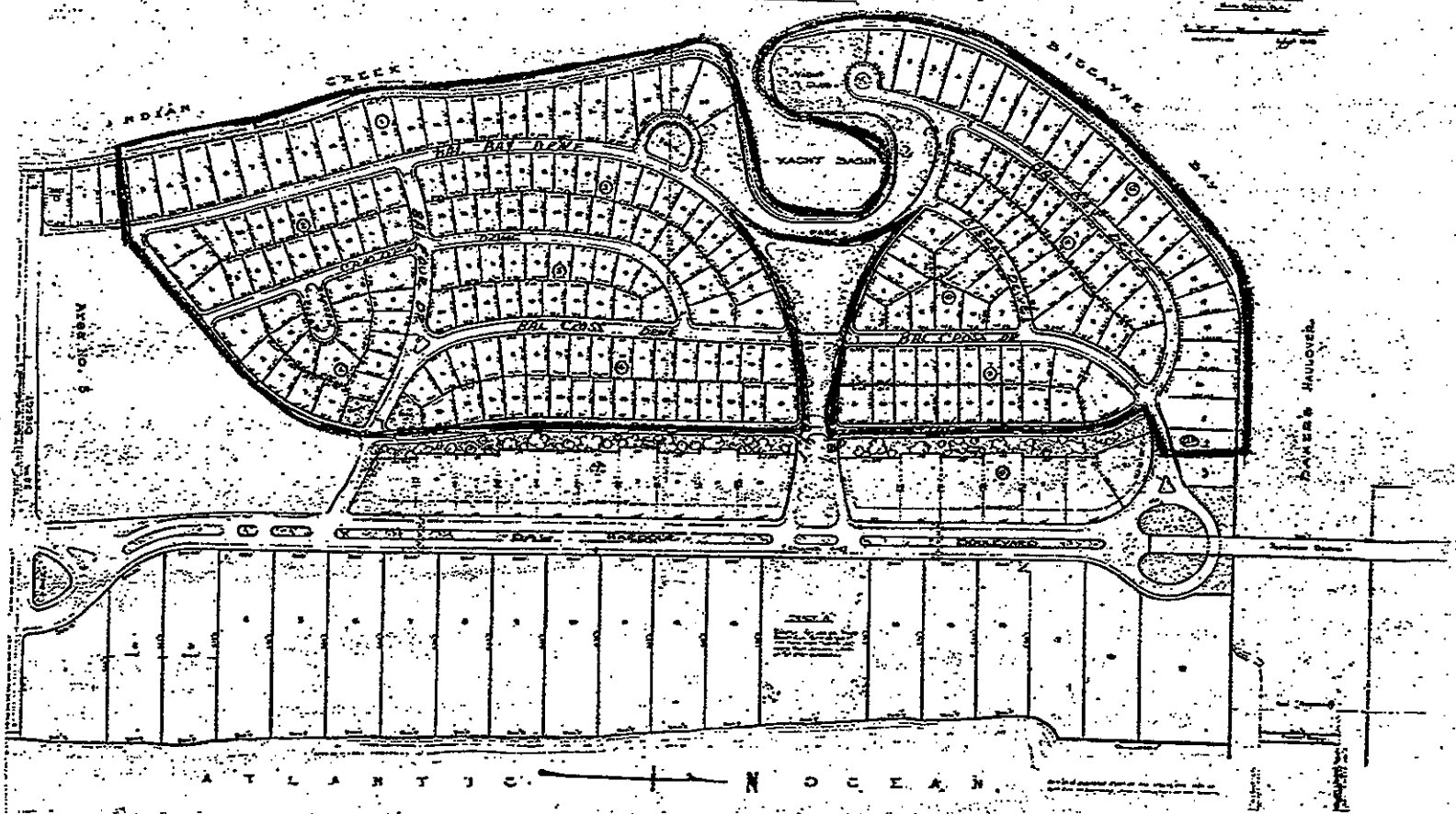
M. T. Wetterer, C.M.C.
Village Clerk

SECURITY DISTRICT
SPECIAL ASSESSMENT

BUDGET 1986 -1987

CODE	ACCOUNT NAME	BUDGET REQUEST	PREVIOUS YEAR	INC/DEC AMOUNT	%	MANAGER'S REMARKS
6	GUARD SERVICE	65,726	63,510	2,216	3.00%	
8	GATE MAINTENANCE CONTRACT	500	1,236	(736)	-60.00%	
9	GATE REPAIRS	1,500	2,000	(500)	-25.00%	
10	INSURANCE	2,400	1,600	800	50.00%	
11	WATER - PHONE	800	500	300	60.00%	
13	ELECTRICITY	600	1,200	(600)	-50.00%	
14	POSTAGE - SUPPLIES	400	1,000	(600)	-60.00%	
16	MANAGEMENT FEE	4,200	4,000	200	5.00%	
17	CONTRACT-BHVHA	10	10	0	0.00%	
18	LEGAL - AUDIT	10,000	4,100	5,900	144.00%	
19	ADVERTISING	1,300	0	1,300	0.00%	
20	GATE ARM	3,500	0	3,500	0.00%	
21	PRIOR YR. DEFICIT	600	0	600	0.00%	
22	CONTINGENCY	1,829	1,824	5	0.00%	
	TOTAL BUDGET	93,365	80,980	12,385	15.00%	

BAL HARBOUR


CREEK
BISCAYNE
BAY
YACHT BASIN
BAL BAY DRIVE
BAL CROSS DRIVE
BAL CROSS DR
BAKER'S HAULOVER
ATLANTIC
OCEAN

RESOLUTION NO. 464

Terminates Special Tax District Res 0.316 Creates new security district #3 Sets annual assessment rates

RESOLUTION OF BAL HARBOUR VILLAGE TERMINATING A SPECIAL TAXING DISTRICT FOR SECURITY PURPOSES AS CREATED BY RESOLUTION NO. 316; CREATING A SPECIAL TAXING DISTRICT FOR THE PURPOSE OF ASSESSING CERTAIN LOTS FOR THE COST OF PROVIDING A SECURITY PROGRAM WITHIN THE DISTRICT; DESIGNATING THE LOTS UPON WHICH ASSESSMENTS SHALL BE LEVIED; PROVIDING A DESCRIPTION OF THE SECURITY PROGRAM; PROVIDING A METHOD TO LEVY SAID ASSESSMENTS; ESTABLISHING THE INITIAL ESTIMATED COST; APPROVING AN AGREEMENT FOR ADMINISTRATION OF SERVICES; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING FOR THE PREPARATION AND PUBLICATION OF THE INITIAL AND EACH ANNUAL ASSESSMENT ROLL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Charter and Code of Bal Harbour Village, Florida provide a method for establishing special taxing districts in Bal Harbour Village; and

WHEREAS, a special taxing district was created in Bal Harbour Village for security purposes pursuant to Resolution No. 316, adopted September 30, 1986 (the "Original Taxing District"); and

WHEREAS, this Council wishes to terminate the Original Taxing District and create a new special taxing district for security purposes; and

WHEREAS, in accordance with the provisions of the Charter and Code of Bal Harbour Village, a petition for the creation of a special taxing district to be known as the "Bal Harbour Village Security Program Special Taxing District" duly signed by 75% of the owners within the proposed district (the "Petition") was filed with the Village Clerk. Said Petition, on file with the Village Clerk, requested that the Village create a special taxing district for the purpose of providing a security program to be financed solely from special assessments levied and collected within the district hereinafter described. No portion of the cost of the security program shall be paid from the general fund or any other fund of Bal Harbour Village other than from said special assessments levied for that purpose; and

WHEREAS, at the time of the adoption of this resolution, there is on file with the Village Clerk, for inspection by the public, an assessment plat showing the area to be assessed and an estimate of the cost of the proposed security program.

NOW THEREFORE THE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA HEREBY RESOLVES AS FOLLOWS:

Section 1. The Original Taxing District shall terminate at midnight September 30, 1992.

Section 2. In accordance with the provisions of the Bal Harbour Village Charter and Code, there is hereby created and established a new special taxing district in the Village of Bal Harbour, Florida to be known and designated as the "Bal Harbour Village Security Program Special Taxing District" (the "New Taxing District").

Section 3. The New Taxing District will encompass District 3, described in section 18-111. (a) (3) of the Bal Harbour Village Code as:

Lots 1 thru 3, Block 12A.....	Resub. of Res. Sec. of Bal Harbour, PB 53, pg. 15
All of blocks 1, 2, 3, 4,, 5 & 6.....	Res. Sec. of Bal Harbour, PB 44, pg. 98
All of Blocks 9, 10, 11 & 12.....	Res. Sec. of Bal Harbour, PB 44, pg. 98
Tract "E".....	Res. Sec of Bal Harbour, PB 44, pg. 58

However, Lots 1 and 2 of Block 1 and Lot 3 of Block 12A of District 3 will not be included in the New Taxing District.

Section 4. The services to be provided within the New Taxing District will consist of the following:

A visible safety and passive security program initially to consist of one uniformed, unarmed security guard, 24 hours a day, 7 days a week, 365 days a year. The guard will be stationary, located in a guardhouse. This program shall also provide for operation and maintenance of an unattended gate at Bal Bay Drive as well as operation and maintenance of automated gates at Harbour Way.

gates

Section 5. It is hereby declared that said security program shall be a special benefit to all properties within the proposed New Taxing District and the total amount of special assessments to be levied as aforesaid will not be in excess of such special benefit. The benefits to properties within the New Taxing District shall be determined and the special assessments shall be levied on the properties within the legal description of the New Taxing District.

Section 6. The estimated cost to the property owners for the security program for the 1992-93 fiscal year is $117,520. The cost for each succeeding calendar year will be determined by the Village Manager or designee prior to the start of each fiscal year and said cost shall be utilized to prepare the annual assessment roll. Single Family Homes will be assessed at a rate of $495.00 annually; Rental Buildings, Cooperative Apartments and Condominium Apartments shall be assessed at $495.00 annually for the first unit and $100 for each additional unit to a maximum of $2,000.00 annually; Club property shall be assessed at $2,000.00 annually; and Unimproved Lots shall be assessed at one-half the rate for single family residences.

Section 7. The agreement, on file with the Village Clerk, between Bal Harbour Village and the Bal Harbour Civic Association, Inc., dated November 3, 1986, for administration of the security program shall continue in its present form.

Section 8. The Village Clerk is directed to publish this resolution one time upon its adoption in a newspaper of general circulation published in Dade County.

Section 9. The Village Clerk is hereby authorized and directed to make available for public inspection in the Village Clerk's office an initial assessment roll and annually thereafter prior to the start of the each fiscal year, showing the lots to be assessed, the amount of the benefit to be assessed against each lot, and the number of annual installments which shall be permitted. A copy of this assessment roll shall be published once a week for a period of two consecutive weeks in a newspaper published in Dade County and of general circulation therein. Attached to this copy shall be a notice directed to all property owners interested in the assessment, notifying them that complaints will be heard with reference to the assessment at a time and place to be specified therein, at which time the assessment roll shall be finally approved and confirmed.

