

NOTE: A three-minute maximum time limit will be imposed on all comments from the public, regardless of the subject matter. A request form is available from the Deputy Town Clerk; fill it in and return it to her prior to the start of the meeting. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager

TOWN OF BAY HARBOR ISLANDS
QUASI-JUDICIAL PUBLIC HEARING
AGENDA
November 10, 2021

AGENDA

SPECIAL NOTICE – HYBRID MEETING

The Town of Bay Harbor Islands Public Hearing will take place in a Hybrid format where a quorum of the Town Council Members will be physically present at the Town Hall Council Chambers. Members of the public are welcome to participate in person or virtually via the Zoom platform.

Zoom Link: <https://us06web.zoom.us/j/93105017940>
Meeting ID: 931 0501 7940

To request to speak during Zoom Public Comment, please utilize the “raise your hand” Zoom feature on your electronic device. You will be recognized at the direction of the Zoom Meeting Host.

Members of the Public may also be admitted to the Council Chambers in person, for Public Comment, subject to social distancing and facial covering.

In addition, any member of the public who does not wish, or is unable to participate through the Zoom video conferencing platform, but would still like to participate can do so by listening to the meeting as it happens by dialing the Toll-free number below:

US Toll Free Number: 877 853 5247 or 888 788 0099
For higher quality, dial a number based on your current location.
US: 1 646 558 8656 or 1 301 715 8592 or 1 312 626 6799
Meeting ID: 931 0501 7940
Participant ID: Press the # key

To request to speak: Dial *9 on your telephone device to activate the “Raise your Hand” feature on the zoom platform.

Members of the Public can also submit their request to speak and/or comments via e-mail to the Office of the Town Clerk at achang@bayharborislands-fl.gov

CALL TO ORDER: 6:30 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL

1. **Public Hearing** for the purpose of hearing public comments with respect to an appeal filed by 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC regarding an April 14, 2021 Brownfield Area Designation at 1000 Kane Concourse, Bay Harbor Islands, Florida. Enclosed is a copy of the appeal correspondence and other supporting documents.
2. **Discussion and possible action** with respect to the appeal filed by 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC regarding the Town Council approval of a Brownfield Area Designation for the property located at 1000 Kane Concourse.

CONCLUSION OF PUBLIC HEARING - Approximately 7:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

November 10, 2021

ITEM NUMBER: 1.

ITEM: Public Hearing for the purpose of hearing public comments with respect to an appeal filed by 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC regarding an April 14, 2021 Brownfield Area Designation at 1000 Kane Concourse, Bay Harbor Islands, Florida. Enclosed is a copy of the appeal correspondence and other supporting documents.

DESCRIPTION:

Property owner / applicant: CBS Realty Holding, LLC

Folio Number: 13-2235-004-0010 and 13-2227-001-2470

Property Address: 1000 Kane Concourse, Bay Harbor Islands, FL 33154

Legal Description: Tract N of Nolan Brown; Lot 18, Block 12, of Bay Harbor Islands, according to the plat thereof, as recorded in plat book 46, page 5 of the public records of Miami-Dade County, Florida.

The subject property received approval to construct a three-story mixed-use building with retail space on the first floor and the new home for the Church by the Sea on the second and third floors.

On October 12, 2020, the Town received a submittal from the Goldstein Environmental Law Firm, P.A, the law firm representing CBS Realty Holding, LLC requesting a Brownfield Area Designation, pursuant to Section 376.80(2)(c), Florida Statutes.

Brownfield area designation proposed by persons other than a governmental entity. For designation of a Brownfield Area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed Brownfield Area shall provide notice and adopt a resolution to designate the Brownfield Area, pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following:

1. A person who owns or controls a potential Brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the Brownfield site.
2. The rehabilitation and redevelopment of the proposed Brownfield site will result in economic productivity of the area, along with the creation of at least five (5) new permanent jobs at the Brownfield site that are full-time equivalent positions not associated with the implementation of the Brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities, pursuant to the redevelopment of the proposed Brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a Brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.
3. The redevelopment of the proposed Brownfield site is consistent with the local Comprehensive Plan and is a permissible use under the applicable local Land Development Regulations.
4. Notice of the proposed rehabilitation of the Brownfield Area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be posted in the affected area.

5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the Rehabilitation Agreement and redevelopment of the Brownfield site.

The Town held two Public Hearings on March 10, 2021 and April 14, 2021 to consider the Brownfield Area Designation, pursuant to Section 376.80(2)(c), Florida Statutes. The applicant's request was approved at the April 14, 2021, Public Hearing and ratified at the April 20, 2021, Regular Council Meeting to allow for any additional public comments.

On Tuesday, May 11, 2021, the Town received an email correspondence appealing the Town Council's decision designating a Brownfield Area within the Town for the property at 1000 Kane Concourse.

Enclosed is a copy of the correspondence submitted by 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC, a response letter submitted by Mr. Brett Brumund of the Goldstein Environmental Law Firm, P.A. and other supporting documents.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk

ATTACHMENTS

1. Appeal of Brownfield Designation, Town Attorney Memo
2. 04-20-2021_ REQUEST FOR _PROCEDURAL DUE PROCESS._
3. 08.27.2021 Email-2
4. Letter in Opposition to Appeal of Resolution No. 2224 (00045643xC4D3E)
5. CBS Request 03.24.2021
6. BHI TC Staff Report CBTS Brownfield Area Request Dec 18 2020
7. 2224 - Brownfield Designation - 1000 Kane Concourse
8. 2- 1000 KC
9. LOCATION MAP- 1000KC

From: [Joseph Geller](#)
To: [Alba Chang](#); [Maria Lasday](#); [Jenice Rosado](#)
Subject: Neuhut Appeal of Brownfield Designation, Public Hearing and Council Consideration scheduled for November 10, 2021 at 6:30 pm
Date: Tuesday, November 2, 2021 4:48:54 AM
Attachments: [04-20-2021 REQUEST FOR PROCEDURAL DUE PROCESS..msg](#)
[L - A. Chang Town Clerk - Letter in Opposition to Appeal of Resolution No. 2224 \(00045643xC4D3E\).pdf](#)

Alba, as discussed, this is my memo to the Council regarding the upcoming “Neuhut Appeal” of the Town Council’s Designation of Brownfield Area of 1000 Kane Concourse, TBHI
Please distribute this to the Mayor and Council Members.

On May 11, 2021, Frances Neuhut filed the attached Exhibit, a letter which she has subsequently characterized as an appeal of the Council’s decision on April 14, 2021 (and “ratified” on April 20, 2021) designating 1000 Kane Concourse as a Brownfield Area within the meaning of Section 376.80, Florida Statutes.

Ms. Neuhut subsequently advised that the “appeal” was brought not only on behalf of her and her husband, Denis Neuhut, but also on behalf of 1060 Kane Concourse, Inc., 1048 LLC, and 1063-1073 95th St.

On July 12, 2021, attorney Michael Goldstein, representing the property owner of 1000 Kane Concourse, TBHI, filed the attached letter in response to the “appeal”.

My opinion and recommendation to the Council follows.

The letter from Ms. Neuhut argues that the Town violated procedural due process in its approval of the Brownfield Area designation of 1000 Kane Concourse. It further references the purchase of the property back in 2016 by an affiliate entity of Church By The Sea, a religious institution, and argues that the Town stands to lose a great deal of revenue because this very valuable property will be exempt from local taxation as a religious institution. It is not clear what government action it is alleged was taken, or not taken, in relation to the purchase five (5) years ago. No specific violation of procedural due process is alleged in connection with the approval of the Brownfield Area designation; rather, the complaint seems to be related to the status of the property owner as a religious institution, or an affiliate thereof.

The letter from attorney Michael Goldstein makes essentially seven (7) numbered arguments, the first three of which relate to why the “Neuhut letter” should not be considered an appeal, and the last four of which relate to why the appeal, if brought, should not be granted.

As to the first three contentions in the Goldstein letter, that the matter is not a proper appeal, for the reasons set forth therein, I decline to rule the matter out of order in its entirety, and urge the Town Council not to do so either. This is not to say that those first three arguments are without merit. That is a decision for judges to make, if the matter ever goes to litigation. I simply do not believe that the Town should elevate form over substance by deciding, for example, that the failure to use the word “appeal” in the letter is dispositive of the outcome when a Town resident seeks to challenge a Council decision. A court might well disagree, but the Town has other considerations beyond the strict letter of the law. The Town Council is free to disagree with me on this point, and it

is the Council's prerogative to do so where this does not deprive anyone of protected rights, as I believe this does not.

We then turn to the substantive merits of the appeal. The "appeal letter" does not state what Town action or inaction assisted the property owner in its purchase of the property. Even more significantly, in my opinion, is the fact that the "appeal" does not allege how the complainant's procedural due process rights were violated. No specific failure of process is alleged. Indeed, the public records relating to the approval of the Brownfield Area Designation show that the matter was duly noticed and advertised, heard at two separate public hearings, as required, that the complainant in fact appeared and spoke against the resolution, and that for certain procedural reasons, the matter was actually heard again for "ratification" at a third meeting, on April 20, 2021. Nothing about this record seems to demonstrate a violation of procedural due process, in my opinion.

In this regard, I would state that numbered arguments 4-7 of Mr. Goldstein's letter appear to me to be correct, notwithstanding that I have declined to agree with his arguments in points 1-3 of his letter.

Perhaps most significantly, not only does the "appeal" fail to demonstrate any non-compliance with the Brownfields statute (cited above), it suffers from an even more fundamental problem. Simply put, it does not appear that the appeal complains, in any way, about the actual Brownfields Area designation or its effect.

The Brownfields Area designation is essentially an acknowledgement that a particular property is suffering from certain types of environmental pollution, for the purpose of directing public funds to assist in the cleanup. It does not appear that the complainant is disputing the existence of pollution at the property site. Nor does she, or they, appear to specifically argue against the use of public funds to, in effect, help to clean up the Town of Bay Harbor Islands. Rather, the complaint appears to argue against the religious nature of the property ownership and its consequences. Whether or not this is a meritorious argument, it does not appear to be related in any way to the Town's decision to designate the property as a Brownfield, nor would any reversal of the designation solve the underlying complaint in any way.

Of course, the Town Council should listen to any evidence and argument presented at the appeal hearing before making a decision.

Accordingly, for the reasons outlined herein, I recommend that the Town Council permit the appeal hearing to go forward, listen to the evidence and argument presented, and unless something is submitted sufficient to overcome the analysis herein, that the Town Council should then deny the appeal.

I would be happy to answer any questions any of you may have.

Sincerely,

Joseph S. Geller, Esq.

Greenspoon Marder LLP
Town Attorneys



Joseph S. Geller, Esq.

Partner

200 East Broward Boulevard, Suite 1800

Fort Lauderdale, FL 33301

Tel.: 954.491.1120

joseph.geller@gmlaw.com

www.gmlaw.com

GREENSPOON MARDER LLP LEGAL NOTICE

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A portion of our practice involves the collection of debt and any information you provide will be used for that purpose if we are attempting to collect a debt from you.

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joseph.geller@gmlaw.com

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From: [Denis Neuhut](#)
To: [Joshua D. Fuller](#)
Cc: [Elizabeth Tricoche](#); [Robert Yaffe](#); [Isaac Salver](#); [Stephanie Bruder](#); [Molly Diallo](#); [Jordan W. Leonard](#); [Maria Lasday](#); [Alba Chang](#)
Subject: 04-20-2021: REQUEST FOR "PROCEDURAL DUE PROCESS."
Date: Tuesday, May 11, 2021 8:59:35 AM

May 11, 2021

VIA ELECTRONIC MAIL

The Honorable Mayor Joshua Fuller
and Honorable Town Council
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Fl. 33154

RE: April 20th., 2021: Council approval of a "resolution designating a Brownfield area for the property located 1000 Kane Concourse, Bay Harbor Islands, Florida, pursuant to Section 376.80(2)©, Florida Statutes.

Dear Honorable Mayor and Council:

Our firm represents both my husband Dr. Denis S. Neuhut, and myself, Mrs. Frances Neuhut, who own property in the Town's B-1 Business District along Kane Concourse and 95th. Street. It has come to our attention that Church by the Sea, the beneficial owner of B-1 zoned property located at 1000 Kane Concourse (the "Property"), a religious tax-exempt facility, is seeking to establish a "resolution designating a Brownfield area at that location." We write to you to confirm that the Town will abide by its resolutions which require any such establishment procedural due process before the Town Council.

Based on available public records, CBS Realty Holding, LLC, whose managing member is Church by the Sea, Inc., purchased the Property from Ocean Cadillac for \$20,000,000 in a transaction that closed on June 1, 2016, after selling property its owned adjacent to Bal Harbour Shops for \$30,000,000 in a transaction that closed on January 29, 2016. Church by the Sea, the beneficial owner of B-1 zoned property (Folio #13-2235-004-0010 and Folio #13-2227-001-2470) located at 1000 Kane Concourse (the "Property") received by resolution, Town Council approval on April 20th. 2021 to designate (the "Property") as a Brownfield Site.