PASSED AND ADOPTED this 15 day of September, 1992.

APPROVED:

Estelle Steen
Mayor

ATTEST:

Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Village Attorney

ARTICLE V. SPECIAL ASSESSMENTS*

*Cross references: Streets, sidewalks and other public places, ch. 17.

Sec. 18-111. Taxing districts for local improvements.

(a) The Village shall be divided into four taxing districts as follows:

(1) *District No. 1.*

a. Lots 1 through 16, Ocean Front Section of Bay Harbor, Plat Book 44, page 27.

b. Tract A, Ocean Front Section of Bay Harbor, Plat Book 44, page 27.

c. Tracts C, D, E, Bal Harbour Ocean Front Addition, Plat Book 57, page 68.

(2) *District No. 2.*

a. Areas 1 through 5, Business Section of Bal Harbour, Plat Book 60, page 49.

b. Tract B, Ocean Front Section of Bay Harbor, Plat Book 44, page 27.

c. A portion of Tract D described in DB 2886, page 198 and DB 3505, page 170, Residential Section of Bal Harbour, Plat Book 44, page 98.

(3) *District No. 3.*

a. Lots 1 through 3, Block 12A, Resubdivision of Residential Section of Bal Harbour, Plat Book 53, page 15.

b. All of Blocks 1, 2, 3, 4, 5 and 6, Residential Section of Bal Harbour, Plat Book 44, page 98.

c. All of Blocks 9, 10, 11 and 12, Residential Section of Bal Harbour, Plat Book 44, page 98.

d. Tract E, Residential Section of Bal Harbour, Plat Book 44, page 98.

(4) *District No. 4.*

a. Lots 1 through 10, Block 7, Residential Section of Bal Harbour, Plat Book 44, page 98.

b. Lots 1 through 5, Block 8, Residential Section of Bal Harbour, Plat Book 44, page 98.

c. Lot 1, Block 8A, Resubdivision of Residential Section of Bal Harbour, Plat Book 53, page 15.

(b) Within such districts, the Council shall have the power and authority to levy, assess and collect such special taxes on all the Real Property within such districts as the Council shall have previously determined to have been benefited by improvements of a local nature which have been made in such districts, such assessments to be made in the manner provided by this article.

(Code 1974, § 16-26)

Charter references: Authority to create taxing districts for local improvements, § 5(a).

Sec. 18-112. Assessment procedure generally.

Whenever the Village Council shall undertake to provide for the construction, reconstruction, repair, repaving and surfacing of Streets, boulevards and alleys; for the grading, regrading, leveling, laying, relaying, paving, repaving and surfacing of Sidewalks; for the doing of any work necessary to prevent the erosion of beaches within the Village limits; and for the making of any public improvements of any nature or character whatsoever, whether the improvement is similar or dissimilar to those enumerated in this section, the procedure prescribed in this division shall be substantially followed in the making of special assessments to pay for such improvements in cases where such assessments are to be levied therefor.

(Code 1974, § 16-16)

Sec. 18-113. Assessment for security benefits.

The Village Council, upon petition by 75 percent of the Owners of Real Property within any taxing district identified in section 18-116, may establish a special assessment district for security purposes. For purposes of this section, the phrase "Owners of Real Property" shall include and refer to cooperative unit Owners and condominium unit Owners as well as lot Owners. The nature and extent of the security to be provided by the Village within the district shall be established in the enabling resolution. The procedure prescribed in this article shall be substantially followed in the making of special assessments to pay for such security benefits in cases where such assessments are to be levied therefor.

(Code 1974, § 16-16.1)

Sec. 18-114. Method of levy.

Special assessments against Property deemed to be benefited by the improvements referred to in section 18-112 or benefits referred to in section 18-113 shall be assessed upon the Property specially benefited thereby in proportion to the benefits to be derived therefrom. The benefits shall be determined and prorated according to foot frontage of the respective Properties specially benefited, or by such other method as the Village Council may prescribe.

(Code 1974, § 16-17)

Sec. 18-115. Contents of resolution; filing of plans and specifications.

(a) When the Village Council shall determine to make any public improvements or to establish security benefits and to defray the whole or part thereof by special assessment, it shall so declare by resolution, stating the nature of the improvement or benefit and designating the area to be improved or benefited, what part of the expense is to be paid by special assessment, the manner in which the assessment shall be made, when it is to be paid, what part shall be apportioned to be paid from the general fund, and what lands upon which the assessment is to be levied. In describing the land, it shall be sufficient to describe the lots and lands deemed to be specially benefited abutting upon and contiguous to the described improvement as: "All lots and lands adjoining and contiguous or bounding and abutting upon such improvement." Such resolution shall also state the total estimated cost of the improvement or benefits.

(b) At the time of the adoption of the resolution provided for in subsection (a) of this section,

there shall be on file with the Village Clerk plans and specifications with the estimated cost of the proposed improvement or benefit, all of which shall be open for inspection to the public.

(Code 1974, §§ 16-18, 16-19)

Sec. 18-116. Publication of resolution.

Upon the adoption of the resolution provided for in section 18-115, the Village shall cause the resolution to be published one time in a newspaper of general circulation published in Dade County.

(Code 1974, § 16-20)

Sec. 18-117. Assessment roll.

(a) *Preparation; contents.* Upon the adoption of the resolution, the Village Council shall cause to be made an assessment roll, which shall be completed and filed with the Clerk of the Village as promptly as possible. The roll shall show the lots and lands assessed and the amount of the assessment against each lot. If the assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon the assessment roll.

(b) *Publication; notice of public hearing.* Upon the completion of the roll, the Village Council shall cause a copy thereof to be published two times successively, once each week, in a newspaper published in Dade County and of general circulation therein. At the same time, the Council shall cause to be attached to the copy of the assessment roll a notice directed to all Property Owners interested in the assessment, notifying them that complaints will be heard with reference to the assessment at a time and place to be specified therein, at which time the assessment roll will be finally approved and confirmed.

(Code 1974, §§ 16-21, 16-22)

Sec. 18-118. Equalization of assessments; approval.

At the time and place specified in the notice provided for in section 18-117(b), the Village Council shall meet as an equalizing board to hear and consider all complaints as to such assessment and shall adjust and equalize the assessment on a basis of justice and right. When so equalized and approved, the assessment shall stand confirmed and remain a legal, valid and binding lien upon the Property against which it is made until paid; provided, however, that, upon the completion of the improvement, the Village shall rebate to the Owner of any Property which has been specially assessed the difference between the assessment as originally made and confirmed and the proportionate part of the actual cost of the improvement or benefit to be paid by special assessment as finally determined upon the completion of the improvement or benefit, if any such difference shall exist.

(Code 1974, § 16-23)

Sec. 18-119. Assessments to constitute lien; payment in annual installments.

The special assessments provided for in this article shall remain liens superior in dignity to all other liens except those for taxes, until paid, from the date of the assessments, and shall bear interest at the rate of five percent per annum unless otherwise ordered by the Council in special cases. Such assessments may, by resolution, be made payable in seven equal yearly installments with accrued interest on deferred payments, or otherwise, as the Council may direct in special cases.

(Code 1974, § 16-24)

Sec. 18-120. Enforcement of payment.

Upon the failure of any Property Owner to pay any assessment or any annual installment or interest thereon, the Village Council shall cause to be brought the necessary legal proceedings, by bill in chancery or otherwise, to enforce payment with accrued interest, together with legal costs and attorney's fees, to be assessed as part of the consideration. In the event of a default in the payment of any installment, the whole assessment with interest shall immediately become due and payable and subject to foreclosure.

(Code 1974, § 16-25)

Secs. 18-121--18-140. Reserved.

Westlaw.

70 So. 435
70 Fla. 484, 70 So. 435
(Cite as: 70 Fla. 484, 70 So. 435)

C

Supreme Court of Florida.
SMITH
v.
HORN.
Dec. 10, 1915.

Error to Circuit Court, Volusia County; Jas. W. Perkins, Judge.

Ejectment by Bertha K. Smith against C. L. Horn. Judgment for defendant, and plaintiff brings error. Affirmed.

West Headnotes

Boundaries 59 ⇐20(1)

59 Boundaries
591 Description
59k19 Roads, Ways, and Public Grounds
59k20 Public Ways
59k20(1) k. In General. Most Cited Cases
Where an owner of land platted the same, and sold subdivisions in accordance with such plat, held, that the title of the grantees of subdivisions abutting such streets presumptively extended to the center of the street subject to the public easement.

Dedication 119 ⇐53

119 Dedication
119II Operation and Effect
119k52 Title or Right Acquired
119k53 k. In General. Most Cited Cases
Where an owner of land platted the same, and sold subdivisions in accordance with such plat, *held,* that his dedication made thereby of the easement for street purposes could not be revoked as against the grantees, and that the title of the grantees of subdivisions abutting such streets presumptively extended to the center of the street subject to the public easement.

Municipal Corporations 268 ⇐663(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(A) Streets and Other Public Ways
268k663 Title and Rights of Abutting Owners in General
268k663(2) k. Ownership on Vacation. Most Cited Cases
Where the owners of land abutting on a street own to the center of the street, subject to the easement, and the street is lawfully surrendered, they become entitled to the property to the center of the street relieved of the easement.

Syllabus by the Court

Where the owner of land has it surveyed, mapped, and platted, showing subdivisions thereof, with spaces for intervening streets or other highways between the subdivisions clearly indicated upon the map or plat, and conveyances in fee of the subdivisions are made with reference to such map or plat, the owner thereby evinces an intention to dedicate an easement in the streets or other highways to the public use as such, the title to the land under the street remaining in the owner or his grantees; and, where such conveyances are made with reference to the map or plat, the dedication of the easement for street purposes cannot be subsequently revoked as against the grantees, and the title of the grantees of subdivisions abutting on such streets, in the absence of a contrary showing, extends to the center of such highway subject to the public easement. And, where the highway is lawfully surrendered, the then holder of the title to abutting property and to the center of the street has the property relieved of the public easement.

***485 **435** F. W. Pope, of Ft. Pierce, for plaintiff in error.

Landis, Fish & Hull, of Deland, and H. A. Horn, of Daytona Beach, for defendant in error.

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WHITFIELD, J.

In an action of ejectment there was judgment for the defendant, and the plaintiff took writ of error. It appears by an agreed statement of facts that the plaintiff, Bertha K. Smith, is the heir of John W. Smith, deceased; that said John W. Smith was the original owner of property which he had surveyed, mapped, and platted as 'Memento,' and filed the plat with the clerk of the circuit court; that the property in controversy is a part of 'Memento,' being the part shown on the map as 'Cemetery street,' lying between Seabreeze avenue and Duke street, and between blocks 14 and 19 of 'Memento' as platted; that from the time of making and filing said map of 'Memento' until the commencement of ***486** this suit the property described in plaintiff's declaration has never been used as a street, highway, or passageway by the public or any persons; that the town has never taken any steps toward clearing, grading, or in any manner improving the said street for street purposes or any other public purposes; that, however, the property up until the time of the vacation of the same was not fenced nor claimed by any person as against the easement of the public; that neither the plaintiff nor her father, John W. Smith, have owned any property on either side of the land described in plaintiff's declaration since July 18, 1902; that the defendant claims title to the said land in which he is in possession, as an abutting owner of a part and as a purchaser of the balance, through the following chain of title; that on February 10, 1885, John W. Smith secured a patent to lots 3 and 4, section 5, township 15 south, range 33 east, the property described in plaintiff's declaration being a part thereof; that in August, 1884, John W. Smith had such property surveyed, mapped, and platted, and called it the town of Memento, dividing it into lots and blocks, and separating the blocks by streets and giving the streets names, the land described in plaintiff's declaration being the street as shown on said map as lying between blocks 14 and 19 and between Seabreeze avenue and Duke street; that on February 14, 1890, John W. Smith, joined by his wife, conveyed by warranty deed to W. A. Glover all of block 19 of Memento, according to the map of Memento, on record; that on April 5, 1895, W. A. Glover, joined by his wife, conveyed by warranty deed to C. C. Post all of block 19 of Memento, according to the map of Memento on record; that on May 13, 1903, C. C. Post, joined by his wife, conveyed by warranty ***487** deed to C. L. Horn all of block 19 of Memento, according to the map of Memento on record; that C. L. Horn, the defendant, is still the owner of the west 5 feet of the southerly 110 feet of block 19 of Memento, this strip of land lying next to and abutting that part of the lands described in plaintiff's declaration which defendant claims as an abutting owner, claiming to the center of the said street; that on July 18, 1902, Bertha K. Smith, plaintiff herein, joined by her husband, by warranty deed conveyed to the Pinewood Cemetery Association all of block 14, Memento, excepting such lots or parts of lots as they had previously conveyed, ****436** such property having come to her as heir of John W. Smith, deceased; that on September 28, 1912, the Pinewood Cemetery Association conveyed to C. L. Horn, the defendant herein, a strip of land 10 feet wide and 110 feet long, being the east 10 feet of the southerly 110 feet of the west one-half of the land described in plaintiff's declaration, the cemetery association claiming title thereto as an abutting owner of said vacated street; that in the early part of the year 1905 the town of Daytona Beach, Fla., was incorporated under the general incorporation laws of the state of Florida; that the town council of the town of Daytona Beach, Fla., authorized D. D. Rogers, C. E., to make a map of the incorporated town of Daytona Beach; that a map of the said town of Daytona Beach was so made and placed on record in the office of the clerk of the circuit court of Volusia county, Fla., on January 8, 1906, a certified copy of said map being hereto attached and marked 'Exhibit B'; that on the map of the incorporation of the town of Daytona Beach, Fla., above referred to, the ***488** property described in plaintiff's declaration is described thereon as 'Hollywood street'; that on the 28th day of February, 1910, the town council of the town of

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Daytona Beach, Fla., passed an ordinance vacating as a street the property described in plaintiff's declaration, which said street is and was within the incorporated limits of the town of Daytona Beach, Fla.; that on May 9, 1914, the heirs of John W. Smith, by their attorney, F. W. Pope, sent a communication to the mayor of the town of Daytona Beach, Fla., notifying him that the heirs of John W. Smith, deceased, thereby withdrew any dedication or intended dedication to the land described in plaintiff's declaration.

For the plaintiff in error it is contended that, since it is expressly stipulated 'that from the time of making and filing said map of 'Memento' until the commencement of this suit the property described in plaintiff's declaration has never been used as a street, highway, or passageway by the public or any persons; that the town has never taken any steps toward clearing, grading or in any manner improving the said street for street purposes or any other public purposes; that, however, the property up until the time of the vacation of the same was not fenced nor claimed by any person as against the easement of the public'-the title to the space designated as a street on the map remained in the dedicator, and consequently the judgment should have been for the plaintiff. This contention would have force in determining the rights of the parties if it were not also expressly stipulated that the dedicator subsequently conveyed block 19 of 'Memento' 'according to the map of Memento on record,' and that the dedicator's sole heir conveyed 'all of block fourteen, Memento, excepting such lots or parts of lots as had been previously***489** conveyed, such property having come to her as heir of John W. Smith, deceased.'

Where the owner of land has it surveyed, mapped, and platted, showing subdivisions thereof, with spaces for intervening streets or other highways between the subdivisions clearly indicated upon the map or plat, and conveyances in fee of the subdivisions are made with reference to such map or plat, the owner thereby evinces an intention to dedicate an easement in the streets or other highways to the public use as such, the title to the land under the street remaining in the owner or his grantees; and, where such conveyances are made with reference to the map or plat, the dedication of the easement for street purposes cannot be subsequently revoked as against the grantees, and the title of the grantees of subdivisions abutting on such streets, in the absence of a contrary showing, extends to the center of such highway, subject to the public easement. And, where the highway is lawfully surrendered, the then holder of the title to abutting property and to the center of the street has the property relieved of the public easement. See Moody v. Palmer, 50 Cal. 31; Trustees M. E. Church, Hoboken, v. Mayor and Council of Hoboken, 33 N. J. Law, 13, 97 Am. Dec. 696; Winter v. Payne, 33 Fla. 470, 15 South. 211; Porter v. Carpenter, 39 Fla. 14, 21 South. 788; Price v. Stratton, 45 Fla. 535, 33 South. 644; Florida E. C. R. Co. v. Worley, 49 Fla. 297, 38 South. 618; Paine v. Consumers' Forwarding & Storage Co., 71 Fed. 626, 19 C. C. A. 99; Garnett v. Jacksonville, St. A. & H. R. R. Co., 20 Fla. 889; Florida Southern R. Co. v. Brown, 23 Fla. 104, 1 South. 512; Lovett v. State, 30 Fla. 142, 11 South. 550, 17 L. R. A. 705; Rawls v. Tallahassee Hotel Co., 43 Fla. 288, 31 South. 237; Robbins v. White, 52 Fla. 613, ***490**42 South. 841; Seaboard Air Line Ry. v. Southern Inv. Co., 53 Fla. 832, 44 South. 351, 13 Ann. Cas. 18; 5 Cyc. 911; 8 R. C. L. § 18.

'Unless the deed manifests an intention on the part of the grantor to limit the boundary line, the line, when the land is bounded by a nonnavigable stream or highway, extends to the center of such stream or highway, if the grantor is the owner of the fee. Hence, where a deed describes the land conveyed as extending 500 feet to a street or avenue, and thence at right angles along the street 120 feet, etc., to the place of beginning, the fee of the land to the center of the street is conveyed subject to the public easement, notwithstanding the line of 500 feet extends only to the side of the street, and not to its center. When the avenue is no longer used as a street, the land is freed from the easement.' 2

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Devlin on Deeds (3d Ed.) § 1024.

This rule is one for construing conveyances, and must be applied to carry out, and not to frustrate the intention of the parties. Where no contrary intent appears, a conveyance to a street carries title to the center of the street, subject to the public easement, the title to the land under the street passing **437 by construction, and not as appurtenant to the abutting land. In this case the plaintiff and her predecessor in title having conveyed the land abutting on both sides of the street without manifesting a contrary intent, the title to the land under the street passed from the grantors by virtue of such conveyances of the abutting land; and the plaintiff has no title to the land under the street. The fact that the space dedicated as a street was not used as such cannot affect the rights of grantees who purchased with reference to the plat showing the dedication of the space for the purposes of a street. And, if the street easement*491 over the land be lawfully abandoned or surrendered, the owner of the land holds it discharged of the easement.

In view of the agreed statement of facts, it must be assumed that the conveyances in question were made with reference to the streets as marked on the plat or map filed among the public records of the county. Though the spaces marked for streets were not, in fact, used as streets, yet the conveyances of lots abutting on the spaces marked on the map as streets, by construction of law to effectuate the manifest intention of the parties, carries title to the middle of the space marked as streets on the map or plat on file; there being no contrary intent shown.

Judgment affirmed.

TAYLOR, C. J., and SHACKLEFORD and ELLIS, JJ., concur.
COCKRELL, J., absent on account of sickness.
Fla. 1915
Smith v. Horn
70 Fla. 484, 70 So. 435

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C
SERVANDO BUILDING COMPANY v. ZIMMERMAN
Fla. 1956

Supreme Court of Florida, En Banc.
SERVANDO BUILDING COMPANY, a Florida corporation, Appellant,
v.
Arthur C. ZIMMERMAN; Dana H. Gillingham and Mary E. Gillingham, his wife; Margaret D. Meyer and Harry H. Meyer, her husband; and Alexander O. Feidelson and Elizabeth K. Feidelson, his wife, Appellees.
Dec. 19, 1956.

Suit to quiet title to streets and an alley in a subdivision. The Circuit Court for Dade County, Charles A. Carroll, J., entered a decree favorable to plaintiffs, and defendant appealed. The Supreme Court, Thomas, J., held that, properly construed, plat providing that discontinued streets should revert to dedicator and its successors evinced intent that reversionary interest should pass to purchasers of lots abutting streets, and remote grantee taking by deed containing reference only to plat nevertheless took title to center of street on which land conveyed abutted, subject only to easement.

Affirmed.

Roberts, J., dissented.

West Headnotes

[1] Boundaries 59 ⚿20(2)

59 Boundaries
59I Description
59k19 Roads, Ways, and Public Grounds
59k20 Public Ways
59k20(2) k. Effect of Location, Dedication, or Occupation. Most Cited Cases

Dedication 119 ⚿65

119 Dedication
119II Operation and Effect
119k65 k. Reversion. Most Cited Cases
Properly construed, plat providing that discontinued streets should revert to dedicator and its successors evinced intent that reversionary interest should pass to purchasers of lots abutting streets, and remote grantee taking by deed containing reference only to plat nevertheless took title to center of street on which land conveyed abutted, subject only to easement.

[2] Boundaries 59 ⚿10

59 Boundaries
59I Description
59k10 k. Maps, Plats, and Field Notes. Most Cited Cases
Plat should be construed against developer who created it and chose words with reference to it.

[3] Zoning and Planning 414 ⚿254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
(Formerly 268k43)
Statute providing that no strip or parcel of land should be reserved by owner when recording a subdivision, unless same were sufficient size and area to be some practical use or service, meant that use or service would have to be practical from standpoint of dedicator, or one who reserved, and alley 10 foot in width did not meet test. F.S.A. § 177.08.