Importantly, and according to Procedural Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution: "When the government seeks to deprive a person of life, liberty, or property, the procedural due process requires at least for the government to afford the person notice, an opportunity to be heard, and a decision made by a neutral decision maker."

As such, the Town Council should consider the fact that, if a religious institution, who has the most desirable parcels of land in the Town's B-1 Business District along Kane Concourse, and is designated five years later as a "Brownfield Site" on the "Property," the Town stands to lose tens of thousands of dollars in annual tax revenue due to also devaluing "Property" in

close vicinity. This is besides, the programming at the Tax-Exempt Church by the Sea, which upon information and belief, will include a school and meetings for persons who are addicted to drugs and alcohol.

We trust that the Town will abide by its Code and, at a minimum, require any proposed religious institution of the Property at 1000 Kane Concourse to undergo evaluation and review at a Council Public Hearing (Florida Statutes 286.0105). Thank you for your prompt attention to this matter.

Very truly yours,
Frances Neuhut

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To: achang@bayharborislands-fl.gov

Message Score: 50

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Medium (75): **Pass**

From: drdenis1@yahoo.com

Low (90): **Pass**

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From: [Denis Neuhut](#)
To: [Alba Chang](#)
Subject: Re: 07-21-2021 "CJURCH BY THE SEA" & THE TRUTH!
Date: Friday, August 27, 2021 4:17:37 PM

Correct.

Sent from my iPhone

On Aug 27, 2021, at 3:26 PM, Alba Chang <achang@bayharborislands-fl.gov> wrote:

Good Afternoon Mrs. Neuhut,

I would like to confirm your amendment to the name of the party appealing the Town Council decision of Brownfield Designation for the property located at 1000 Kane Concourse is as follow:

1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC (the "Firm" and/or Corporations' Appeal").

*Alba L. Chang, CMC
Town Clerk*

*Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Ph. 305-866-6241
Fax 305-866-4863
Email: achang@bayharborislands-fl.gov
Website: www.bayharborislands-fl.gov*

From: Denis Neuhut <drdenis1@yahoo.com>
Sent: Friday, July 16, 2021 11:00 PM
To: Maria Lasday <mlasday@bayharborislands-fl.gov>
Cc: Joshua D. Fuller <jfuller@bayharborislands-fl.gov>; Elizabeth Tricoche <etricoche@bayharborislands-fl.gov>; Robert Yaffe <ryaffe@bayharborislands-fl.gov>; Isaac Salver <isalver@bayharborislands-fl.gov>; Stephanie Bruder <sbruder@bayharborislands-fl.gov>; Molly Diallo <mdiallo@bayharborislands-fl.gov>; Jordan W. Leonard <jleonard@bayharborislands-fl.gov>; steven.hurwitz@am.jll.com; jgavcovich@aol.com; oscar@sklarchitect.com; Alan Bebachik <abebchik@gmail.com>; wesley@kodamiami.com; Janet Adler <Janet@JanetAdlerRealty.com>; Alba Chang

<achang@bayharborislands-fl.gov>

Subject: 07-21-2021 "CJURCH BY THE SEA" & THE TRUTH!

Dear Maria,

(1). Before the (07-21-2021) Council Public Hearing, will you please correct the **APPEAL** filed by Mrs. Frances Neuhut, and instead, state is on behalf of 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC (the "Firm" and/or Corporations' Appeal").

NOTE: They are the same ("Firm"/ Corporation) names used as when {alleged Lobbyist} Amy E. Huber ("for the firm"), and on behalf of "The Church by the Sea, Inc." hand delivered to the Mayor Jordan Leonard and Council a "Response to Corporations' **APPEAL** September 30, 2016.

(2). Why on the (BHI) Town Internet, the (08-19-2016) "CHURCH BY THE SEA's (08-19-2016) Development Site Plan and alleged **Building Permit** approval by the Town Planner (DRC) and the P&Z Board appears to have been ERASED?

Therefore, the Town Planner's "Church" location description still shows together their location 1000 Kane Concourse as "Tract N" and Lot 18 of Block 12, recorded in the Public Records of Miami-Dade County:

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From: drdenis1@yahoo.com

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<IMG_0235.jpeg>

(3): Therefore, why had the (BHI) Building Dept. leave out (**Lot 18 of Block 12**) for Owner/Developer "Church by the Sea," when they issued them a (12-12-2019) "DEMOLITION PERMIT," and (06-29-2020) "BUILDING PERMIT?"

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THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.
Brownfields, Due Diligence, Development, Permitting, Cleanups & Compliance

2100 Ponce de Leon Boulevard, Suite 710
Coral Gables, FL 33134
Telephone: (305) 777-1680
www.goldsteinenvlaw.com

Michael R. Goldstein, Esq.
Direct Dial: (305) 777-1682
Email: mgoldstein@goldsteinenvlaw.com

July 12, 2021

Via Email Only

Alba L. Chang, CMC, Town Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

**Re: Response to Appeal of Resolution No. 2224, Approved by the Town Council of the
Town of Bay Harbor Islands, Florida on April 14, 2021, and Ratified on April 20, 2021**

Dear Ms. Chang:

This Firm represents CBS Realty Holding, LLC (“CBS Realty”), in connection with the request to have property located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154 (the “Subject Property”) designated a Brownfield Area pursuant to §376.80, Florida Statutes. The request was submitted to the Town Clerk on October 12, 2020, and brought before the Town Council in public hearings on March 10, 2021; April 14, 2021; and April 20, 2021. The CBS Realty request was approved at the April 14, 2021, public hearing and ratified at the April 20, 2021, hearing. The Resolution approving the designation was signed on April 14, 2021, and transmitted to the Florida Department of Environmental Protection on May 26, 2021. CBS Realty has detrimentally relied on the Town’s approval.

On May 21, 2021, the Town Clerk forwarded an email to the undersigned, enclosed herein, that was sent from the email account on drdenis@yahoo.com on May 11, 2021. The email appears to have been sent by Frances Neuhut (hereinafter the “Neuhut Email”). The subject of the Neuhut Email is “04-2021: REQUEST FOR PROCEDURAL DUE PROCESS.”¹ In the transmittal, the Town Clerk

¹ The text of the Neuhut Email, a complete copy of which is enclosed at Exhibit A, states in full:

Dear Honorable Mayor and Council:

Our firm represents both my husband Dr. Denis S. Neuhut, and myself, Mrs. Frances Neuhut, who own property in the Town’s B-1 Business District along Kane Concourse and 95th. Street. It has come to our attention that Church

stated, “attached find the email correspondence from resident Frances Neuhut appealing the April 14th and 20th Town Council decision of Brownfield Designation for the above-reference property.” In correspondence dated June 25, 2021, to the undersigned, the Town Clerk stated, “that the Town has scheduled a Public Hearing for Wednesday, July 21, 2021, at 6:00 p.m. with respect to the appeal relating to the approval of a Brownfield Area Designation for the property located at 1000 Kane Concourse.” On July 9, 2021, the Town Clerk wrote to the undersigned and the undersigned’s colleague, Brett Brumund, requesting that the Firm submit its response by July 12, 2021. Later that same day, the Town Clerk wrote to Mr. Brumund, with a copy to the undersigned, stating that the Town Attorney “advised” that the Neuhut Email is being treated as a “formal appeal.” This letter and the paragraphs that follow constitute the response requested by the Town Clerk no later than June 12, 2021.

1. On its face, the Neuhut Email does not constitute an appeal. It does not use the word “appeal” or any similar term in the subject line or the body of the email, nor does it request a rehearing or any similar action that could reasonably be characterized as a petition to the Town Council to revisit any action previously taken by the Town Council. More specifically, the Neuhut Email fails to request, petition, or ask for any form of relief or any kind from any action previously taken by the Town Council at any of the three public hearings on this matter.

by the Sea, the beneficial owner of B-1 zoned property located at 1000 Kane Concourse (the “Property”), a religious tax-exempt facility, is seeking to establish a “resolution designating a Brownfield area at that location.” We write to you to confirm that the Town will abide by its resolutions which require any such establishment procedural due process before the Town Council.

Based on available public records, CBS Realty Holding, LLC, whose managing member is Church by the Sea, Inc., purchased the Property from Ocean Cadillac for \$20,000,000 in a transaction that closed on June 1, 2016, after selling property its owned adjacent to Bal Harbour Shops for \$30,000,000 in a transaction that closed on January 29, 2016. Church by the Sea, the beneficial owner of B-1 zoned property (Folio #13-2235-004-0010 and Folio #13-2227-001-2470) located at 1000 Kane Concourse (the “Property”) received by resolution, Town Council approval on April 20th. 2021 to designate (the “Property”) as a Brownfield Site.

Importantly, and according to Procedural Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution: “When the government seeks to deprive a person of life, liberty, or property, the procedural due process requires at least for the government to afford the person notice, an opportunity to be heard, and a decision made by a neutral decision maker.”

As such, the Town Council should consider the fact that, if a religious institution, who has the most desirable parcels of land in the Town’s B-1 Business District along Kane Concourse, and is designated five years later as a “Brownfield Site” on the “Property,” the Town stands to lose tens of thousands of dollars in annual tax revenue due to also devaluing “Property” in close vicinity. This is besides, the programming at the Tax-Exempt Church by the Sea, which upon information and belief, will include a school and meetings for persons who are addicted to drugs and alcohol.

We trust that the Town will abide by its Code and, at a minimum, require any proposed religious institution of the Property at 1000 Kane Concourse to undergo evaluation and review at a Council Public Hearing (Florida Statutes 286.0105). Thank you for your prompt attention to this matter.

2. The Neuhut Email cannot be characterized as an appeal and, in fact, is not an appeal because it is entirely prospective in that it states that the Town Council is “seeking to establish” a resolution and requests that the Town Council abide by self-imposed due process criteria. Appeals, logically, are of actions previously taken, not that will occur in the future.
3. Because the Neuhut Email does not claim that procedural due process was not provided and because it does not otherwise complain of, cite to, any particular action that the Town Council took or failed to take at any of the three public hearings but speaks entirely to actions that the Town Council will or may take in the future, it appears that the concerns expressed in the Neuhut Email were meant to be submitted prior to one or all of the required public hearings on this item. It would be improper to now construe the Neuhut Email as an appeal of actions taken by the Town Council when nothing in it indicates this to be the case.
4. To the extent that the Neuhut Email is considered by the Town Council to be an appeal, which it is not, the argument that the appeal should be granted based on deprivation of procedural due process lacks merit due the fact that CBS Realty and the Town complied with or exceeded all statutory notice requirements as required by law, including the following:
 - CBS Realty posted notice of the proposed designation and notice of a virtual community meeting on the Subject Property with a sign visible to Kane Concourse;
 - CBS Realty published notice of the proposed designation and notice of a virtual community meeting in the *Miami Herald* newspaper on October 18, 2020;
 - CBS Realty posted notice of the proposed designation and notice of a virtual community meeting in the community bulletin section of Craigslist on October 20, 2020;
 - the Town announced the upcoming public hearings at the scheduled Town Council meeting held on February 10, 2021;
 - the Town mailed notice of the public hearing to property owners within 375 feet of the Subject Property during the week of February 25, 2021;²
 - the Town published notice of the first public hearing in the *Miami Herald* newspaper on February 25, 2021; and

² Actual notice via U.S. mail is not a statutory requirement for brownfield area designations pursuant to §376.80, Florida Statutes. Accordingly, the notice sent via U.S. Mail, which went to all property owners within 375 feet of the Subject Property, exceeded the due process required by law.

- the Town published notice of the second public hearing in the *Miami Herald* newspaper on April 1, 2021.
5. To the extent that the Neuhut Email is considered by the Town Council to be an appeal, which it is not, the argument that the appeal should be granted based on deprivation of procedural due process lacks merit due to the fact that Ms. Neuhut was present at all three public hearings and gave testimony in opposition to the application at all three public hearings.
 6. To the extent that the Neuhut Email is construed as an appeal, which it is not, such appeal lacks merit as the statements made in the Neuhut Email do not speak to any of the applicable statutory criteria contained in § 376.80(2)(c), Florida Statutes, of Florida's Brownfields Redevelopment Act. In fact, nowhere in the Neuhut email is even one of the five applicable criteria cited.
 7. To the extent that the Neuhut Email is construed as an appeal, which it is not, such appeal lacks merit as the Neuhut Email fails to provide any evidence that CBS Realty, the Town's professional staff, or the Town Council violated any of the applicable statutory criteria contained in § 376.80(2)(c), Florida Statutes, of Florida's Brownfields Redevelopment Act.

In addition to the arguments presented above, CBS Realty reserves other arguments to present at the next Town Council meeting and in any judicial proceeding that may arise out of this matter.

Very truly yours,

THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.

Michael R. Goldstein

Michael R. Goldstein
/mrg

Enclosure

Cc: Joseph Geller, Esq., Town Attorney for Town of Bay Harbor Islands, Florida
CBS Realty Holding, LLC
Brett C. Brumund, Esq.