***289** James T. McBrayer, Miami, for appellant.
George C. Simpson and Worley, Gautier & Dawes, Miami, for Arthur C. Zimmerman et al.
Turner & Turner, for A. O. Feidelson and Elizabeth K. Feidelson, his wife, appellees.
THOMAS, Justice.
This suit was one to quiet title of the appellees to streets and an alley in a subdivision by extinguishing any claims of the defendants. The plaintiffs were awarded a decree and are, therefore, appellees here while one defendant is appellant. All the appellees owned lots that were conveyed to them according to a certain plat, which will presently be described, and all deraigned their title as required by Sec. 66.20, Florida Statutes 1953, and F.S.A. The first link in each chain was a deed from Francis D. Wheeler and Elizabeth Marie Wheeler, his wife.

It appears from the record that the plat to which there was reference in each of the deeds was recorded in

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the year 1926 by Coral Gables Corporation, the then owner of the land in which appellees' lots are located.

The plat bore a marginal notice that a dedication was recorded, or would be recorded. The following are the pertinent provisions of this dedication:
***290** 'Now, Therefore, These Presents Witness, That the said Coral Gables Corporation, for itself, its successors and assigns, does hereby dedicate all streets, avenues, and other thoroughfares, shown on said plat, to the free use of the public as highways, and also all plazas shown thereon to the free use of the public as such; provided that if such use of any part thereof shall or may be *discontinued by law* such part shall revert to said Coral Gables Corporation, its successors and assigns.
'And these presents further witness that it is not intention of this instrument to dedicate in any manner and of the alleys shown on said plat, whether indicated by the word 'alley' or otherwise, or to dedicate any of the parks shown thereon, whether indicated by the word 'park' or otherwise; but the private and unconditional ownership of each and all of said alleys and each and all of said parks is hereby expressly reserved in said Coral Gables Corporation, its successors and assigns, for private use and disposition.'(Emphasis supplied.)

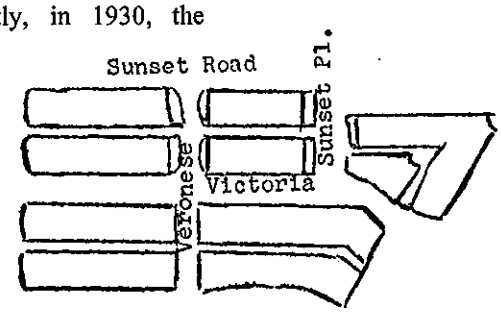
It is noteworthy that the provisions affecting streets and alleys are not the same.

At the time the plat was recorded there was an outstanding mortgage to Francis D. Wheeler from Anna R. Chichester. Evidently Coral Gables Corporation purchased the whole tract subject to this mortgage and proceeded to have the plat and dedication recorded. Subsequently, in 1930, the mortgagee, Francis D. Wheeler, foreclosed the mortgage against the mortgagor and Coral Gables Corporation. In the decree it was provided that the property be sold 'subject to the **dedication** of * * * **streets**, avenues and thorough-fares crossing said property' as shown on the plat and following this provision appeared the language: 'However, the reversionary interest in said sidewalks, streets, avenues and throughfares shall pass by the Master's deed to the abutting property owners.'So the title to the lots involved in this case became vested in Francis D. Wheeler by master's deed. After that the Wheelers conveyed to the appellees and others by reference to the plat that had been filed by Coral Gables Corporation.

About twenty-four years after the decree of foreclosure was entered, the city commission of the City of Coral Gables ordained that Veronese Street between Avenue Gondoliere and Sunset Road, as it was defined on the plat, be vacated and discontinued. The lot of one appellee abuts Sunset Place and an alley; the properties of two appellees abut Veronese Street; and the property of one appellee abuts Sunset Place.

After the ordinance was enacted Elizabeth Marie Wheeler conveyed to the appellant by warranty deed 'Veronese Street' and 'Sunset Place' between certain points and including the parts of these streets lying in front of appellees' properties, and the alley which borders the lot of one appellee.

The following is a tracing of so much of the plat as is necessary clearly to illustrate the relative location of appellees' properties and the streets and alley adjacent to them:



***291** For emphasis, we repeat that the ordinance affected only Veronese Street and contained no reference to Sunset Place; also both streets were conveyed as parcels of land, although the reversion mentioned in the dedication was apparently intended to take effect only upon 'discontinuance by law,' and we are aware of no law discontinuing the use of Sunset Place.

In the decree in the instant suit the chancellor quoted the portion of the decree in the earlier foreclosure to which we have referred and from which we have

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quoted.

He cancelled and annulled so much of the deed from Elizabeth Marie Wheeler to the appellant as was intended to effect a transfer of the streets and *alleys* abutting appellees' lots and confirmed the title to the streets and *alleys* in the respective appellees.

[1][2] We think the several questions posed for our determination may be reduced to one, namely, in the circumstances we have related, did the deeds to plaintiffs, from the Wheelers containing the references only to the plat, convey the title to the center of the street subject to the easement, or was the title retained by the grantors so that the streets might be sold as individual parcels?

At once the impractical effect of a ruling favorable to appellant is obvious. The seven corner lots purchased as such would become inside lots which they were never intended to be. And the impracticality will be emphasized as we will show before we conclude our comment.

It is argued that every purchaser was put upon notice by the reference on the plat to the dedication, and by the dedication itself, that upon discontinuance of any street 'such part' would revert to the dedicator, its successors and assigns, and that it follows, therefore, that when it was ordained that Veronese Street be vacated, the fee to property in the street free of user was alienable by Wheeler as successor to Coral Gables Corporation. At a glance this contention seems logical but when the underlying principle is taken into account and the interpretation of the dedication is based on that principle, with the aid of the circumstances surrounding this controversy, the contention of the appellant must be rejected.

The guide in such situations, primarily, is the intention of the party making the dedication. In Smith v. Horn, 70 Fla. 484, 70 So. 435, 436, it was written that 'the title of the grantees of [lots] abutting on such streets, in the absence of a contrary showing, extends to the center of such highway, subject to the public easement.'In Florida Southern Ry. Co. v. Brown, 23 Fla. 104, 1 So. 512, 513, decided nearly seventy years ago, this court observed that the rule 'seems to be based on the supposed intention of the parties, and the improbability of the grantor desiring or intending to reserve his interest in the street when he had parted with his title to adjoining land.'And it was further said in that case that such intention will never be presumed.

In Smith v. Horn, supra, it was further commented that the 'rule is one for construing conveyances, and must be applied to carry out, and not to frustrate the intention of the parties. Where no contrary intent appears, a conveyance to a street carries title to the center of the street, subject to the public easement, the title to the land under the street passing by *construction*, and not as appurtenant to the abutting land.'(Emphasis supplied.)

We take it then that we are bound to determine the intention of the parties and to decide whether or not the phraseology in the dedication, without any presumption being indulged on behalf of the appellant, was such that the closure of Veronese Street operated to put the title of the street, free of the easement, in appellant's grantor, Elizabeth Marie Wheeler, whose husband had bought from the master.

There was a provision in the foreclosure decree, as we have related, that the reversionary*292 interest in streets, and so on, should pass by the master's deed to abutting owners. This indicated a purpose on the part of the chancellor not to separate the fee of the streets and the fee of the lots. The decree described the encumbered property both as acreage, as it was described in the mortgage, any by lots and blocks as it appeared on the plat that was recorded after the mortgage was given.

It may be that the reference in the decree was beyond the issues of the case, a thought that suggests itself as we explore the file, but there is no need to pause for discussion of that matter. The fact remains that the pronouncement by the court was made a quarter century ago and in the intervening years conveyances have been made by the mortgagee, who purchased at the foreclosure sale and whose title originated with the master's deed executed pursuant to that decree. This is not determinative of this case but is a circumstance bearing on intention.

Another circumstance we have already mentioned, that is, the curious result of changing corner lots into inside lots. When we consider what the outcome of adopting appellant's view could be, we veer even farther from the view that there was an intention that the fee of the land dedicated as streets should be alienable by appellant as successor of Elizabeth Marie Wheeler, as distinguished from the owner of the abutting property.

When the mortgage from Anna R. Chichester to Francis D. Wheeler was given, the property was described as acreage but it was contemplated by the

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parties that it might be subdivided for there was an express provision that that could be done. In the event the property was subdivided into lots and blocks, releases from the lien of the mortgage were to be executed at the rate of $800 for each lot of not more than one-fifth of an acre and the amount paid was to be credited on the mortgage.

This showed plainly a willingness on the part of the mortgagee to change the status of the security from one as a whole tract to one of lots and to reduce the mortgage proportionately as the 800-dollar payments were made. Cf. Weills v. City of Vero Beach, 96 Fla. 818, 119 So. 330. It seems logical to conclude that if all lots were released at that rate, no indebtedness would remain, even taking into account the area devoted to streets and alleys.

The property had an area of thirty-nine acres, more or less, so there were about 195 lots which if released at $800 a lot or $4,000 an acre would have brought $156,000. The principal debt was $124,800. So there was a wide margin between the amount of the debt and the amount the mortgagee would have received had all lots been sold and been released on the terms mentioned in the mortgage.

This mortgage was on record when Coral Gables Corporation took title to the property presumably from Anna R. Chichester and proceeded to subdivide it.

Upon subdividing the property and marketing it, Coral Gables Corporation sold according to the plat and obviously that subdivider could not have interested buyers of lots unless there was access to a street. We doubt if a prospective purchaser would have even considered investing in any of the corner lots if he had suspected that eventually a corner lot might become an inside one, or in an inside one that could posibly become a piece of land with no outlet on a street.

Taking into account the history of this property for the past thirty years, we cannot conclude that it was the intention of any of the parties dealing with it to have the fee of streets retained in the Coral Gables Corporation, one-time holder of the legal title, which corporation got its title from Chichester, mortgagor, or in Francis D. Wheeler, mortgagee in a mortgage in which first it was indicated that the property might be subdivided and its character, therefore, changed from acreage to lots and *293 blocks thereby making streets a factor indispensable to a successful marketing.

From our close study we take the view that the dedicatory language in the light of this history will not permit a construction that there was an intention to deviate from the general rule that one purchasing a lot according to a plat gets title to the center of the street subject to the easement. If the Wheelers had a contrary intent they should have clearly expressed it when making conveyances by reference to the plat subsequent to foreclosure. To repeat, we are dealing with the basic question of construing the intention of the parties to the transaction we have detailed, and in consideration of the plat we have applied the rule that the plat should be construed against the developer who created it and chose the words with reference to it.McCorquodale v. Keyton, Fla., 63 So.2d 906.

What we have said about the history of the transactions affecting the property involved in this litigation applies to the alleys as well as the streets. But we have not overlooked the difference between the language of the **dedication** with reference to **streets**, and that regarding alleys. In the case of the latter the dedicator stated that there was no intention to dedicate any of the alleys shown on the plat and that they were expressly reserved for private use and disposition.

[3] It is difficult to understand why such a condition should have been imposed but we can ascribe to it little efficacy because of the provisions of the law enacted before the plat in question was recorded. In Sec. 8 of Chapter 10275, Laws of Florida, Acts of 1925, now Sec. 177.08, Florida Statutes 1955, and F.S.A., prescribing the method of preparing plats, it was provided that 'no strip or parcel of land shall be reserved by the owner when recording a subdivision, unless the same is sufficient in size and area to be of some practical use or service.'This must have meant a use or service that would be practical from the standpoint of the dedicator, or the one who reserved it. What practical use or service the alleys on the plat in question could be to the appellant as distinguished from appellees and other owners we cannot understand. The alley here involved was ten feet in width. An isolated piece of land of such proportion could be of no use to anyone except owners of property it touched and persons dealing with them.

It is true that the dedicatory language employed in regard to alleys applies also to parks, while plazas are mentioned in the paragraph of the **dedication** with reference to **streets**. What distinction there could be between parks and plazas that would justify classifying them differently is so puzzling as to give

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us the idea that the language in the dedication was, to say the least, carelessly chosen, and fails to express the 'clear intent' necessary to avoid application of the 'rule.' Florida Southern Ry. Co. v. Brown, supra.

We decide that the appellees properly prevailed so the decree is--

Affirmed.

DREW, C. J., and TERRELL, HOBSON, THORNAL and O'CONNELL, JJ., concur.
ROBERTS, J., dissents.
ROBERTS, Justice (dissenting).
Plaintiffs, appellees here, own lots abutting on Veronese Street and on Sunset Place in the Biscayne Bay Section of the City of Coral Gables, one of which (Veronese) has been officially 'vacated and discontinued' by the city. All plaintiffs deraign their title (although not immediately in every case) from Francis D. Wheeler and Elizabeth Marie Wheeler, his wife. They filed the instant suit to have declared null and void, as a cloud on their title, a deed from Mrs. Wheeler, as widow and sole devisee under the will of Francis D. Wheeler,***294** to the Servando Building Co., defendant-appellant, by which Mrs. Wheeler conveyed to Servando certain streets and alleys in the above mentioned subdivision, including the portions of Veronese Street and Sunset Place upon which plaintiffs' lots abut. Upon a consideration of the complaint, Servando's answer thereto, and various exhibits filed by the parties, the Chancellor entered a final decree cancelling the deed from Mrs. Wheeler to Servando 'insofar as said deed conveys the streets and alleys abutting the [plaintiffs'] property' and also enjoining Servando and Mrs. Wheeler from claiming title to any reversionary interest in such portions of the streets and alleys. Servando has appealed.

The facts as shown by the pleadings and exhibits are as follows: Francis Wheeler held a mortgage on a parcel of land which was subsequently subdivided and platted as the Biscayne Bay Section, Part One, of Coral Gables. Wheeler's mortgage expressly provided that the acreage could be subdivided into blocks and lots and the lots sold free of the mortgage lien under stated circumstances. The plat of the subdivision was filed for record on July 13, 1926, and contained a notation that 'This plat is made subject to a dedication thereof, recorded, or to be recorded among the Public Records of Dade County.'The dedicatory instrument, filed for record the same day, dedicated 'all streets, avenues, and other thoroughfaces' shown on the plat to the public use and provided that 'if such use of any part thereof shall or may be discontinued by law such part shall revert to said Coral Gables Corporation, its successors and assigns.'It was expressly provided therein, however, that the alleys and parks shown on the plat were *not* dedicated to public use and that the 'private and unconditional ownership' of such alleys and parks was reserved in the dedicator, its successors and assigns, for private use and disposition.

Francis Wheeler foreclosed his mortgage in 1930 and bought in the property (except for certain lots that had apparently been sold, as authorized by the mortgage) at the foreclosure sale. The final decree of foreclosure authorized the Master to sell the property as a whole or by separate lots or parcels, and contained the following provision:
'It Is Further Ordered and Decreed that the above described property shall be sold subject to the **dedication** of the sidewalks, **streets**, avenues and thorough-fares crossing said property as shown on the plat above mentioned of Coral Gables Biscayne Bay Section, Part One, Plat 'A' as recorded among the public records of Dade County, Florida in Plat Book 25, page 63. However, *the reversionary interest in said sidewalks, streets, avenues and thorough fares shall pass by the Master's deed to the abutting property owners.*'(Emphasis added.)

The deeds by which Francis Wheeler and his wife conveyed to plaintiffs or their predecessors in title their respective lots described the property by reference to the recorded plat but did not expressly reserve to the grantors any reversionary interest in the streets, avenues, and thoroughfares shown on the plat and dedicated to public use.

The point for determination here is whether in these circumstances the conveyances to plaintiffs of lots abutting the streets carried with them the title to the center of the street, subject only to the public easement.

This court holds that a **dedication** of a **street** to public use does not divest the dedicator of his title to the land; it merely subjects the land and the title to a public easement for street purposes.Robbins v. White, 52 Fla. 613, 42 So. 841. It is also settled law that where conveyances of lots abutting upon streets are made with reference to a map or plat dedicating such streets to public use, 'the title of the grantees of subdivisions [sic] abutting on such streets, in the absence of a contrary showing,***295** extends to the center of such highway, subject to the public

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easement.'Smith v. Horn, 70 Fla. 484, 70 So. 435, 436.In the early case of Florida Southern Ry. Co. v. Brown, 1887, 23 Fla. 104, 1 So. 512, 513, it was said that this rule 'seems to be based on the supposed intention of the parties, and the improbability of the grantor desiring or intending to reserve his interest in the street when he had parted with his title to adjoining land. Such intention will never be presumed.'And the court in Smith v. Horn, supra, again pointed out that 'This rule is one for construing conveyances, and must be applied to carry out, and not to frustrate the intention of the parties.*Where no contrary intent appears*, a conveyance to a street carries title to the center of the street, subject to the public easement, the title to the land under the street passing by construction, and not as appurtenant to the abutting land.'(Emphasis added.)

It is also well settled that, where a deed describes property by reference to a map or plat, the map or plat referred to 'becomes as much a part of the instrument making the reference as if actually copied into it.'Andreu v. Watkins, 26 Fla. 390, 7 So. 876, 880.And since the plat here involved was expressly made subject to the dedicatory instrument filed for record on the same date, it follows that the terms of such dedication were also a part of the deeds by which plaintiffs took title to their respective lots.

Nor can there be any doubt that Francis Wheeler, as the purchaser of the property at the mortgage foreclosure sale, acquired the title of and succeeeded to the reversionary rights, if any, of the Coral Gables Corporation. Cf. Jones v. Hiller, 65 Fla. 532, 62 So. 583.Ordinarily, the purchaser of property at a mortgage foreclosure sale acquires the title of the mortgagor *as of the date of the mortgage*, Logan v. Stieff, 36 Fla. 473, 18 So. 762. But, as has been noted, Wheeler's mortgage expressly authorized the subdividing and platting of the acreage covered by his mortgage; and the Chancellor in the mortgage foreclosure suit properly held that the purchasers at the foreclosure sale should be bound by the **streetdedications** made in the plat and, at the same time, confirmed in such purchasers the title to the reversionary interest in the streets and thoroughfares expressly reserved by the dedicator in the dedicatory instrument. The writer so interprets the provision of the decree in that suit, quoted and italicized earlier in this opinion, and rejects the contention made by the plaintiffs, Mr. and Mrs. Feidelson, that the Chancellor by such provision intended thereby to nullify the reverter clause contained in the dedication. The file in that suit is not before us, so we do not know the issues there made. But it is not reasonable to assume that the Chancellor intended to impose upon the purchasers the burdens but deprive them of the benefits contained in the dedicatory instrument. The contention of the appellees Feidelson in this respect can not, therefore, be in the opinion of the writer sustained.

So the question then becomes: Is the reverter clause in the dedication sufficient to rebut the presumption that the conveyance of a lot abutting a street carries with it the fee simple title to the center of the streets? In the opinion of the writer, the only reasonable interpretation of this clause is that the Coral Gables Corporation intended to reserve for itself, or for any person to whom it might convey the fee simple title to the property *underneath the streets*, the right to the entire beneficial interest in such property upon the discontinuance of the public use to which it was dedicated; and that such clause negatives a 'supposed intention' that a conveyance of a lot abutting upon a street would carry with it the title to the center of the street. This interpretation comports with the remainder of the dedicatory instrument, by which the dedicator provided that all alleys and parks shown on the plat should remain the property of the dedicator, its successors and assigns, 'for private use and disposition.' The record***296** also shows that the Wheelers (or Mrs. Wheeler) have so construed the reverter clause over the years, by making conveyances of portion of streets and alleys, one of which was assigned by the Wheeler's grantee to the plaintiffs Meyer.

The cases cited by counsel for plaintiffs are not decisive here, since in none of them does it appear that there was appended to the dedication a reverter clause such as that with which we are here concerned. Counsel for the defendant Servando has cited the case of State by Burnquist v. Marcks, 1949, 228 Minn. 129, 36 N.W.2d 594, 596, in which the dedicatory plat contained a clause declaring that the 'reversionary title' of any vacated street was expressly reserved to the "original platting company" and providing that "the fee and any part of any street is declared not to be included in or as any part of any lot therein."It will be seen that this reverter clause is couched in somewhat stronger language than that involved in the instant case, and it was apparently undisputed that the assignee of the original platting company took title to a street, upon its abandonment by the city, rather than an abutting lot owner.

In Plumer v. Johnston, 1886, 63 Mich. 165,29 N.E. 687, 689, the exact question with which we are here concerned was presented, under a reservation

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contained in the instrument dedicating the plat, as follows: "Reserving to ourselves, however, said street and alleys, whenever the same may be discontinued by law."In upholding the title of the original owner to a vacated street as against the claim of the owner of abutting lots, the court said:
'Whether this reservation amounts to a condition upon which the dedication was made, need not now be determined. The intent is plainly manifest that conveyances of lots upon the plat should not carry the title to the middle of the streets and alleys thereon, and that if the dedication was not accepted, or, if accepted, the street should be vacated, the title, use, and possession should become absolute in the plaintiff * * *.'

And in Helm v. Webster, 1877, 85 Ill. 116, one Holmes and others conveyed property to the city for use as a street and provided in the deed that the property should 'revert to the present owners thereof, their heirs or assigns,' upon the vacation or abandonment of the street by the city. Holmes sold property abutting on the street, together with his reversionary interest in the street, to Webster; and Webster thereafter subdivided the premises. Mrs. Helm purchased from Webster lots abutting on the street, and the controversy was between Webster and Helm as to the ownership of the street after it was vacated by the city. While the case turned on another point, the court said:
'It cannot be denied that, by virtue of Holmes' deed to [Webster], * * * [Webster] became vested with all the rights reserved by Holmes in his deed of August 24, 1855; but without that reservation in this deed, Holmes, on general principles, would have been remitted to his title, on the abandonment of the street by the city.'