Exhibit A

From: [Denis Neuhut](#)
To: [Joshua D. Fuller](#)
Cc: [Elizabeth Tricoche](#); [Robert Yaffe](#); [Isaac Salver](#); [Stephanie Bruder](#); [Molly Diallo](#); [Jordan W. Leonard](#); [Maria Lasday](#); [Alba Chang](#)
Subject: 04-20-2021: REQUEST FOR "PROCEDURAL DUE PROCESS."
Date: Tuesday, May 11, 2021 8:59:34 AM

May 11, 2021

VIA ELECTRONIC MAIL

The Honorable Mayor Joshua Fuller
and Honorable Town Council
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Fl. 33154

RE: April 20th., 2021: Council approval of a "resolution designating a Brownfield area for the property located 1000 Kane Concourse, Bay Harbor Islands, Florida, pursuant to Section 376.80(2)©, Florida Statutes.

Dear Honorable Mayor and Council:

Our firm represents both my husband Dr. Denis S. Neuhut, and myself, Mrs. Frances Neuhut, who own property in the Town's B-1 Business District along Kane Concourse and 95th. Street. It has come to our attention that Church by the Sea, the beneficial owner of B-1 zoned property located at 1000 Kane Concourse (the "Property"), a religious tax-exempt facility, is seeking to establish a "resolution designating a Brownfield area at that location." We write to you to confirm that the Town will abide by its resolutions which require any such establishment procedural due process before the Town Council.

Based on available public records, CBS Realty Holding, LLC, whose managing member is Church by the Sea, Inc., purchased the Property from Ocean Cadillac for \$20,000,000 in a transaction that closed on June 1, 2016, after selling property its owned adjacent to Bal Harbour Shops for \$30,000,000 in a transaction that closed on January 29, 2016. Church by the Sea, the beneficial owner of B-1 zoned property (Folio #13-2235-004-0010 and Folio #13-2227-001-2470) located at 1000 Kane Concourse (the "Property") received by resolution, Town Council approval on April 20th. 2021 to designate (the "Property") as a Brownfield Site.

Importantly, and according to Procedural Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution: "When the government seeks to deprive a person of life, liberty, or property, the procedural due process requires at least for the government to afford the person notice, an opportunity to be heard, and a decision made by a neutral decision maker."

As such, the Town Council should consider the fact that, if a religious institution, who has the most desirable parcels of land in the Town's B-1 Business District along Kane Concourse, and is designated five years later as a "Brownfield Site" on the "Property," the Town stands to lose tens of thousands of dollars in annual tax revenue due to also devaluing "Property" in

close vicinity. This is besides, the programming at the Tax-Exempt Church by the Sea, which upon information and belief, will include a school and meetings for persons who are addicted to drugs and alcohol.

We trust that the Town will abide by its Code and, at a minimum, require any proposed religious institution of the Property at 1000 Kane Concourse to undergo evaluation and review at a Council Public Hearing (Florida Statutes 286.0105). Thank you for your prompt attention to this matter.

Very truly yours,
Frances Neuhut

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THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.
Brownfields, Due Diligence, Development, Permitting, Cleanups & Compliance

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March 24, 2021

Via Email Only

Alba L. Chang, CMC, Town Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Response to Questions and Requests for Additional Information from the Mayor and Town Council of the Town of Bay Harbor Islands, Florida (the “Town”) from March 10, 2021, Brownfield Area Designation Public Hearing for Property Located at 1000 Kane Concourse, Bay Harbor Islands, FL (the “Subject Property”)

Dear Ms. Chang:

On behalf of CBS Realty Holding, LLC (“CBS”), we respectfully submit this letter in response to the questions and requests raised by the Mayor, Vice Mayor, and Councilmembers at the public hearing held on March 10, 2021. The specific questions and requests addressed in this letter are: 1) revision of the Brownfield Area Designation Eligibility Statement (the “Eligibility Statement”) and 2) documentation detailing the corporate structure of the applicant, CBS, and its sole managing member, The Church by the Sea Inc. (the “Church”).

I. Revisions to Eligibility Statement

In response to Vice Mayor Fuller’s request to revise Section I.2. of the Eligibility Statement, CBS amends this section to read as follows:¹

2. Economic Productivity. As the second requirement for designation, Florida Statutes § 376.80(2)(c)(2) provides that “[t]he rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the rehabilitation agreement or an agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement shall not apply to the rehabilitation and redevelopment of a

¹ A complete copy of the revised Eligibility Statement is enclosed at Exhibit A.

brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.”

CBS satisfies this criterion in that, first, the Project will result in significant economic productivity of the area. Specifically, the planned 9,000 square foot retail component of this mixed-use project will contribute to the economic productivity of the area by providing goods and services to residents and visitors in the Town. CBS further satisfies this criterion in that the Project will create more than five new permanent jobs at the Subject Property associated with future retail tenants and operation of the Church itself. For all the reasons discussed herein, CBS meets this second criterion.

Although there may be some indirect positive economic impact for the Town generated by the implementation of the redevelopment and rehabilitation project itself, § 376.80(2)(c)(2), Florida Statutes, requires that the completed redevelopment generate economic productivity to satisfy this second requirement for designation. As stated in both the original statement of economic productivity and in the revised statement above, the completed redevelopment will include a ground floor retail component fronting Kane Concourse that will create more than five new permanent, full time equivalent jobs not associated with the redevelopment or rehabilitation and will contribute to the economic productivity of the area.

II. Corporate Structure, Membership, and Corporate Officers of CBS and the Church

With respect to the corporate structure of the applicant itself, CBS is managed by its sole member, the Church, a Florida not for profit corporation with a principal address of 1045 95th Street, Bay Harbor Islands, Florida 33154. The most recent Florida Department of State, Division of Corporations (the “Department of State”) records for the Church name Karin Matos and Chris Bernstein as Co-Presidents and name Jason Nevader as Treasurer and Co-Secretary. In support of this structure, enclosed are the following:

- Limited Liability Company Operating Agreement of CBS Realty Holding, LLC, dated October 1, 2017;²
- 2020 Florida Limited Liability Company Annual Report for CBS Realty Holding, LLC, filed with the Department of State on June 4, 2020;³
- Amended Articles of Incorporation of the The Church by the Sea Inc., filed with the Department of State on June 6, 2012;⁴ and
- 2020 Florida Not For Profit Corporation Annual Report for The Church by the Sea Inc., filed with the Department of State on February 7, 2020.⁵

² Enclosed at Exhibit B.

³ Enclosed at Exhibit C.

⁴ Enclosed at Exhibit D.

⁵ Enclosed at Exhibit E.

Alba L. Chang, CMC, Town Clerk, Town of Bay Harbor Islands, Florida

March 24, 2021

Page 3 of 3

Thank you for the opportunity to address the Town Council's questions prior to the second public hearing scheduled on April 14, 2021. Should you or the Town Council have any additional questions or would like to request any additional information, please let us know.

Very truly yours,

THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.

Brett C. Brumund

Brett C. Brumund

/bcb

Enclosures

Cc: Frank Simone, Esq., Town Attorney for Town of Bay Harbor Islands, Florida
CBS Realty Holding, LLC

Exhibit A

Brownfield Area Designation Eligibility Statement

CBTS Green Reuse Area

1000 Kane Concourse, Bay Harbor Islands, Florida 33154

Folio Numbers 13-2235-004-0010 and 13-2227-001-2470

CBS Realty Holding, LLC (“CBS”)¹ proposes to redevelop and rehabilitate two parcels of land located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470 (the “Subject Property”) with a new mixed-use development. Once complete, the Subject Property will contain a single 76,000 square foot, three-story building with parking, retail, and lobby for the Church by the Sea (the “Church”) on the ground floor and space for the Church on the second and third floors (the “Project”). As demonstrated herein, the Project meets all five of the applicable designation criteria set forth at § 376.80(2)(c), Florida Statutes.² In addition, the Subject Property meets the definition of a “brownfield site” pursuant to § 376.79(4), Florida Statutes.

I. Subject Property Satisfies the Statutory Criteria for Designation

1. Agreement to Redevelop the Brownfield Site. As the first requirement for designation, Florida Statutes § 376.80(2)(c)(1) provides that “[a] person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.”

CBS satisfies this criterion in that it owns the Subject Property and has agreed to redevelop and rehabilitate it. See Special Warranty Deed, at Attachment B. Accordingly, CBS meets this first criterion.

2. Economic Productivity. As the second requirement for designation, Florida Statutes § 376.80(2)(c)(2) provides that “[t]he rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the rehabilitation agreement or an agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.”

CBS satisfies this criterion in that, first, the Project will result in significant economic productivity of the area. Specifically, the planned 9,000 square foot retail component of this mixed-use project will contribute to the economic productivity of the area by providing goods and services to residents and visitors in the Town. CBS further satisfies this criterion in that the Project will create more than five new permanent jobs at the Subject Property associated with future retail tenants and operation of the Church itself. For all the reasons discussed herein, CBS meets this second criterion.

3. Consistency with Local Comprehensive Plan and Permittable Use under Local Land Development Regulations. As the third requirement for designation, Florida Statutes § 376.80(2)(c)(3) provides that “[t]he redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations.”

CBS satisfies this criterion in that the Subject Property is located within a B-1 Business zoning district with a Commercial designation on the Town’s future land use map. The Town’s B-1 Business District is designed to allow higher intensity

¹ CBS is managed by its sole member, The Church by the Sea Inc., a Florida not for profit corporation.

² A copy of § 376.80, Florida Statutes, can be found at Attachment A to this Eligibility Statement.

development on the Town's eastern island fronting Kane Concourse. This district specifically allows development of projects with a mix of uses including retail, restaurant, and religious institutions provided the religious use is located on the second floor of the building or higher.³ This consistency and permissibility is further reflected in the Town's issuance of Building Permit No. B19-000232 for the construction of a new mixed use retail/worship/commercial building on June 29, 2020.⁴ For these reasons, CBS meets this third criterion.

4. Public Notice and Comment. Florida Statutes § 376.80(2)(c)(4) stipulates that “[n]otice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be posted in the affected area.” Additional notice requirements pertaining to applicants other than a governmental entity can be found at Florida Statutes § 376.80(1)(c)(4)(b) and consist of publication in a newspaper of general circulation in the area, publication in ethnic newspapers or local community bulletins, and announcement at a scheduled meeting of the local governing body before the actual public hearing.

CBS satisfies all applicable notice and opportunity to comment requirements established by Florida Statutes §376.80(2)(c)(4) and § 376.80(1)(c)(4)(b) as follows:

- (i) notice is being posted at the Subject Property;*
- (ii) notice is being published in the Miami Herald;*
- (iii) notice is being published in the community bulletin section of Craigslist; and*
- (iv) a virtual community meeting will be held using a video and teleconferencing platform.*

All notices will contain the following narrative:

Representatives for CBS Realty Holding, LLC., will hold a virtual community meeting on October 26, 2020, at 5:30 p.m. to not later than 7:00 p.m. for the purpose of affording interested parties the opportunity to provide comments and suggestions about the potential designation of land located at 1000 Kane Concourse, Bay Harbor Islands 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470, as a Green Reuse Area. The designation is being made pursuant to Section 376.80, Florida Statutes, of Florida's Brownfield Redevelopment Act, and will involve two public hearings before the Bay Harbor Islands Town Council. The virtual community meeting will also address future development and rehabilitation activities planned for the site.

The virtual community meeting is free and open to all members of the public. Please register at <http://bit.ly/CBTSMeeting> or call (305) 640-5300 before the meeting to receive instructions for accessing the virtual meeting. For additional instructions on how to join, or to provide comments and suggestions regarding designation, development, or rehabilitation at any time before or after the meeting date, please contact CBS Realty Holding, LLC's representatives, Michael R. Goldstein or Brett C. Brumund who can be reached by phone at (305) 640-5300, by email at bbrumund@goldsteinenvlaw.com, and/or U.S. Mail at The Goldstein Environmental Law Firm, P.A., 2100 Ponce de Leon Blvd., Suite 710, Coral Gables, FL 33134.

Proof of publication and posting will be provided to the Town.

5. Reasonable Financial Assurance. As the fifth requirement for designation, Florida Statutes § 376.80(2)(c)(5) provides that “[t]he person proposing the area for designation has provided reasonable

³ See Bay Harbor Islands, Fla., Code of Ordinances, § 23-5.

⁴ A copy of Building Permit No. B19-000232 is available at Attachment C.

assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”

The total capital budget of approximately \$32.9 million for the Project is fully funded through the financial resources of CBS’ manager, the Church.⁵ The financial position of the Church, as manager and funding source for CBS, provides reasonable assurance that CBS has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan. It therefore satisfies this fifth criterion.

II. Subject Property Meets the Definition of Brownfield Site

Section 376.79(4), Florida Statutes, defines “brownfield site” to mean “. . . real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.” The facts here evidence that the Subject Property falls within the definition of the term “brownfield site” due to the presence of actual contamination resulting from its former use for automotive sales and repair. This has complicated redevelopment for CBS by requiring assessment and remediation under the oversight of the Miami-Dade County Division of Environmental Resources Management (“DERM”).

Specifically, a petroleum discharge was reported in 1986 at the former Ocean Cadillac facility that occupied the Subject Property. Later site assessment activities at the Subject Property identified several underground storage tanks (“USTs”) associated with the site’s former use, one of which still contained product that appeared to be used oil.⁶ The USTs and two hydraulic lifts were removed in March 2020. Additional assessment activities conducted during the UST closure and removal process identified groundwater with free floating petroleum product, concentrations of volatile organic compounds and polynuclear aromatic hydrocarbons above Florida Department of Environmental Protections (“FDEP”) groundwater cleanup target levels, and areas of stained soil around the former USTs and in the area of the hydraulic lifts. Following removal of the USTs and hydraulic lifts, approximately 8,000 gallons of free-floating product was pumped from the site and nearly 750 tons of impacted soils were removed and disposed offsite. Site assessment activities also identified elevated levels of arsenic in soils however, this is likely attributable to naturally occurring conditions and is considered a background condition on South Florida’s barrier island system.

As a result of the former use of the Subject Property, there was and is actual contamination that CBS has been required to carefully manage during redevelopment at great legal and financial risk. More specifically, actual contamination at the Subject Property has complicated redevelopment efforts for CBS by imposing design and construction changes on the Project that would not be required but for the presence of contamination. The presence of actual contamination also increases CBS’ exposure to environmental and regulatory liability with respect to the Project and has made it materially more expensive and time consuming to move forward. Accordingly, this designation, if granted, will allow for CBS to access limited but important state-based economic incentives to help underwrite the costs associated with managing the environmental risk as well as, generally, to put the Project to a more certain financial ground. In this sense, the designation will not only play a critical role in the successful redevelopment of the Subject Property, but also in the larger revitalization efforts for this area of the Town. Finally, the investigation and remediation of the contamination itself has added another major level of complexity as has required and may continue to require close and constant oversight by DERM. The regulatory process associated with remediation can be lengthy, complicated, uncertain, and without guaranteed end points. Accordingly, CBS has no assurance that as it

⁵ See Attachment D for correspondence from the Church’s financial institution, UBS Financial Services, Inc., confirming the Church has sufficient financial resources to fund the expected \$32.9 million redevelopment and any remaining rehabilitation.

⁶ See Attachment E for excerpts from the Tank Closure Assessment Report prepared and filed with DERM following removal of the USTs and hydraulic lifts.

moves forward with the Project the total cost of cleanup will not in fact ultimately exceed what is currently projected. Such uncertainty constitutes an *acute* form of redevelopment complexity that goes to the heart of the Florida Brownfield Program and underscores why incentives are so important for sites and projects exactly like this one.

Based on all the foregoing, the Subject Property clearly falls within the definition of “brownfield site” as set forth in § 376.79(4), Florida Statutes.

III. Conclusion

CBS has demonstrated that the Subject Property meets the definition of a “brownfield site” and that it satisfies the five statutory criteria for designation. Accordingly, designation of the Subject Property as a brownfield area pursuant to § 376.80(2)(c), Florida Statutes, of Florida’s Brownfield Redevelopment Act is appropriate.

Exhibit B

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
CBS REALTY HOLDING, LLC**

THIS OPERATING AGREEMENT dated October 1st 2017 and effective as of May 5, 2016, by THE CHURCH BY THE SEA INC., Florida Not For Profit Corporation (the "Member") and CBS REALTY HOLDING, LLC, a Florida limited liability company (the "Company").

ARTICLE I

THE COMPANY

Section 1.1. Formation. The Member has caused the Company to be formed under the provisions of the Florida Revised Limited Liability Company Act (the "Act"), by the filing of the Articles of Organization of the Company on May 4, 2016 as required by the Act. The Company and the rights and obligations of the Member in its capacity as such shall be governed by the Act, except in each case as specifically set forth in this Agreement. The Company shall file such documents as may be required by law for the operation of the Company in all jurisdictions where the Company does business.

Section 1.2. Name. The name of the Company shall be: CBS REALTY HOLDING, LLC.

Section 1.3. Purpose. The purpose of the Company shall be to engage in any lawful act or activity for which a limited liability company may be organized under the Act. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law, together with any powers incidental thereto, so far as such powers and privileges are reasonably necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the Company.

Section 1.4. Registered Agent and Registered Office and Other Offices. The registered agent for service of process is Steven A. Weinberg, and the registered office of the Company in the State of Florida shall be c/o Frank, Weinberg & Black, P.L., 7805 S.W. 6th Court, Plantation, Florida 33324; in each case until otherwise established by an Amendment in the manner provided by law. The Company may have such other office or offices within or without the State of Florida as the Member may from time to time appoint or the business of the Company may require. The address of the principal place of business of the Company shall be 9700 Collins Avenue, Suite 300, Bal Harbour, Florida 33154.

Section 1.5. Term. The term of the Company shall commence as of May 4, 2016, which is the date of the filing of the Articles of Organization with the Florida Secretary of State, and shall continue until the date on which the Company is terminated pursuant to the provisions of this Agreement or as otherwise required by law.

Section 1.6. No Termination. Except as specifically provided in this Agreement, the Member shall not terminate or attempt to terminate this Agreement or voluntarily take any action which would result in such termination.

Section 1.7. Organizational Matters. From time to time as required, the Authorized Member (defined hereafter) shall execute all such certificates and other documents, make such filings and recordings and perform such other acts conforming hereto, as shall be required to comply with the Act and any other statutes, rules and regulations that affect the Company.

ARTICLE II

THE MEMBER

Section 2.1. Action by Member. Except as delegated by the Authorized Member to any officers or other persons or entities, the business of the Company shall be conducted under the exclusive management of the Member, who shall have the authority to act for and bind the Company in all matters. The Member, when acting for and binding the Company in all matters shall referred to itself as the "Authorized Member" when acting in the name of and on behalf of the Company with respect to its business. The Authorized Member shall have power and authority, in the name and on behalf of the Company, to (a) purchase, lease or otherwise acquire, or sell, lease or otherwise dispose of, any property, (b) open bank accounts and otherwise invest the funds of the Company, (c) purchase insurance on the business and assets of the Company, (d) commence, defend and settle lawsuits and other proceedings, (e) enter into any agreement, instrument or other writing with respect to the business of the Company, (f) retain accountants, attorneys and other agents, and (g) take any other lawful action that the Authorized Member considers necessary, convenient or advisable in connection with the business or operations of the Company.

Section 2.2. Liability for Debts of the Company. The Member shall not be personally liable for any debts or losses of the Company, except to the extent expressly required by the Act.

Section 2.3. Indemnification of Member, etc.. Except to the extent expressly prohibited by the Act, the Company shall indemnify, defend and hold harmless the Member, Authorized Member, officer, employee or agent (collectively, the "Indemnified Party") of the Company against all claims, actions, proceedings, demands, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees) to the extent that the same arise, directly or indirectly, from the business or operations of the Company and shall promptly reimburse the Indemnified Party, upon written request, for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Indemnified Party in connection therewith.

ARTICLE III

OFFICERS

Section 3.1. Officers. The Authorized Member may, but shall have no obligation to, elect one or more of the following officers (the "Officers") to supervise operations of the Company on a day-to-day basis: a chief executive officer, president, one or more vice presidents, a secretary, a treasurer and such other officers as the Authorized Member may determine. Except as limited

herein or under the Act, the Authorized Member shall determine the powers and duties of the Officers and any other terms or conditions regarding the positions held by them. All officers, agents and employees of the Company shall be subject to removal, with or without cause, at any time by the Authorized Member. The Officers of this Company shall be the same officers as serving the Member from time to time.

Section 3.2. Powers and Authority. The Officers shall have such power and authority to manage the day to day operations of the Company as are delegated to them by the Authorized Member. Any Officer's exercise of such delegated powers and authority shall, with the exception of actions taken by such Officer in the ordinary course of business, require the concurrence of the Authorized Member. Notwithstanding the immediately preceding sentence the Chief Executive Officer and President of the Company shall, in all matters other than Significant Transactions or matters involving Significant Transactions, have the power and authority to govern the activities of the Company and may, in his or her or its sole discretion, delegate such power and authority, or any portion thereof, to any Officer or the Authorized Member.

For purposes of this Agreement, a "Significant Transaction" shall mean any of the following activities:

- (a) any merger, consolidation or other business combination with respect to the Company or any subsidiary thereof, or any sale or other disposition of all or substantially all of the Company's or any such subsidiary's assets, or any acquisition by the Company or any such subsidiary of any material business or assets, or the liquidation or dissolution of the Company or any subsidiary or the adoption of any plan with respect to any such liquidation or dissolution;
- (b) any conveyance, sale, lease, transfer or other disposition of any significant amount of assets of the Company or any subsidiary thereof, other than the sale of inventory in the ordinary course of business;
- (c) the incurrence of any lien on any assets of the Company or any subsidiary thereof, other than purchase money liens on items the purchase of which is not otherwise subject to Authorized Member's approval;
- (d) any issuance by the Company or any subsidiary of any equity rights;
- (e) the incurrence, issuance, assumption or guaranty by the Company or any subsidiary thereof of any indebtedness for borrowed money or any note, bond, debenture or similar instrument;
- (f) the entering into or termination of any material contract or any amendment to, or waiver or termination of any material provision of any material contract;
- (g) the adoption or amendment of the Company's (or any of its subsidiaries') financial plan or operating and capital expenditure budget, or the material amendment of the Company's (or any of its subsidiaries') business plan;

(h) any capital expenditure during any fiscal year in excess of the capital budget approved by the Authorized Member for such year;

(i) the commencement of any lawsuit, proceeding or other action by or on behalf of the Company or any subsidiary thereof (other than (i) collection actions commenced by the Company in the ordinary course of its business, and (ii) cross-claims and counterclaims the commencement and resolution of which would not reasonably be expected to have a material effect on the business or financial condition of the Company and its subsidiaries, taken as a whole);

(j) the payment, or undertaking of any obligation to pay, compensation to any key employees or officers in excess of amounts authorized by the Authorized Member from time to time;

(k) the adoption of any pension plans, profit sharing plans or other benefit plans;

(l) the selection or change of the Company's or any of its subsidiaries; independent accountants or legal counsel;

(m) the hiring or discharge of senior officers of the Company or any subsidiary thereof;

(n) the entry by the Company or any subsidiary thereof into any line of business materially different from the Company's current line of business, or the exit by the Company or any such subsidiary from any material line of business included in such plan; and

(o) any amendment to or modification or repeal to any provision of the certificate of formation, operating agreement or other constitutive documents of the Company or any subsidiary thereof.

Section 3.3. Indemnity of the Officers. Each Officer, to the extent that he is acting for or in the interests of the Company, shall be indemnified by the Company to the fullest extent permitted by Florida law. Notwithstanding the foregoing, no Officer shall be indemnified for claims and expenses arising out of said Officer's illegal acts, gross negligence or willful misconduct.

Section 3.4. Resignation. An Officer of the Company may resign at any time by giving written notice to the Authorized Member. The resignation of any Officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. In the event of a resignation, the Member may nominate and elect such Officer's successor.

ARTICLE IV

CAPITAL

Section 4.1. Capital Contributions. The Member shall have the right, but not the obligation, to make capital contributions in such additional amounts as the Member shall from time to time desire.

ARTICLE V

DISTRIBUTIONS

Section 5.1. Distributions. All distributions of cash or other property from the Company to the Member shall be made at such times, and in such amounts, as the Authorized Member deems appropriate, and subject to any reserve which the Authorized Member may cause the Company to retain.

ARTICLE VI

BOOKS AND RECORDS

Section 6.1. Records and Books of Account. The Authorized Member shall keep the records required to be kept pursuant to the Act, and any other books and records with respect to the Company as the Authorized Member, in its sole discretion, shall deem necessary or desirable. The fiscal year of the Company shall run from January 1 through December 31. The Company's books and records shall at all times be maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Member pursuant to the Act.

ARTICLE VII

DISSOLUTION

Section 7.1. Events of Dissolution. The Company shall be dissolved upon the earlier to occur of the following:

- (a) the written consent of the Member; or
- (b) the bankruptcy, insolvency, withdrawal, liquidation or dissolution of the Member.

Section 7.2. Application of Proceeds. Upon dissolution of the Company, the Authorized Member shall wind up the business of the Company and the assets of the Company shall be liquidated, and the cash proceeds applied, first to the satisfaction of creditors and then to the Member.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Governing Law. This Agreement, and all matters relating to the Member and the Company, shall be governed and construed in accordance with the domestic laws of the State of Florida without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida. Venue shall be in Miami-Dade County, Florida.

Section 8.2. Entire Agreement and Amendments. This Agreement represents the entire agreement between the parties with respect to the subject matter of this Agreement, and may not be changed, modified or terminated except by an instrument in writing signed by the Member and the Company.

Section 8.3. Headings; Pronouns. The headings in this Agreement are for convenience only and shall not affect the meaning, construction or effect of this Agreement.