As previously noted, counsel for the plaintiffs have cited no case holding to the contrary, and an independent research has revealed none. It is the opinion of the writer, then, by reason and by authority, that a provision in a **dedication** that the **streets** shall revert to the dedicator, its successors or assigns, upon their vacation or abandonment by the city, plainly manifests an intention that conveyances of lots abutting upon such streets shall not carry the title to the middle of the streets. This being so, the plaintiffs in the instant case have no title to the property underneath the streets upon which their lots abut, so it was error to quiet their title therein as against the deed from Mrs. Wheeler to Servando.

Accordingly, I would reverse the decree appealed from.

Fla. 1956
Servando Bldg. Co. v. Zimmerman
91 So.2d 289

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U.S. v. 16.33 Acres of Land in Dade County, Fla. 1977.

Supreme Court of Florida.
UNITED STATES of America, Plaintiff-Appellee,
v.
16.33 ACRES OF LAND IN the COUNTY OF DADE, State of Florida, and Sterling Investments, Inc., et al., Defendants-Appellants.
UNITED STATES of America, Plaintiff-Appellee,
v.
156.65 ACRES OF LAND IN the COUNTY OF DADE, State of Florida, and Sterling Investments, Inc., et al., Defendants-Appellants.
No. 50243.

Jan. 13, 1977.
Rehearing Denied March 10, 1977.

Question was certified from the United States Court of Appeals for the Fifth circuit to determine whether law of Florida gave successor in interest to original developer any interest in condemned property. The Supreme Court, Hatchett, J., made answer that where, at time it dedicated platted roads 'to the perpetual use of the public for proper purposes,' original developer explicitly reserved to itself any reversionary interest, as against the public, lots in plat were thereafter sold, with deeds describing lots by reference to plat, and reversionary interest, retained by developer, was subsequently conveyed, together with lots, subject to easement in favor of public, successor in interest to developer had no interest of any kind in property and, therefore, was precluded from claiming a compensable interest in property when it was subsequently condemned.

Question answered.

Adkins and Roberts (Retired), JJ., dissented.

*477 Peter R. Taft, Asst. Atty. Gen., Washington, D.C., Robert W. Rust, U.S. Atty., Miami, and Jacques B. Gelin, Harry W. McKee and Eva R. Datz, Dept. of Justice, for plaintiff-appellee.
Rollo E. Karkeet, and Robyn Greene, of Greene & Cooper, Miami, for defendants-appellants.

HATCHETT, Justice.
Sterling Investments, Inc. (Sterling), sought to establish a compensable interest in condemned property in the course of condemnation proceedings in the United States District Court for the Southern District of Florida. Whether Sterling has an interest in the property is a question of state law, which was considered as such, and decided adversely to Sterling by the United States District Court. When the cause was appealed to the United States Court of Appeals for the Fifth Circuit, that court certified to us the question of what interest in the property, if any, Florida law gives Sterling. 537 F.2d 182 (5th Cir. 1976). The facts are stated in the Fifth Circuit's certificate, prepared pursuant to Rule 4.61, Florida Appellate Rules, 1962 Revision, as follows:

Introduction.-This action was begun by a complaint filed by the United States to condemn certain real estate in the Elliott Shores Subdivision on Elliott Key, in Dade County, Florida. The record title holders of the subdivision lots were designated as the defendant-landowners. Sterling Investments, Inc. (Sterling), as successor-in-interest to the original developer, filed an answer alleging that it is the fee simple owner of all the avenues, roads and boulevards as shown on the plat of the subdivision. (R. 298).

The District Court, by its order of June 2, 1975, disallowed Sterling's claim, holding, Inter alia, that the conveyances by the original developer of 'the lots abutting the streets and roads by reference to the plat carried title to the center of the abutting roadway subject to the rights in favor of the public all in accordance with the law of the State of Florida' (R. 627). Sterling appealed to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit determined that issues of state law may be dispositive of this case and ordered that it be certified to the Supreme Court of the State of Florida.

A. Background.-The Biscayne National Monument was authorized October 18, 1968, and formally established June 12, 1970, 82 *478 Stat. 1188 (R. 477). The United States instituted four proceedings to acquire the land needed for the establishment of the Biscayne National Monument:

Style of Lawsuit	Date Complaint filed	Date Notice of Lis Pendens Filed
United States v. 95,064 acres of land, No. 70-477-Civ-CF (This was a proceeding against the State of Florida to condemn its interest in the project area.)	4/8/70	4/13/70 (O.R. 6821, p. 232)

United States v. 338.87 acres of land, No. 72-1311-Civ-CF (This was a proceeding to condemn land on Old Rhodes, Totten, Rubicon and Elliot Keys.)	8/18/72	8/31/72 (O.R. 7872, p. 126) and amended 11/8/72 (O.R. 7970, p. 773)
United States v. 16.33 acres of land, No. 72-1509-Civ-CF (The instant proceedings.)	9/20/72	9/22/72 (O.R. 7904, p. 137) and amended 12/17/72 (O.R. 8041, 0. 52)
United States v. 156.65 acres of land, No. 72-1548-Civ-CF (The instant proceedings.)	9/28/72	9/29/72 (O.R. 7915, p. 413)

B. Elliott Key is an island approximately eight miles long. Elliott Shores subdivision is approximately two miles north of the southern tip of Elliott Key. The subdivision is approximately one-third of a mile wide and extends from the Atlantic Ocean to Biscayne Bay.

C. Elliott Key has never been connected to the mainland of Florida and is accessible only by boat. The terrain consists of jagged coral rock covered with an almost impenetrable growth of salt water vegetation. The ocean shoreline is land and rock, and the bay shoreline is mangrove fringe. The island has no public utilities. There are no roads capable of vehicular use. A footpath, wide enough for a hiker or two, has been hacked through the vegetation, and periodic attempts are made to keep it open.

D. There is no evidence that Elliott Shores has ever been surveyed, cleared, or even staked. It is uninhabited. Elliott Key itself has a small municipal marina with no overnight facilities. The island attracts fishermen, boaters, nature hikers, and other recreational users interested in exploring undeveloped, virgin land (M. 2).

E. In 1926, Miami Bank, STERLING'S predecessor in title, recorded a plat of the property. In entire subdivision has been sold and resold from the plat as recorded in the Public Records of Dade County, Florida, in Plat Book 23, on page 24, as it has been impossible for anyone to determine visually the location of any of the lots or roads (R. 625, M. 3).

The plat filed by Miami Bank states (R. 626):
'That all avenues, roads and boulevards as shown on said plat attached are hereby dedicated to the perpetual use of the public for proper purposes reserving to ourselves, our heirs, administrators, executors, or assigns, the reversion or reversions thereof if ever discontinued by law.'

The plat goes on to state (R. 444):'(E)very conveyance of any real estate in this subdivision which may be made hereafter shall be subject to the following restrictions:
'1. All lots shall be restricted to residential purposes only with the following exceptions * * * which shall be designated as business lots. This restriction shall not operate against the erection in the subdivision of apartment houses or hotels.
'2. All buildings in said subdivision shall be of fire resisting materials * * *.
'3. No residence shall be erected at a less cost then Three Thousand Dollars * * *.
*479 '4. No building shall be erected on a business lot at a less cost than One Hundred Dollars * * * per story for each front foot of the lot * * *.
'5. No residence * * * shall be constructed * * * closer than Fifty * * * feet to the centre line of the adjacent street * * *.
'6. No garage * * * shall be used for residential purposes * * *.
'7. A septic tank * * * shall be put on the * * * property * * *.
'8. No spirituous or intoxicating liquor shall be manufactured, bartered or sold in * * * said subdivision * * *.
'9. No livestock shall be kept * * * in said subdivision * * *.
'10. No unlawful or immoral use shall be made of the premises * * * nor shall any interest therein be sold * * * to any person other than of the Caucasian race * * *.
'11. The privilege is hereby reserved to the said first party, its successors or assigns to erect and maintain electric and telephone poles, and suitable equipment for any other utilities and to lay water mains on or in the rear five feet of the land hereby conveyed, or on or in the three foot strip along the side line thereof, when necessary, to gain access to the five foot strip reserved along the rear lines of lots * * * for utility purpose and for such purposes as well as to repair, remove or replace said poles, equipment and mains, the said first party shall have the right for itself, its agents and employees to enter upon said premises in reasonable manner and at reasonable times.'

F. In 1960, the dedication in the plat was accepted by Dade County by a blanket resolution which accepted all previously unaccepted dedications in the county (R. 326-327). All of the tracts abutting the roads except for Tract 478 were the subject matter of tax deeds issued by the

State of Florida through the Trustees of the Internal Improvement Trust Fund in or before 1944.

G. All conveyances of the lots in the subdivision were made by deeds which contained specific references to the plat (R. 627). No deed contained language showing an intent contrary to that evidenced by the plat. None of the conveyances made express reference to the fee title to the roads.

H. On February 25, 1972 (R. 488, 764), Dade County conveyed all of its interest on Elliott Key to the United States. This condemnation proceeding was instituted on September 20, 1972, and a notice of Lis pendens was filed September 22, 1972.

I. Sterling traces its title to a quitclaim deed by the original subdivider dated March 3, 1959, to one J. A. Bechard, conveying unspecified tracts in Dade, Broward and Monroe Counties (R. 341, 328, 350-351, 511). Following mesne conveyances, the reversionary interest in the avenues, alleys, roads and boulevards in the Elliott Shores Subdivision was deeded to Sterling on August 16, 1972 (R. 341). There are no tax deeds in Sterling's chain of title.

J. In November 1972, Sterling instituted an action in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, to quiet title to the avenues, roads and boulevards in the Elliott Shores Subdivision (R. 453, 318). Dade County, the only named party defendant, disclaimed any ownership interest in the land (R. 485). Thereafter on January 24, 1973, the Florida court issued a judgment quieting title in Sterling (R. 505). The Florida court also found that 'the **dedication** of all avenues, **roads** and boulevards to the perpetual use of the public for proper purposes has been discontinued by law and the use thereof reverts to the fee owners' (R. 505, J.A. 145).

K. Summary of proceedings before the district court.-No. 72-1509-Civ-CF was instituted by the United States by a complaint filed on September 20, 1972 (R. 1-2), and amended on November 6, 1972 (R. 119), February 21, 1973 (R. 125, 179), April 13, 1973 (R. 225), and November 23, 1973 (R. 275), to condemn various lots in the Elliott Shores Subdivision on Elliott Key, including the fee to the road rights of way abutting ***480** the lots (up to the center line) but subject to 'existing easements for public roads and highways, public utilities, railroads and pipelines, and free and clear of all encumbrances or liens.'The property was acquired for inclusion in the Biscayne National Monument.

L. By motion, the United States asked the court to determine the ownership of the roads and boulevards in the Elliott Shores Subdivision.

M. The federal district court found that there was nothing in the original plat and the subsequent deeds of conveyance to show an intention on the part of the original subdivider to retain a fee interest in the streets and roads. The court held that the conveyances of the lots by reference to the plat carried title to the center of the abutting roadway subject to an easement in favor of the public (R. 627).