Section 8.4. Further Assurances. The Member shall sign such further and other documents, and perform or cause to be performed such other acts and things, in each case as may be necessary or desirable in order to give full effect to this Agreement.

Section 8.5. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties to this Agreement hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

Section 8.6. No Waiver. No failure by the Member to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of a breach of any other provision hereof.

Section 8.7. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Member and its respective successors and permitted assigns.

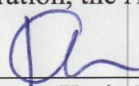
Section 8.8. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Member and the Company have executed this Agreement as of the date first above written.

COMPANY:

CBS REALTY HOLDING, LLC, a Florida limited liability company

BY: THE CHURCH BY THE SEA INC., a Florida corporation, the Authorized Member

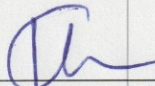
By: 

Name: Karin Matos

Title: Co-President

MEMBER:

THE CHURCH BY THE SEA INC., a Florida corporation, the Member

By: 

Name: Karin Matos

Title: Co-President

Exhibit C

2020 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L16000087920

Entity Name: CBS REALTY HOLDING, LLC

Current Principal Place of Business:

1045 95TH ST
BAY HARBOR ISLANDS, FL 33154

Current Mailing Address:

1045 95TH ST
BAY HARBOR ISLANDS, FL 33154 US

FEI Number: NOT APPLICABLE

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

JOVEL, REYNA
1045 95TH ST
BAY HARBOR ISLANDS, FL 33154 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: REYNA JOVEL

06/04/2020

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title MGR
Name THE CHURCH BY THE SEA INC.
Address 1045 95TH ST
City-State-Zip: BAY HARBOR ISLANDS FL 33154

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: REYNA JOVEL

CONTROLLER

06/04/2020

Electronic Signature of Signing Authorized Person(s) Detail

Date

Exhibit D

Division of Corporations

Page 1 of 1

706917

Florida Department of State
Division of Corporations
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H12000149620.3)))



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To: Division of Corporations
Fax Number : (850) 617-6380

From: Account Name : FRANK, WEINBERG, BLACK, P.L.
Account Number : I20040000083
Phone : (954) 474-8000
Fax Number : (954) 474-9850

****Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.****

Email Address: kmoro@fwblaw.net

FILED
2012 JUN -6 AM 10:11
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**COR AMND/RESTATE/CORRECT OR O/D RESIGN
THE CHURCH BY THE SEA INC.**

Certificate of Status	0
Certified Copy	0
Page Count	01
Estimated Charge	\$35.00

Electronic Filing Menu

Corporate Filing Menu

Help

DR
6/7/12



June 6, 2012

FLORIDA DEPARTMENT OF STATE
Division of Corporations

THE CHURCH BY THE SEA INC.
501 96TH STREET
BAL HARBOUR, FL 33154US

SUBJECT: THE CHURCH BY THE SEA INC.
REF: 706917

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The current name of the entity is as referenced above. Please correct your document accordingly.

Please remove the comma after the word Sea in the name of the corporation.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Annette Ramsey
Regulatory Specialist II

FAX Aud. #: H12000149620
Letter Number: 412A00016081

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FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

2012 JUN -6 AM 8:10

TO: ASSEMBLY CLERK
SUFFICIENCY OF FILING

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AMENDED ARTICLES
of
INCORPORATION
of
THE CHURCH BY THE SEA INC.
A Florida Eleemosynary Corporation

FILED
2012 JUN -6 AM 10:11
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to a Vote of the Membership of the CORPORATION, these AMENDED ARTICLES of INCORPORATION of THE CHURCH BY THE SEA INC. were adopted on the 22nd day of November, 2009.

The PREAMBLE of ARTICLES of INCORPORATION of THE CHURCH BY THE SEA INC. is incorporated, herein, by reference and the remainder of the ARTICLES are deleted and the following is substituted, therefore:

ARTICLE I
NAME AND LOCATION

The name of this Corporation is THE CHURCH BY THE SEA Inc. Its location shall be 501 96th Street, Bal Harbour, Miami-Dade County, Florida 33154.

ARTICLE II
PURPOSE

The purpose or purposes for which the Corporation is formed are as follows:

- 1. Spiritual:** to conduct religious worship and to foster the spiritual growth and benefit, instruction, and enlightenment of its members and the moral and spiritual welfare of the community or communities in which it serves.

AMENDED ARTICLES of INCORPORATION
of
THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154

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2.Temporal: to foster, conduct, and maintain for educational, religious, and instructional purposes churches, schools, parsonages, and other institutions connected therewith of a religious, educational, charitable, and benevolent character. To this end to acquire, either by gift or purchase, to hold, own, sell, mortgage, or encumber, lease, and improve real estate and personal property, to receive donations, gifts, and endowments and administer the same, to establish, participate in, operate, and administer trusts, life estates, other funds, make loans or grants in carrying out the religious or charitable welfare of its Members or the community in which it serves or the area or associations it aids or influences with the only limitation that all revenue, profit, income in the conduct of the Corporation's enterprise is to be used and employed in its religious, educational, charitable, and benevolent works as above set forth and not for the primary benefit of a member or a group of members of this Corporation, and to have the power to do any and all things necessary or expedient in carrying out the purposes of the Corporation, and in general to do all things as authorized by the State of Florida to eleemosynary corporations.

ARTICLE III QUALIFICATION OF MEMBERS

The qualification of Members and the manner of their admission shall be as follows:

- (i) Every person who signed the original Charter and
- (ii) Every person subsequently admitted to Membership of the Congregation so that their name appears on the records of the Church shall be a Member of this Corporation.

Any person shall be admitted to Membership of this Corporation who:

- has been approved for such membership by the Minister(s) and Membership Committee;

AMENDED ARTICLES of INCORPORATION
of

THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154

H12000149620 3

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- has expressed a desire to join The Church by the Sea; who has been informed about the principles of the Christian faith set out in the Preamble to the By-Laws currently in effect, the mission of this church and the expectations the church has of those who are members;
- has in a service of worship, in person, or by proxy, promised to be a loyal and supportive member of the church; and
- has been accepted by the Membership present.

The new Member's name shall then be presented to the Secretary of the Corporation for enrollment on the Membership records of the Corporation.

There shall be two types of Memberships, to wit:

- **Regular Membership:** those members who have joined the Congregation of the Corporation to the exclusion of all other Church affiliations, and
- **Associate Membership:** those members who wish to take an active role in the welfare of the Church but who hold a regular membership in some other religious institution.

There shall be no distinction between the two types of Membership in the matter of voting or holding office other than as provided, hereinafter.

ARTICLE IV VOTING

All Regular and Associate Members have the right to vote in the affairs of this Corporation.

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ARTICLE V PERPETUAL EXISTENCE

The Corporation shall have perpetual existence, God willing.

ARTICLE VI RELIGIOUS AND SPIRITUAL ACTIVITIES

The spiritual activities of this Corporation shall be headed by the Senior Minister, as Pastor, assisted by Associate Ministers, the Diaconate, and such other committees as provided in the By-Laws.

The Senior Minister shall select his or her own staff to carry out the spiritual activities of the Church subject to the approval of the Board of Directors and within the financial limits established by the Board of Directors. The Senior Minister, the Diaconate, and all committees are charged to do all things necessary to nurture the spiritual welfare of the Membership.

The Spiritual mission of the Corporation shall be under the stewardship of the Diaconate. The Diaconate shall consist of all of the Deacons. The Diaconate may appoint Acting Deacons who shall serve as Deacons until the next Annual Meeting of the Corporation.

The Diaconate, among other things, has the responsibility of filling the pulpit in the temporary or extended absence (including but not limited to sabbatical or medical leaves) of the Senior Minister within the budget limitations established by the Board of Directors.

The Board of Directors, by committee or otherwise, shall have the responsibility of initiating action and supervising the selection and call of the Senior Minister, as provided by the By-Laws, in the event of a vacancy in that position. The President of the Corporation shall execute any contract of

AMENDED ARTICLES of INCORPORATION
of
THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154
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employment with the Senior Minister, under such terms as the Board of Directors has authorized. However, before any initial contract of employment of the Senior Minister becomes effective, the call of the Senior Minister shall be approved by the Membership at any regular or special Meeting of the Membership; a quorum for said Meeting shall be determined in accordance with Article IX, *infra*.

The Board of Directors shall have the responsibility of removing the Senior Minister, if considered necessary, by majority vote of the full Membership of the Board of Directors.

ARTICLE VII TEMPORAL GOVERNANCE

All business matters of this Corporation such as, but not necessarily limited to those enumerated below, are strictly vested in the Board of Directors whose actions by majority vote of those present at any regular or special meeting will be the act of the Corporations:

- (i) management, maintenance, alteration, repair, mortgaging, purchase and sale of real property;
- (ii) receiving, buying and selling, mortgaging of personal property, contracting in name of Corporation; and
- (iii) establishing the amount and paying of salaries of employees of the Corporation.

The President or a Vice President, in the absence of the President, is authorized to execute all instruments in the name of and under the seal of the Corporation and attested by the Secretary or Vice Secretary in conformity with a resolution adopted by the Board of Directors at any regular or special meeting by majority vote of the quorum present. No other individual, or group, can enter into any matter of business on behalf of the Corporation unless granted such power to act by the Board of Directors, in writing.

AMENDED ARTICLES of INCORPORATION
of
THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154
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ARTICLE VIII TERMINATION OF MEMBERSHIP

Membership in this Corporation shall be terminated as provided herein:

1. **By Death:** the names of Deceased Members shall be removed from the rolls of the Corporation by the Secretary and shall be reported to the Membership at the Annual Meeting of the Corporation and by the inclusion of their names in the Annual report of the Corporation.
2. **By Transfer or Resignation:** Members who by their own request transfer their membership to another congregation, or who resign from the Membership, shall be removed from the rolls by the Secretary of the Corporation.
3. **By Inactivity:** Members who have been inactive in the affairs of the Church may have their Membership terminated in accordance with procedures established by the Minister(s) and/or Membership Committee.

ARTICLE IX QUORUM

A quorum for all regular and special Meetings of the Membership shall be twenty-five (25) percent of the total number of the Church members eligible to vote as shown by the records of the Corporation, or seventy-five (75) Members, whichever is least.

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ARTICLE X

**BOARD OF DIRECTORS, OFFICERS
ELECTION & TERM,
QUORUM AND VOTING POWER**

The Board, election and term of officers and quorum are as follows:

1. **Directors:** The Corporation shall have not more than twenty-four (24), nor less than fifteen (15), Directors elected by the Membership at the Annual Meeting of the Corporation as provided in the By-Laws. The number of Directors may be increased or diminished from time to time by the By-Laws as deemed appropriate by the Membership. Directors shall serve terms of not more than two years, and may be re-elected to successive terms.
2. **Officers, Election and Term:** The Board shall elect within 30 days after the Annual Meeting, from within its own Membership, a President, Vice President(s), Treasurer, Secretary, and any assistant officers as may be deemed necessary, to serve a one (1) year term and who shall continue in office until a successor is elected.
3. **Quorum:** A quorum for any regular or special meeting of the Board of Directors shall not be less than seven (7) Directors.
4. **Senior Minister:** The Senior Minister shall be an *ex officio* member of the Board of Directors but without right to vote. The Senior Minister shall have the discretion to invite any staff member to attend any Board of Directors meeting without right to vote.
5. **Directors Emeriti:** The Board may at its discretion elect Directors Emeriti, consisting of those individuals who have in the past rendered outstanding service as Directors of the Corporation. Directors Emeriti shall have the right to attend and be heard on any issue or issues in all Board Meetings, but shall not have the right to vote. The presence of Directors

AMENDED ARTICLES of INCORPORATION
of

THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154

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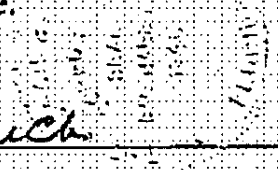
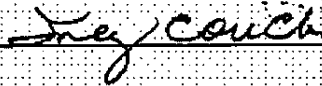
Emeriti, if any, shall be recorded by the Secretary of the Meeting, but shall not be counted in determination of a quorum.

ARTICLE XI AMENDMENTS

These Amended Articles of Incorporation of the Corporation may be amended at any regular or special meeting for that purpose called in accordance with the By-Laws by a majority vote of the quorum of the Membership present and the statutes of the State of Florida. Amendments to the Amended Articles of Incorporation shall become effective only when they are properly filed and recorded in accordance with the laws of the State of Florida.

I, Inez Couch, Secretary of the Corporation, attest the foregoing is a true and correct copy of the Amended Articles of Incorporation of The Church By The Sea, Inc. adopted on the 22nd day of November 2009, at a Meeting of the Membership of the Corporation.

WHEREFORE, I have affixed my name and the seal of the Corporation this 22nd day of November, in the Year of our Lord Two Thousand Nine.



Inez Couch, Secretary.

AMENDED ARTICLES of INCORPORATION
of
THE CHURCH BY THE SEA
501 96th Street, Bal Harbour, Florida 33154
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CERTIFICATE OF OFFICER

I, Inez Couch, being the duly elected Secretary of THE CHURCH BY THE SEA INC., a Florida not for profit corporation (the "Corporation") as of November 22, 2009, do hereby certify that on November 22, 2009, the Amended Articles of Incorporation of the Corporation to which this certification is attached were duly adopted by the Members of the Corporation and the number of votes cast for the amendment(s) were sufficient for approval

Executed this 29 day of May, 2012.

Inez E. Couch
Inez Couch

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 29th day of May, 2012, by Inez Couch, as Secretary, as of November 22, 2009, of THE CHURCH BY THE SEA INC., a Florida not for profit corporation, on behalf of the Corporation and who is personally known to me or who produced a _____ as adequate identification.

Karen Lea Vaccaro
Notary Public, STATE OF FLORIDA

My Commission Expires:



H:\FWB\Church by the Sea, Inc\13871.000 Ratification of BHS Option Agreement\Corporate Documents\Certificate of Couch v.1.wp.docx

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Exhibit E

2020 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 706917

Entity Name: THE CHURCH BY THE SEA INC.

Current Principal Place of Business:

1045 95TH STREET
BAY HARBOR ISLANDS, FL 33154

Current Mailing Address:

1045 95TH STREET
BAY HARBOR ISLANDS, FL 33154 US

FEI Number: 59-0668474

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

JOVEL, REYNA
1045 95TH STREET
BAY HARBOR ISLANDS, FL 33154 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: REYNA JOVEL

02/07/2020

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title CO-PRESIDENT

Name MATOS, KARIN

Address 1045 95TH STREET

City-State-Zip: BAY HARBOR ISLANDS FL 33154

Title TREASURER, CO-SECRETARY

Name NEVADER, JASON

Address 1045 95TH STREET

City-State-Zip: BAY HARBOR ISLANDS FL 33154

Title CO-PRESIDENT

Name BERNSTEIN, CHRIS

Address 1045 95TH STREET

City-State-Zip: BAY HARBOR ISLANDS FL 33154

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 617, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: KARIN MATOS

CO-PRESIDENT

02/07/2020

Electronic Signature of Signing Officer/Director Detail

Date

THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.
Brownfields, Transactions, Due Diligence, Development, Permitting, Cleanups & Compliance

2100 Ponce de Leon Boulevard, Suite 710
Coral Gables, Florida 33134
Telephone: (305) 777-1680
www.goldsteinenvlaw.com

Michael R. Goldstein, Esq.
Direct Dial: (305) 777-1682
Email: mgoldstein@goldsteinenvlaw.com

October 12, 2020

Via Email

Ms. Maria Lasday, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Request for Designation of the Property Located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470, as a Brownfield Area Pursuant to §376.80(2)(c), Florida Statutes

Dear Ms. Lasday:

On behalf of CBS Realty Holding, LLC (“CBS”), we are pleased to submit this Request for Designation of the property located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470 (the “Subject Property”), as a Brownfield Area pursuant to Chapter 376.80(2)(c), Florida Statutes. When fully redeveloped, the Subject Property will contain a three-story mixed-use building with retail space on the first floor and the new home for the Church by the Sea on the second and third floors. The completed project will have an estimated cost of approximately \$32.9 million. The legal description and property cards depicting the location of the Subject Property are enclosed herein at Exhibit A.

CBS is applying for the Brownfield Area Designation due to the presence of actual contamination on the Subject Property resulting from its former use for automobile sales and repair. This has required, and will continue to require, that CBS incur significant time and expense for technical, engineering, and legal consultants in order to properly conduct environmental assessment and remediation. The designation has thus become a key part of this ambitious project’s ultimate viability by enabling CBS to access certain regulatory and economic incentives to mitigate and manage the risk and expense associated with the discovery of contamination and the necessary response. It is also key to furthering

Ms. Maria Lasday, Town Manager
October 12, 2020
Page 2

the sustainable reuse of this centrally located property in the Town of Bay Harbor Islands' business district.

In considering a request for this type of designation, a local government must evaluate and apply the criteria set forth in Chapter 376.80(2)(c), Florida Statutes. As reflected in the Statement of Eligibility incorporated herein at Exhibit B, CBS meets such statutory criteria. Accordingly, based on the foregoing, we respectfully request that staff recommend approval. Of course, as you evaluate the application and supporting materials, please feel free to contact us with any questions or should further information be required. Thank you.

Very truly yours,

THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.

Michael R. Goldstein

Michael R. Goldstein
/mrg

Enclosures

cc: CBS Realty Holding, LLC

Exhibit A

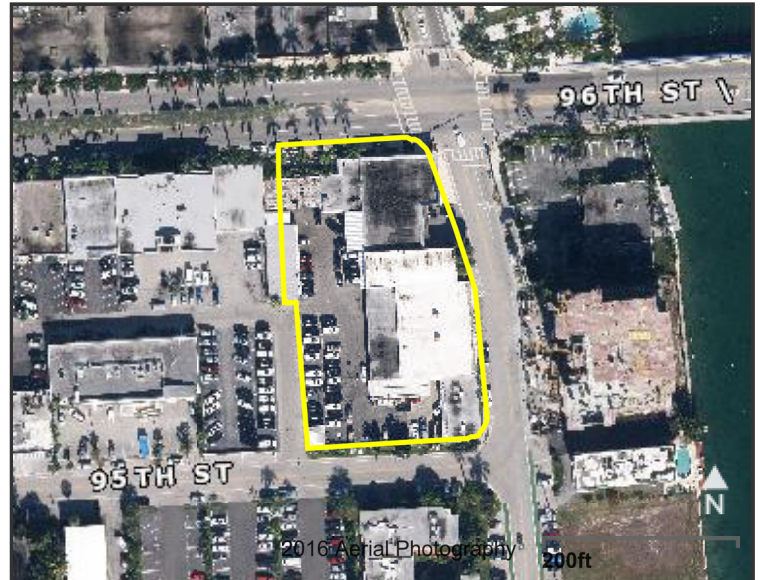


OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 10/7/2020

Property Information	
Folio:	13-2235-004-0010
Property Address:	1000 KANE CONC Bay Harbor Islands, FL 33154-2107
Owner	CBS REALTY HOLDING LLC
Mailing Address	1045 95 ST BAL HARBOUR, FL 33154 USA
PA Primary Zone	6000 COMMERCIAL - GENERAL
Primary Land Use	2719 AUTOMOTIVE OR MARINE : AUTOMOTIVE OR MARINE
Beds / Baths / Half	0 / 0 / 0
Floors	2
Living Units	0
Actual Area	Sq.Ft
Living Area	Sq.Ft
Adjusted Area	28,100 Sq.Ft
Lot Size	51,717 Sq.Ft
Year Built	Multiple (See Building Info.)



Assessment Information			
Year	2020	2019	2018
Land Value	\$12,929,250	\$10,343,400	\$12,929,250
Building Value	\$741,972	\$705,963	\$706,485
XF Value	\$61,250	\$61,474	\$61,698
Market Value	\$13,732,472	\$11,110,837	\$13,697,433
Assessed Value	\$12,221,920	\$11,110,837	\$12,223,560

Benefits Information				
Benefit	Type	2020	2019	2018
Non-Homestead Cap	Assessment Reduction	\$1,510,552		\$1,473,873
Religious	Exemption	\$12,221,920		
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description
NOLAN BROWN REPLAT PB 56-53 TRACT N LOT SIZE IRREGULAR OR 11567-1239 0882 5

Taxable Value Information			
	2020	2019	2018
County			
Exemption Value	\$12,221,920	\$0	\$0
Taxable Value	\$0	\$11,110,837	\$12,223,560
School Board			
Exemption Value	\$13,732,472	\$0	\$0
Taxable Value	\$0	\$11,110,837	\$13,697,433
City			
Exemption Value	\$12,221,920	\$0	\$0
Taxable Value	\$0	\$11,110,837	\$12,223,560
Regional			
Exemption Value	\$12,221,920	\$0	\$0
Taxable Value	\$0	\$11,110,837	\$12,223,560

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
06/01/2016	\$20,000,000	30100-3356	Qual on DOS, multi-parcel sale
09/01/1975	\$1,122,800	00000-00000	Deeds that include more than one parcel

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:

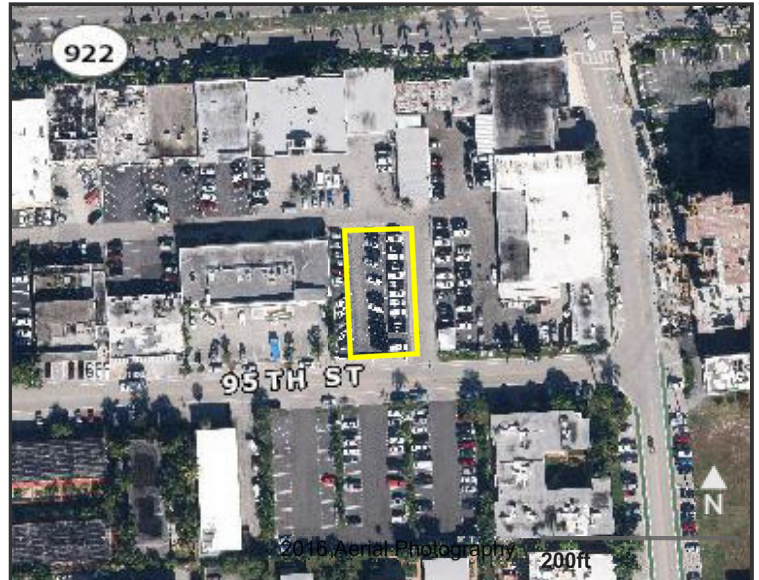


OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 10/7/2020

Property Information	
Folio:	13-2227-001-2470
Property Address:	
Owner	CBS REALTY HOLDING LLC
Mailing Address	1045 95 STREET BAL HARBOUR, FL 33154 USA
PA Primary Zone	6000 COMMERCIAL - GENERAL
Primary Land Use	1081 VACANT LAND - COMMERCIAL : VACANT LAND
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	9,750 Sq.Ft
Year Built	0



Assessment Information			
Year	2020	2019	2018
Land Value	\$1,950,000	\$1,755,000	\$1,657,500
Building Value	\$0	\$0	\$0
XF Value	\$0	\$0	\$0
Market Value	\$1,950,000	\$1,755,000	\$1,657,500
Assessed Value	\$1,930,500	\$1,755,000	\$1,657,500

Benefits Information				
Benefit	Type	2020	2019	2018
Non-Homestead Cap	Assessment Reduction	\$19,500		
Religious	Exemption	\$1,930,500		
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description	
BAY HARBOR ISLAND PB 46-5 LOT 18 BLK 12 LOT SIZE 75.000 X 130 OR 11567-1239 0882 5	

Taxable Value Information			
	2020	2019	2018
County			
Exemption Value	\$1,930,500	\$0	\$0
Taxable Value	\$0	\$1,755,000	\$1,657,500
School Board			
Exemption Value	\$1,950,000	\$0	\$0
Taxable Value	\$0	\$1,755,000	\$1,657,500
City			
Exemption Value	\$1,930,500	\$0	\$0
Taxable Value	\$0	\$1,755,000	\$1,657,500
Regional			
Exemption Value	\$1,930,500	\$0	\$0
Taxable Value	\$0	\$1,755,000	\$1,657,500

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
06/01/2016	\$20,000,000	30100-3356	Qual on DOS, multi-parcel sale
09/01/1975	\$1,122,800	00000-00000	Deeds that include more than one parcel

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:

EXHIBIT "A"

LEGAL DESCRIPTION

Tract N of NOLAN BROWN, according to the Plat thereof, as recorded in Plat Book 56, Page 53, of the Public Records of Miami-Dade County, Florida

and

Lot 18, Block 12, of BAY HARBOR ISLAND, according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida

Exhibit B

Brownfield Area Designation Eligibility Statement

CBTS Green Reuse Area

1000 Kane Concourse, Bay Harbor Islands, Florida 33154

Folio Numbers 13-2235-004-0010 and 13-2227-001-2470

CBS Realty Holding, LLC (“CBS”) proposes to redevelop and rehabilitate two parcels of land located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470 (the “Subject Property”) with a new mixed-use development. Once complete, the Subject Property will contain a single 76,000 square foot, three-story building with parking, retail, and lobby for the Church by the Sea (the “Church”) on the ground floor and space for the Church on the second and third floors (the “Project”). As demonstrated herein, the Project meets all five of the applicable designation criteria set forth at § 376.80(2)(c), Florida Statutes.¹ In addition, the Subject Property meets the definition of a “brownfield site” pursuant to § 376.79(4), Florida Statutes.

I. Subject Property Satisfies the Statutory Criteria for Designation

1. Agreement to Redevelop the Brownfield Site. As the first requirement for designation, Florida Statutes § 376.80(2)(c)(1) provides that “[a] person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.”

CBS satisfies this criterion in that it owns the Subject Property and has agreed to redevelop and rehabilitate it. See Special Warranty Deed, at Attachment B. Accordingly, CBS meets this first criterion.