N. In addition, the district court held that, to the extent that the lot owners' chain of title showed tax deeds, these deeds would have extinguished the original subdivider's reversion, even assuming such a reversion had been retained.

O. Finally, the district court held that the establishment of the national monument did not effect a discontinuance of the public use of the road rights of way (R. 627-628).

P. As regards the interest of the lot owners, final judgments have been entered and payments have been made to them. All of the judgments were entered pursuant to settlement.

Although some eight questions of law have been certified, we find it unnecessary to decide most of them, because of the view we take of the case.

When Miami Bank, Sterling's predecessor in title, dedicated the platted roads 'to the perpetual use of the public for proper purposes,' it explicitly reserved to itself any reversionary interest, As against the public. Thereafter, all the lots in the plat were sold; and the deeds described the lots by reference to the plat. Because there was no mention of any reversionary interest in these transactions, the present case falls under the rule stated in Smith v. Horn, 70 Fla. 484, 70 So. 435, 436 (1915):
Where the owner of land has it surveyed, mapped, and platted, showing subdivisions thereof, with spaces for intervening streets or other highways between the subdivisions clearly indicated upon the map or plat, and conveyances in fee of the subdivisions are made with reference to such map or plat, the owner thereby evinces an intention to dedicate an easement in the streets or other highways to the public use as such, the title to the land under the street remaining in the owner or his grantees; and, where such conveyances are made with reference to the map or plat, the dedication of the easement for street purposes cannot be subsequently revoked as against the grantees, and the title of the grantees of subdivisions abutting on such streets, in the absence of a contrary showing, extends to the center of such highway, subject to the public easement. And, where the highway is lawfully surrendered, the then holder of the title to abutting property and to the center of the street has the property relieved of the public easement.

This rule dates from the decision in Florida Southern Ry. Co. v. Brown, 23 Fla. 104, 1 So. 512 (1887), and was applied in Servando Building Co. v. Zimmerman, 91 So.2d 289 (Fla.1956). In the present case, we hold that

the reversionary interest, retained by the subdivider, was subsequently conveyed, together with the lots, subject to the easement in favor of the public. The reversionary interest of Sterling's predecessor in title was distributed among the lot owners, as the lots were sold. It follows that Sterling has no interest of any kind in the parcel; none of its property was taken in the condemnation action, and the road easements in favor of the public are preserved.

In these circumstances, we conclude that consideration of the remaining certified questions would serve no useful purpose.

*481 OVERTON, C.J., and BOYD, ENGLAND and SUNDBERG, JJ., concur.
ADKINS and ROBERTS (Retired), JJ., dissent.
Fla. 1977.
U.S. v. 16.33 Acres of Land in Dade County
342 So.2d 476

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073-222—June 20, 1973

COUNTIES

MAINTENANCE AND REPAIR OF PRIVATE ROADS

To: Wayne Mixson, Representative, 7th District, Tallahassee

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May a county provide minor work or repairs on private roads and expend county funds therefor?

SUMMARY:

A county cannot legally provide minor work or repairs on private roads and cannot expend county funds therefor. County road funds may be expended only for the construction, maintenance, or repair of public roads which are part of the county road system.

Section 125.01(1)(m), F. S., authorizes the county to provide roads, and §125.01(1)(r) empowers the county to levy and collect taxes and special assessments therefor. The board of county commissioners is vested with control of county roads within its county, including the power and duty to maintain and repair such roads. Section 336.02, F. S. The maintenance and repair costs are paid from county funds. The fundamental criterion for the expenditure of county funds is that such expenditure will serve a county as contrasted to a private purpose. Article VII, §1, State Const., impliedly limits the imposition of taxes and the expenditure of tax revenues to public purposes. *See* City of Daytona Beach v. King, 181 So. 1, 5 (Fla. 1938), where the Florida Supreme Court quotes Cooley on Taxation, Vol. I, 4th Ed., p. 212, paragraph 87 and pp. 381 and 382, paragraph 174:

> "Public purpose of Tax.—It is the first requisite of lawful taxation, that the purpose for which it is laid shall be a public purpose. . . .
> Statement of Rule.—It is implied in all definitions of taxation that taxes can be levied for public purposes only; and the rule that taxes can be levied only for public purposes is so well settled that a lengthy citation of decisions so holding is unnecessary. This is said to be 'an underlying principle of our government.' . . . Likewise, taxation for other than public purposes is a taking of property without due process of law, within the meaning of the Fourteenth Amendment; and is also prohibited, it is said, by the provision of the Federal Constitution guaranteeing to every state a republican form of government."

See also, Green v. Frazier, 253 U.S. 233, 238 (1920), where the Supreme Court of the United States said:

> The due process of law clause contains no specific limitation upon the right of taxation in the states, but it has come to be settled that the authority of the states to tax does not include the right to impose taxes for merely private purposes.

Speaking about public (or county) purposes, the court, in Padgett v. Bay County, 187 So.2d 410 (1 D.C.A. Fla., 1966), said that "[t]he streets were for public use, and the test is not as to how much use is made of the road, but whether it is available to the public." A private road is, by its very nature, not available to the public, and the public has no right to travel by motor vehicle thereon. This being the case, the repair or maintenance of such a road cannot serve a public or county purpose. If a county cannot expend funds to maintain municipal roads which have not been properly designated as county roads or as a part of the county road system

and which are not used by the general public of the county, it certainly cannot do so to maintain private roads. Collins v. Jackson County, 156 So.2d 24 (1 D.C.A. Fla., 1963), involved an action to enjoin a county from using county equipment, materials, and labor in constructing roads on private property. The court noted that, at the inception of the suit, the county was using county road-building equipment to build roads on private property, that such an act was unlawful, and that injunctive relief was proper. Since the maintenance or repair of a private road is for the benefit of a private individual and not for the benefit of county residents in general, county funds cannot be expended for this purpose.

There is some indication in your letter that a private road might have been continuously used by the public, *i.e.*, a "long established road." Although a county may not maintain nonpublic roads, it is possible for the public, apart from the county, to acquire the right to use land as a roadway by prescription. *See* Downing v. Bird, 100 So.2d 57 (Fla. 1958), and AGO 073-151 for the requirements for acquisition by prescription. A prescriptive right is

> . . . acquired only by actual, continuous, uninterrupted use by the claimant of the lands of another, for a prescribed period. [An easement by prescription requires 20 years to mature.] In addition, the use must be adverse under claim of right and must either be with the knowledge of the owner or so open, notorious, and visible that knowledge of the use by and adverse claim of the claimant is imputed to the owner. . . . [T]he use . . . must be inconsistent with the owner's use and enjoyment of his lands and must not be a permissive use . . . . (Downing at 64.)

A county may acquire a right-of-way for public roadway purposes by operation of law under §337.31(1), F. S., which provides in part:

> Whenever any road constructed by any of the several counties or incorporated municipalities or by the division of road operations shall have been maintained, kept in repair or worked continuously and uninterruptedly for a period of four years by any county, municipality, or by the division of road operations, either separately or jointly, such road shall be deemed to be dedicated to the public to the extent in width which has been actually worked for the period aforesaid, whether the same has ever been formally established as a public highway or not.

Although the statute requires construction by the county, "construction" does not necessarily mean paving.

> When an offer to dedicate a road is made, a series of acts, over a period of time, which will develop or construct a road adequate to serve the needs of the community may be sufficient to constitute a construction in this sense.(See 10 Fla. Jur. *Dedication* §18.)

See also Pasco County v. Johnson, 67 So.2d 639 (Fla. 1953).

There can also be common-law dedication. Common-law dedication is the

> . . . setting apart of land for public use, and to constitute it there must be an intention by the owner, clearly indicated by his words or acts, to dedicate the land to public use, and an acceptance by the public of the dedication. [City of Palmetto v. Katsch, 86 Fla. 506, 98 So. 352, 353 (1923).]

Dedication may be by permissive conduct of the dedicator. One means which can be used to express purpose or intention to dedicate land to the public is by acquiescence of the owner in the use of his property by the public for public purposes, *id.* The public can be shown to have accepted it by using the land. If the private road referred to in your inquiry as a "long established road" has in fact been

used by the public as a public roadway, and if the owner of the private lands has in fact made a common-law dedication of such land or roadway legally sufficient to constitute a dedication thereof for public use, it is possible that such roadway may be considered dedicated to the public and to have been accepted by the public by means of public use. However, such mixed questions of fact and law must be determined by the courts in appropriate adversary proceedings initiated for that purpose.

Before a county can add new roads to the county road system, as authorized by §336.02, F. S., it is necessary that there be a determination by the county commissioners that such roads serve a public purpose. Only then can the county validly accept a dedication of a road as a county road. Attorney General Opinion 059-133. Said opinion also states that:

> The mere approval of a subdivision plat for record does not constitute a valid determination that the roads dedicated in that plat do, in fact, serve a county purpose. Nor does such approval constitute a valid acceptance of dedication as expressed by the plat.

The approval of a plat does not create an obligation "upon any governing body to perform any act of construction or maintenance within such dedicated areas except when the obligation is voluntarily assumed by the governing body." Section 177.081(2), F. S.

Your question as stated is answered in the negative.

073-223—June 20, 1973

SUNSHINE LAW

APPLICABILITY TO APPOINTIVE BOARDS

To: George F. Young, Chairman, Broward County Board of Rules and Appeals, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Are appointive bodies subject to §286.011, F. S., the Sunshine Law?

SUMMARY:

Appointive bodies, as well as elective, fall under the purview of the Sunshine Law. Advisory bodies can be controlled by the Sunshine Law. Committees of a governing board composed of members of the board must have public meetings when such meetings deal with matters pertaining to the duties and responsibilities of the board.

The Government in the Sunshine Law, §286.011, F. S., provides:

> (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.

There is no mention of a distinction between an elective or appointive body. The statute includes *all* boards and commissions. The court in Times Publishing Company v. Williams, 222 So.2d 470 (2 D.C.A. Fla., 1969), stated:

Florida Attorney General
Advisory Legal Opinion

Number: AGO 79-14
Date: February 16, 1979
Subject: Public funds, private roads

Roger G. Saberson
City Attorney
Delray Beach

QUESTION:

Can a city spend public funds to maintain privately owned streets in a residential subdivision located within the city without violating s. 10, Art. VII of the State Constitution?

SUMMARY:

A municipality may not lawfully expend public funds to repair or maintain *privately* owned roads or streets located within the municipality. Any expenditure of public funds must be for a primarily public purpose, with only incidental or secondary benefit to private interests.

I must point out, first, that only the courts, not this office, can officially determine and rule whether a particular expenditure of funds by a municipality violates s. 10, Art. VII, or any other provision of the State Constitution. Short of judicial adjudication of this matter, it is primarily and initially your responsibility as city attorney to advise the city council as to the validity of a particular expenditure or the likelihood that it might be ruled unconstitutional by the courts.