2. Economic Productivity. As the second requirement for designation, Florida Statutes § 376.80(2)(c)(2) provides that “[t]he rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the rehabilitation agreement or an agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.”

CBS satisfies this criterion in that, first, the Project will result in significant economic productivity of the area. The budget for redevelopment is approximately \$32.9 million, which will be spent in part on local labor, contractors, consultants, construction materials, furnishings, land and infrastructure improvements, and impact fees. The construction workers will spend a portion of their salaries with local merchants who, in turn, will reinvest locally in their respective businesses, as well as the businesses of other local merchants. The planned retail component of this mixed-use project will also contribute to the economic productivity of the area by providing goods and services to residents and visitors in the Town. CBS further satisfies this criterion in that the Project will create more than five new permanent jobs at the Subject Property associated with future retail tenants and operation of the Church itself. For all the reasons discussed herein, CBS meets this second criterion.

3. Consistency with Local Comprehensive Plan and Permittable Use under Local Land Development Regulations. As the third requirement for designation, Florida Statutes § 376.80(2)(c)(3) provides that “[t]he redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations.”

¹ A copy of § 376.80, Florida Statutes, can be found at Attachment A to this Eligibility Statement.

CBS satisfies this criterion in that the Subject Property is located within a B-1 Business zoning district with a Commercial designation on the Town's future land use map. The Town's B-1 Business District is designed to allow higher intensity development on the Town's eastern island fronting Kane Concourse. This district specifically allows development of projects with a mix of uses including retail, restaurant, and religious institutions provided the religious use is located on the second floor of the building or higher.² This consistency and permissibility is further reflected in the Town's issuance of Building Permit No. B19-000232 for the construction of a new mixed use retail/worship/commercial building on June 29, 2020.³ For these reasons, CBS meets this third criterion.

4. Public Notice and Comment. Florida Statutes § 376.80(2)(c)(4) stipulates that “[n]otice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be posted in the affected area.” Additional notice requirements pertaining to applicants other than a governmental entity can be found at Florida Statutes § 376.80(1)(c)(4)(b) and consist of publication in a newspaper of general circulation in the area, publication in ethnic newspapers or local community bulletins, and announcement at a scheduled meeting of the local governing body before the actual public hearing.

CBS satisfies all applicable notice and opportunity to comment requirements established by Florida Statutes §376.80(2)(c)(4) and § 376.80(1)(c)(4)(b) as follows:

- (i) notice is being posted at the Subject Property;*
- (ii) notice is being published in the Miami Herald;*
- (iii) notice is being published in the community bulletin section of Craigslist; and*
- (iv) a virtual community meeting will be held using a video and teleconferencing platform.*

All notices will contain the following narrative:

Representatives for CBS Realty Holding, LLC., will hold a virtual community meeting on October 26, 2020, at 5:30 p.m. to not later than 7:00 p.m. for the purpose of affording interested parties the opportunity to provide comments and suggestions about the potential designation of land located at 1000 Kane Concourse, Bay Harbor Islands 33154, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470, as a Green Reuse Area. The designation is being made pursuant to Section 376.80, Florida Statutes, of Florida's Brownfield Redevelopment Act, and will involve two public hearings before the Bay Harbor Islands Town Council. The virtual community meeting will also address future development and rehabilitation activities planned for the site.

The virtual community meeting is free and open to all members of the public. Please register at <http://bit.ly/CBTSMeeting> or call (305) 640-5300 before the meeting to receive instructions for accessing the virtual meeting. For additional instructions on how to join, or to provide comments and suggestions regarding designation, development, or rehabilitation at any time before or after the meeting date, please contact CBS Realty Holding, LLC's representatives, Michael R. Goldstein or Brett C. Brumund who can be reached by phone at (305) 640-5300, by email at bbrumund@goldsteinenvlaw.com, and/or U.S. Mail at The Goldstein Environmental Law Firm, P.A., 2100 Ponce de Leon Blvd., Suite 710, Coral Gables, FL 33134.

Proof of publication and posting will be provided to the Town.

² See Bay Harbor Islands, Fla., Code of Ordinances, § 23-5.

³ A copy of Building Permit No. B19-000232 is available at Attachment C.

5. Reasonable Financial Assurance. As the fifth requirement for designation, Florida Statutes § 376.80(2)(c)(5) provides that “[t]he person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”

The total capital budget of approximately \$32.9 million for the Project is fully funded through the financial resources of CBS’ manager, the Church.⁴ The financial position of CBS through its manager, the Church, provides reasonable assurance that CBS has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan. It therefore satisfies this fifth criterion.

II. Subject Property Meets the Definition of Brownfield Site

Section 376.79(4), Florida Statutes, defines “brownfield site” to mean “. . . real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.” The facts here evidence that the Subject Property falls within the definition of the term “brownfield site” due to the presence of actual contamination resulting from its former use for automotive sales and repair. This has complicated redevelopment for CBS by requiring assessment and remediation under the oversight of the Miami-Dade County Division of Environmental Resources Management (“DERM”).

Specifically, a petroleum discharge was reported in 1986 at the former Ocean Cadillac facility that occupied the Subject Property. Later site assessment activities at the Subject Property identified several underground storage tanks (“USTs”) associated with the site’s former use, one of which still contained product that appeared to be used oil.⁵ The USTs and two hydraulic lifts were removed in March 2020. Additional assessment activities conducted during the UST closure and removal process identified groundwater with free floating petroleum product, concentrations of volatile organic compounds and polynuclear aromatic hydrocarbons above Florida Department of Environmental Protections (“FDEP”) groundwater cleanup target levels, and areas of stained soil around the former USTs and in the area of the hydraulic lifts. Following removal of the USTs and hydraulic lifts, approximately 8,000 gallons of free-floating product was pumped from the site and nearly 750 tons of impacted soils were removed and disposed offsite. Site assessment activities also identified elevated levels of arsenic in soils however, this is likely attributable to naturally occurring conditions and is considered a background condition on South Florida’s barrier island system.

As a result of the former use of the Subject Property, there was and is actual contamination that CBS has been required to carefully manage during redevelopment at great legal and financial risk. More specifically, actual contamination at the Subject Property has complicated redevelopment efforts for CBS by imposing design and construction changes on the Project that would not be required but for the presence of contamination. The presence of actual contamination also increases CBS’ exposure to environmental and regulatory liability with respect to the Project and has made it materially more expensive and time consuming to move forward. Accordingly, this designation, if granted, will allow for CBS to access limited but important state-based economic incentives to help underwrite the costs associated with managing the environmental risk as well as, generally, to put the Project on a more certain financial ground. In this sense, the designation will not only play a critical role in the successful redevelopment of the Subject Property, but also in the larger revitalization efforts for this area of the Town. Finally, the investigation and remediation of the

⁴ See Attachment D for correspondence from CBS’ financial institution, UBS Financial Services, Inc., confirming the Church has sufficient financial resources to fund the expected \$32.9 million redevelopment and any remaining rehabilitation.

⁵ See Attachment E for excerpts from the Tank Closure Assessment Report prepared and filed with DERM following removal of the USTs and hydraulic lifts.

contamination itself has added another major level of complexity as has required and may continue to require close and constant oversight by DERM. The regulatory process associated with remediation can be lengthy, complicated, uncertain, and without guaranteed end points. Accordingly, CBS has no assurance that as it moves forward with the Project the total cost of cleanup will not in fact ultimately exceed what is currently projected. Such uncertainty constitutes an *acute* form of redevelopment complexity that goes to the heart of the Florida Brownfield Program and underscores why incentives are so important for sites and projects exactly like this one.

Based on all the foregoing, the Subject Property clearly falls within the definition of “brownfield site” as set forth in § 376.79(4), Florida Statutes.

III. Conclusion

CBS has demonstrated that the Subject Property meets the definition of a “brownfield site” and that it satisfies the five statutory criteria for designation. Accordingly, designation of the Subject Property as a brownfield area pursuant to § 376.80(2)(c), Florida Statutes, of Florida’s Brownfield Redevelopment Act is appropriate.

Attachment A

Select Year: 2019 ▼ Go

The 2019 Florida Statutes

[Title XXVIII](#)
NATURAL RESOURCES; CONSERVATION,
RECLAMATION, AND USE

[Chapter 376](#)
POLLUTANT DISCHARGE PREVENTION
AND REMOVAL

[View Entire
Chapter](#)

376.80 Brownfield program administration process.—

(1) The following general procedures apply to brownfield designations:

(a) The local government with jurisdiction over a proposed brownfield area shall designate such area pursuant to this section.

(b) For a brownfield area designation proposed by:

1. The jurisdictional local government, the designation criteria under paragraph (2)(a) apply, except if the local government proposes to designate as a brownfield area a specified redevelopment area as provided in paragraph (2)(b).

2. Any person, other than a governmental entity, including, but not limited to, individuals, corporations, partnerships, limited liability companies, community-based organizations, or not-for-profit corporations, the designation criteria under paragraph (2)(c) apply.

(c) Except as otherwise provided, the following provisions apply to all proposed brownfield area designations:

1. Notification to department following adoption.—A local government with jurisdiction over the brownfield area must notify the department, and, if applicable, the local pollution control program under s. [403.182](#), of its decision to designate a brownfield area for rehabilitation for the purposes of ss. [376.77-376.86](#). The notification must include a resolution adopted by the local government body. The local government shall notify the department, and, if applicable, the local pollution control program under s. [403.182](#), of the designation within 30 days after adoption of the resolution.

2. Resolution adoption.—The brownfield area designation must be carried out by a resolution adopted by the jurisdictional local government, which includes a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. [166.041](#), except that the procedures for the public hearings on the proposed resolution must be in the form established in s. [166.041\(3\)\(c\)2](#). For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. [125.66](#), except that the procedures for the public hearings on the proposed resolution shall be in the form established in s. [125.66\(4\)\(b\)](#).

3. Right to be removed from proposed brownfield area.—If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request.

4. Notice and public hearing requirements for designation of a proposed brownfield area outside a redevelopment area or by a nongovernmental entity. Compliance with the following provisions is required before designation of a proposed brownfield area under paragraph (2)(a) or paragraph (2)(c):

a. At least one of the required public hearings shall be conducted as closely as is reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns.

b. Notice of a public hearing must be made in a newspaper of general circulation in the area, must be made in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

(2)(a) *Local government-proposed brownfield area designation outside specified redevelopment areas.*—If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government shall provide notice, adopt the resolution, and conduct public hearings pursuant to paragraph (1)(c). At a public hearing to designate the proposed brownfield area, the local government must consider:

1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;
3. Whether the area has potential to interest the private sector in participating in rehabilitation; and
4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

(b) *Local government-proposed brownfield area designation within specified redevelopment areas.*—Paragraph (a) does not apply to a proposed brownfield area if the local government proposes to designate the brownfield area inside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area and the local government complies with paragraph (1)(c).

(c) *Brownfield area designation proposed by persons other than a governmental entity.*—For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following:

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.
2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. [420.0004](#) or the creation of recreational areas, conservation areas, or parks.
3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations.
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be posted in the affected area.
5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.

(d) *Negotiation of brownfield site rehabilitation agreement.*—The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield site rehabilitation agreement with the department or approved local pollution control program.

(3) When there is a person responsible for brownfield site rehabilitation, the local government must notify the department of the identity of that person. If the agency or person who will be responsible for the coordination

changes during the approval process specified in subsections (4), (5), and (6), the department or the affected approved local pollution control program must notify the affected local government when the change occurs.

(4) Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The person responsible for brownfield site rehabilitation must notify the advisory committee of the intent to rehabilitate and redevelop the site before executing the brownfield site rehabilitation agreement, and provide the committee with a copy of the draft plan for site rehabilitation which addresses elements required by subsection (5). This includes disclosing potential reuse of the property as well as site rehabilitation activities, if any, to be performed. The advisory committee shall review any proposed redevelopment agreements prepared pursuant to paragraph (5)(i) and provide comments, if appropriate, to the board of the local government with jurisdiction over the brownfield area. The advisory committee must receive a copy of the executed brownfield site rehabilitation agreement. When the person responsible for brownfield site rehabilitation submits a site assessment report or the technical document containing the proposed course of action following site assessment to the department or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

(5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local pollution control program if actual contamination exists at the brownfield site. The brownfield site rehabilitation agreement must include:

(a) A brownfield site rehabilitation schedule, including milestones for completion of site rehabilitation tasks and submittal of technical reports and rehabilitation plans as agreed upon by the parties to the agreement.

(b) A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with the requirements of chapter 471 or chapter 492, respectively. Submittals provided by the person responsible for brownfield site rehabilitation must be signed and sealed by a professional engineer registered under chapter 471, or a professional geologist registered under chapter 492, certifying that the submittal and associated work comply with the law and rules of the department and those governing the profession. In addition, upon completion of the approved remedial action, the department shall require a professional engineer registered under chapter 471 or a professional geologist registered under chapter 492 to certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the department.

(c) A commitment to conduct site rehabilitation in accordance with department quality assurance rules.

(d) A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria in s. [376.81](#), including any applicable requirements for risk-based corrective action.