You stated in your letter that the roads or streets in question are 'private streets' and that they are 'privately owned.' Given this premise, it is certainly to be presumed that maintenance or repair of such private streets would be the responsibility of

the private owners thereof. The test for any expenditure of public funds by a municipality or other governmental entity in this state is whether the expenditure is for a purpose which primarily benefits the public, with any benefits to private interests being only incidental and secondary. O'Neill v. Burns, 198 So.2d 1 (Fla. 1967). I assume that in making the various references to 'private streets' and 'privately owned streets' in your letters you have determined that no municipal or public right to use of or easement over such roads or streets exists or has arisen, such as by prescriptive easement, common law dedication, or operation of law. *See* AGO's 078-88 and 073-222 for discussion of the several ways in which a municipality or the public (as distinct from the municipality) may gain the right to use land for public roadway purposes. In any event, such determinations, as pointed out in AGO 078-88, are mixed questions of fact and law which this office cannot determine. If any such factors exist, it is your responsibility to establish them and to apply to them the legal principles referred to herein.

Based on your statement of the facts involved, your question appears to have been answered by AGO 073-222. Although that opinion concerned maintenance of roads by a county, the home rule powers of municipality are of no real significance here, as the matter at issue is controlled by constitutional law and the fundamental doctrine of public purpose. In AGO 073-222, the question was: 'May a county provide minor work or repairs on private roads and expend county funds therefor?' The answer to that question was in the negative. It was stated in that opinion:

> The fundamental criterion for the expenditure of county funds is that such expenditure will serve a county as contrasted to a private purpose. Article VII, s. 1, State Const., impliedly limits the imposition of taxes and the expenditure of tax revenues to public purposes.

This principle of constitutional law applies with equal effect to municipalities and municipal funds. It was further stated in AGO 073-222 that '[a] private road is, by its very nature, not available to the public, and the *public has no right to travel* by motor vehicle thereon. This being the case, the repair or maintenance of such a road cannot serve a public or county purpose.' (Emphasis supplied.) In O'Neill v. Burns, 198 So.2d 1,

4 (Fla. 1967), the Supreme Court applied the prohibitions of s. 10, Art. IX, State Const. 1885 (the predecessor of current s. 10, Art. VII), to a proposed grant of state funds to the Junior Chamber of Commerce and quoted with approval the following analysis of the public purpose doctrine as stated by the trial court:

> It is only when there is some *clearly identified and concrete public purpose* as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished, that the state *or its subdivision* may disburse, loan or pledge public funds or property to a non-governmental entity such as a non-profit corporation . . .. (Emphasis supplied.)

See also Brumby v. City of Clearwater, 149 So. 203 (Fla. 1933), wherein the court found invalid a contract entered into by a municipality and a private individual, under which the municipality was to dredge a channel leading to the private individual's place of business. The court found such an expenditure of municipal funds to be violative of s. 10, Art. IX, State Const. 1885 (which, for the purposes of this opinion, was essentially the same as present s. 10, Art. VII, State Const.), as being for a primarily private purpose. *Cf.* Padgett v. Bay County, 187 So.2d 410 (1 D.C.A. Fla., 1966); and Collins v. Jackson County, 156 So.2d 24 (1 D.C.A. Fla., 1963), in which, although the issue had become moot by the county's acquisition of title to the roads and incorporation of them into the county road system during the pendency of the suit, the District Court of Appeal emphasized at 27 that its conclusion therein was 'not to be construed as condoning the expenditure of public funds on private property or the abuse of discretion that results when public funds are expended for purposes other than in furtherance of lawful objectives serving the public necessity and convenience.'

Based on the above-cited authorities, I am of the opinion that your question as stated should be answered in the negative. The expenditure of public funds by a municipality to repair or maintain *private* streets (in which the municipality has no property rights or interest and over which the public has no easement or right to use for roadway purposes or to travel) would appear to contravene s. 10, Art. VII, State Const., and would not meet the test of being for a primarily public purpose

with only incidental private benefit.

Prepared by:

Jerald S. Price
Assistant Attorney General

Florida Attorney General
Advisory Legal Opinion

Number: AGO 85-90
Date: October 30, 1985
Subject: Assessment on unrecorded subdivision

Mr. L. Michael Milbrath
County Attorney
Marion County
19 N.W. Pine Avenue
Room 200
Ocala, Florida 32670

Dear Mr. Milbrath:

This is in response to your request for an opinion on substantially the following question:

> WHETHER A NONCHARTER COUNTY CAN LEVY SPECIAL ASSESSMENTS AGAINST ALL TAXABLE REAL PROPERTY LOCATED IN AN UNRECORDED SUBDIVISION IN WHICH ACCESS TO ALL OR PORTIONS OF THE LOTS OR PARCELS OF LAND IS BY ROADS OR EASEMENTS NOT OWNED BY OR DEDICATED TO THE PUBLIC OR TO MARION COUNTY FOR THE PURPOSE OF MAKING ROAD AND DRAINAGE IMPROVEMENTS?

You state in your letter that there are several unrecorded subdivisions in Marion County in which access to all or portions of the lots or parcels of land is by roads or easements not owned by or dedicated to the public or to Marion County. You further state that the board of county commissioners has received several requests to perform road and drainage improvements on these private roads and easements.

Section 125.01(1)(r), F.S. (1984 Supp.), among other things, provides that the legislative and governing body of a county shall have the power to carry on county government which, to the extent not inconsistent with general or special law, shall include the power to "[l]evy and collect taxes, ... and special

assessments; ... which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law." (e.s.) While the legislative and governing body of a noncharter county has been granted broad home rule powers by s. 1(f), Art. VIII, State Const., as implemented by s. 125.01, F.S., and as construed by the Florida Supreme Court in Speer v. Olson, 367 So.2d 207, 211 (Fla.1978), such county derives no taxing and assessment power from s. 1(f) of Art. VIII, State Const. Such taxing and assessment power requires enabling legislation. See, ss. 1(a) and 9, Art. VII, State Const. Cf., City of Miami v. Brinker, 342 So.2d 115 (3 D.C.A.Fla., 1977) (municipality has no inherent power to levy assessments); AGO's 80-87, 82-9. Special assessments are charges assessed by a governmental agency or unit against particular parcels of land which have received a special benefit from the public improvement; the amount of the assessments is computed by apportioning all or part of the total cost of such improvements among the properties especially benefitted. See, City of Treasure Island v. Strong, 215 So.2d 473 (Fla.1968); Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla.1922); 48 Fla.Jur.2d Special Assessments s. 1; 70 Am.Jur.2d Special or Local Assessments ss. 1 and 18; 14 McQuillin Municipal Corporations ss. 38.02, 38.32 and 38.124. Special assessments place a special or local charge on the land involved on the basis that the property derives a special benefit in addition to the general benefit to the public. See, Hillsboro Island House Condominium Apartments, Inc. v. Town of Hillsboro Beach, 263 So.2d 209 (Fla.1972); Rosche v. City of Hollywood, 55 So.2d 909 (Fla.1952); Klemm v. Davenport, 129 So. 904 (Fla.1930).

While special assessments are distinguishable from taxes, they are levied under the taxing power and are, in a broad sense, a peculiar species of taxes. See, Jackson v. City of Lake Worth, 23 So.2d 526 (Fla.1945) (assessment for benefit, although not strictly speaking a tax, is a burden levied under power of taxation); State ex rel. Board of Supervisors of South Florida Conservancy District v. Caldwell, 35 So.2d 642 (Fla.1948); Anderson v. City of Ocala, 91 So. 182 (Fla.1922) (power exerted in imposing and collecting special assessments is the taxing power of the state). The levy of special assessments on real property is therefore subject to constitutional proscriptions limiting the imposition of taxes for public purposes. See, s. 1, Art. VII, State Const., which limits the imposition of taxes and the expenditure of tax revenues to public purposes. And see, s. 10, Art. VII, State Const. Thus, a special assessment must be

for a public purpose. See, Atlantic Coast Line R. Co. v. City of Lakeland, 115 So. 669, 676 (Fla.1927), wherein the Florida Supreme Court stated that "[t]he paving of streets and sidewalks results from the demand which arises for additional conveniences for the public at large, and the power to tax for it rests upon the existence of public necessity." The Court at 677 went on to conclude:

> There is in this state's Constitution no provision which may be construed or tortured into a construction authorizing a municipality to tax a citizen to make him build improvements for his own benefit merely. It must be for a public purpose or it is not a legitimate exercise of the taxing power, and it cannot be warranted under any other power known to constitutional government....

It is necessary in order for such assessment to be valid that the project be a public not a private project. 70 Am.Jur.2d Special or Local Assessments s. 17.

This office has previously addressed the issue of whether a county could provide minor work or repairs on private roads and expend county funds therefor. It was stated in AGO 73-222 that "[a] private road is, by its very nature, not available to the public, and the public has no right to travel by motor vehicle thereon. This being the case, the repair or maintenance of such a road cannot serve a public or county purpose." See also, Brumby v. City of Clearwater, 149 So. 203 (Fla.1933), wherein the Court found invalid a contract entered into by a municipality and a private individual, under which the municipality, was to dredge a channel leading to the private individual's place of business. In AGO 79-14, this office concluded that "[a] municipality may not lawfully expend public funds to repair or maintain privately owned roads or streets located within the municipality."

Applying these constitutional principles and judicial decisions to the facts presented in your inquiry, it would not appear, in my opinion, that roads or easements and drainage improvements to such roads or easements in a subdivision to which access to all portions of the lots or parcels of lands is by roads or easements not owned by or dedicated to the public or to the county, would serve a public purpose, and that such improvements would benefit only the private landowners since the roads or

easements are not owned by or dedicated to the public or Marion County. This conclusion is applicable to drainage improvements that are made as a concomitant to or an integral part of the road or easement improvements in question. No comment, however, is expressed herein as to any independent drainage improvements that are deemed necessary or expedient, for sanitary or agricultural purposes or conducive to the public health, convenience or welfare, or public utility, or for the benefit of any lands that are low, wet, submerged or liable to become submerged; for such projects the county may utilize the provisions of Ch. 157, F.S., to effectuate such drainage purposes.

Therefore, unless and until judicially determined to the contrary, it is my opinion that a county is not authorized to levy special assessments on all taxable real property located in an unrecorded subdivision in which access to all or portions of the lots or parcels of land is by roads or easements not owned by or dedicated to the public or to Marion County for the purpose of making road and drainage improvements to such private roads. However, if the county determines that a drainage project is necessary or expedient, for sanitary or agricultural purposes or conducive to public health, convenience or welfare, or public utility, or for the benefit of lands that are low, wet, submerged or liable to become submerged, the county may utilize the provisions of Ch. 157, F.S., to effectuate the purposes specified therein.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Craig Willis
Assistant Attorney General