(e) Timeframes for the department's review of technical reports and plans submitted in accordance with the agreement. The department shall make every effort to adhere to established agency goals for reasonable timeframes for review of such documents.

(f) A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation.

(g) Other provisions that the person responsible for brownfield site rehabilitation and the department agree upon, that are consistent with ss. [376.77-376.86](#), and that will improve or enhance the brownfield site rehabilitation process.

(h) A commitment to consider appropriate pollution prevention measures and to implement those that the person responsible for brownfield site rehabilitation determines are reasonable and cost-effective, taking into

account the ultimate use or uses of the brownfield site. Such measures may include improved inventory or production controls and procedures for preventing loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials.

(i) Certification that the person responsible for brownfield site rehabilitation has consulted with the local government with jurisdiction over the brownfield area about the proposed redevelopment of the brownfield site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. Certification shall be accomplished by referencing or providing a legally recorded or officially approved land use or site plan, a development order or approval, a building permit, or a similar official document issued by the local government that reflects the local government's approval of proposed redevelopment of the brownfield site; providing a copy of the local government resolution designating the brownfield area that contains the proposed redevelopment of the brownfield site; or providing a letter from the local government that describes the proposed redevelopment of the brownfield site and expresses the local government's agreement with or approval of the proposed redevelopment.

(6) Any contractor performing site rehabilitation program tasks must demonstrate to the department that the contractor:

- (a) Meets all certification and license requirements imposed by law; and
- (b) Will conduct sample collection and analyses pursuant to department rules.

(7) During the cleanup process, if the department or local program fails to complete review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task. However, the person responsible for brownfield site rehabilitation does so at its own risk and may be required by the department or local program to complete additional work on a previous task. Exceptions to this subsection include requests for "no further action," "monitoring only proposals," and feasibility studies, which must be approved prior to implementation.

(8) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s. [376.82](#) are revoked.

(9) The department is specifically authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s. [403.182](#) to administer the brownfield program within their jurisdictions, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area. When determining whether a delegation pursuant to this subsection of all or part of the brownfield program to a local pollution control program is appropriate, the department shall consider the following. The local pollution control program must:

- (a) Have and maintain the administrative organization, staff, and financial and other resources to effectively and efficiently implement and enforce the statutory requirements of the delegated brownfield program; and
- (b) Provide for the enforcement of the requirements of the delegated brownfield program, and for notice and a right to challenge governmental action, by appropriate administrative and judicial process, which shall be specified in the delegation.

The local pollution control program shall not be delegated authority to take action on or to make decisions regarding any brownfield site on land owned by the local government. Any delegation agreement entered into pursuant to this subsection shall contain such terms and conditions necessary to ensure the effective and efficient administration and enforcement of the statutory requirements of the brownfield program as established by the act and the relevant rules and other criteria of the department.

(10) Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas, to help eliminate the public health and

environmental hazards, and to promote the creation of jobs and economic development in these previously run-down, blighted, and underutilized areas.

(11)(a) The Legislature finds and declares that:

1. Brownfield site rehabilitation and redevelopment can improve the overall health of a community and the quality of life for communities, including for individuals living in such communities.
2. The community health benefits of brownfield site rehabilitation and redevelopment should be better measured in order to achieve the legislative intent as expressed in s. 376.78.
3. There is a need in this state to define and better measure the community health benefits of brownfield site rehabilitation and redevelopment.
4. Funding sources should be established to support efforts by the state and local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, to evaluate the community health benefits of brownfield site rehabilitation and redevelopment.

(b) Local governments may and are encouraged to evaluate the community health benefits and effects of brownfield site rehabilitation and redevelopment in connection with brownfield areas located within their jurisdictions. Factors that may be evaluated and monitored before and after brownfield site rehabilitation and redevelopment include, but are not limited to:

1. Health status, disease distribution, and quality of life measures regarding populations living in or around brownfield sites that have been rehabilitated and redeveloped.
2. Access to primary and other health care or health services for persons living in or around brownfield sites that have been rehabilitated and redeveloped.
3. Any new or increased access to open, green, park, or other recreational spaces that provide recreational opportunities for individuals living in or around brownfield sites that have been rehabilitated and redeveloped.
4. Other factors described in rules adopted by the Department of Environmental Protection or the Department of Health, as applicable.

(c) The Department of Health may and is encouraged to assist local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, in evaluating the community health benefits of brownfield site rehabilitation and redevelopment.

(12) A local government that designates a brownfield area pursuant to this section is not required to use the term “brownfield area” within the name of the brownfield area designated by the local government.

History.—s. 4, ch. 97-277; s. 3, ch. 98-75; s. 11, ch. 2000-317; s. 2, ch. 2004-40; s. 44, ch. 2005-2; s. 7, ch. 2006-291; s. 5, ch. 2008-239; s. 2, ch. 2014-114.

Attachment B

Prepared by and after recording, return to:
Erica L. English, Esq.
Katz Barron Squitero Faust
2699 S. Bayshore Drive, 7th Floor
Miami, Florida 33133

Parcel I.D. Nos. 13-2235-004-0010
13-2227-001-2470

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made this 1st day of June, 2016, by OCEAN CADILLAC INC., an Illinois corporation (hereinafter referred to as "**Grantor**"), whose post office address is 6307 N.W. 80 Drive, Parkland, Florida 33067, to CBS REALTY HOLDING, LLC, a Florida limited liability company (hereinafter referred to as "**Grantee**"), whose post office address is 9700 Collins Avenue, Bldg. A, Suite 300, Bal Harbour, Florida 3315 (the words "**Grantor**" and "**Grantee**" include their respective heirs, successors, legal representatives and assigns where the context requires or permits).

WITNESSETH, That:

Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at and before the execution and delivery of these presents, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does hereby grant, bargain, sell, alien, convey and confirm unto the said Grantee that certain tract or parcel of land described on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "**Property**"), subject to and without warranty as to those certain matters set forth and described on Exhibit B, attached hereto and incorporated herein by this reference (hereinafter referred to as the "**Permitted Exceptions**"), but without serving to reimpose same.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee, its heirs, successors, legal representatives and assigns, forever in fee simple.

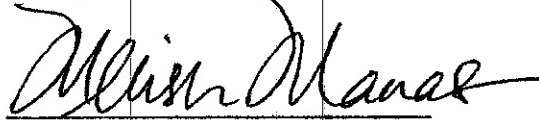
AND GRANTOR will warrant and forever defend the right and title to the Property unto Grantee, its heirs, successors, legal representatives and assigns, against the claims of all persons claiming, through and under Grantor (other than a claim arising out of the Permitted Exceptions), but not otherwise.

IN WITNESS WHEREOF, Grantor has executed and delivered this Special Warranty Deed as of the day and year first above written.

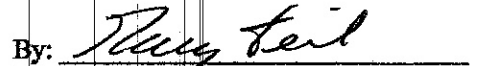
GRANTOR:

Signed, sealed and delivered
in the presence of:

OCEAN CADILLAC, INC., an Illinois
corporation



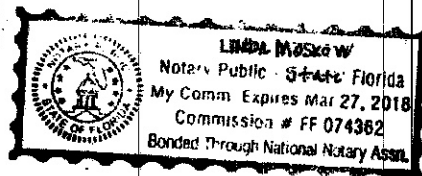
Printed Name: MELISSA MANAS

By: 
Print Name: GARY FEIL
Title: VICE PRESIDENT


Printed Name: COREY FEIL

STATE OF FL)
)SS.
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 26 day of MAY, 2016 by GARY FEIL, as VICE PRESIDENT of OCEAN CADILLAC, INC., an Illinois corporation, on behalf of the corporation. He is personally known to me (or has produced as identification).




Notary Public

Expiration of commission:

Special Warranty Deed - Signatures

EXHIBIT "A"

LEGAL DESCRIPTION

Tract N of NOLAN BROWN, according to the Plat thereof, as recorded in Plat Book 56, Page 53, of the Public Records of Miami-Dade County, Florida

and

Lot 18, Block 12, of BAY HARBOR ISLAND, according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida

Attachment C



TOWN OF BAY HARBOR ISLANDS - DADE COUNTY, FLORIDA
THIS CARD MUST BE DISPLAYED ON FRONT OF JOB.
(ALL SUB-CONTRACT PERMITS MUST BE ATTACHED)

OWNER

CBS REALTY HOLDING LLC

CONTRACTOR

KVC Constructors Inc Project Manager

LOT TRACT

BLOCK N

No.

B19-000232

ADDRESS

1000 KANE CONC

DATE ISSUED

06/29/2020

SCOPE OF WORK

Construction of New Mixed Use Retail
/ Worship / Commercial Building

Note:

Permit Package must be posted for
inspector to sign. Notice of
Commencement is required for first
inspections.

PENALTY FOR REMOVAL UNTIL JOB IS COMPLETE

BUILDING PERMIT

**WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE
FOR IMPROVEMENTS TO YOUR PROPERTY IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT(F.S. 713.135)**

PERMIT EXPIRES 180 DAYS FROM EITHER THE ISSUE DATE OR THE LAST APPROVED INSPECTION

For inspections please call (305) 993-1786 or log onto our online portal for citizens: <https://www2.citizenserve.com/bhi>

Notice: In addition to the requirement of this permit, there may be additional restrictions applicable to this property that may be found in Public Records of the County, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies.

Attachment D



UBS Financial Services Inc.

100 S.E. 2nd Street
Suite 2500
Miami, FL 33131

ubs.com/fs

Confirmation

The Church by the Sea
1045 95th Street
Bay Harbor Isle, FL 33154

October 9, 2020

Confirmation: Information regarding the account of The Church by the Sea

The following client has requested UBS Financial Services Inc. to provide you with a letter of reference to confirm their banking relationship with our firm.

To whom it may concern:

The Church by the Sea has been a valued client of ours since November 2017, and as of the close of business on 10/08/2020 the Church by the Sea account has a total value in excess of \$32,900,000.00.

Please be aware this account is a securities account not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances, **[if pledged:** have been pledged to a financial institution as collateral and] may also be subject to the risks of withdrawal and transfer. **[if margin:** This securities account has been approved for margin.] The above-referenced account value may reflect assets not held at UBS.

Questions

If you have any questions about this information, please contact Richard Suss at 305-536-9350.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

cc: The Church by the Sea

Attachment E



TECHNICAL
SERVICES

GALLAGHER BASSETT TECHNICAL SERVICES

TANK CLOSURE ASSESSMENT REPORT

OF

**CHURCH BY THE SEA PROPERTY (FORMER OCEAN CADILLAC)
1000 KANE CONCOURSE
BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA 33154
FOLIO NUMBER: 13-2235-004-0010
MIAMI-DADE COUNTY DERM UT -2037 / FILE - 0391
FDEP ID: 138622149 / ELIGIBLE DISCHARGE DATE: 10/21/1986 (ATRP)**

Prepared For:

**Miami-Dade County Department of Regulation & Economic Resources
Division of Environmental Resources Management
701 Northwest 1st Court, Suite 400
Miami, Florida 33136-3912**

Prepared On Behalf Of:

**CHURCH BY THE SEA
c/o KVC Constructors, Inc.
9499 Northeast 2nd Avenue, Suite 205
Miami Shores, Florida 33138**

Prepared By:

**Gallagher Bassett Technical Services
5751 Miami Lakes Drive
Miami Lakes, Florida 33014
Phone: (305) 374 - 8300**

Report Date: June 29, 2020

Project No. 2020 - 3067

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SECTION 1.0 INTRODUCTION

Gallagher Bassett Technical Services (GBTS), a division of Gallagher Bassett Services, Inc. (GBSI), was retained by KVC Constructors (referred to as the *Client*) to perform environmental site assessment activities and prepare this Tank Closure Assessment Report (TCAR) for the Church By The Sea Property (the Former Ocean Cadillac facility) located at 1000 Kane Concourse, Bay Harbor Islands, Miami-Dade County, Florida 33154 (hereafter referred to as the "*Property*"). The *Property* was further identified by the Miami-Dade County Property Appraiser folio number: 13-2235-004-0010 (see **Appendix A**). A Topographic Map depicted the location the *Property* is presented as **Figure 1**. A recent aerial photograph depicting the *Property* prior to the recent demolition activities is presented as **Figure 2**. A Site Layout Map showing the former layout of the Ocean Cadillac facility is presented as **Figure 3**.

The structures of the former Ocean Cadillac facility have recently been demolished and the *Property* is being redeveloped with the Church By The Sea facility, which will include a 3-story building and parking garage that will encompass the *Property*. Please refer **Appendix B** for maps illustrating the future facility.

Background Environmental History

The former Ocean Cadillac facility had a known petroleum discharge case from October 21, 1986, which was deemed eligible for the Abandoned Tank Restoration Program (ATRP) with a low priority score of 7. Regulatory files pertaining to the *Property* were found in Miami-Dade County Department of Resources Management's (DERM) tracking numbers: UT -2037 / FILE – 0391, and the Florida Department of Environmental Protection (FDEP) facility site ID: 13-8622149. A *Site Assessment Template Report* dated May 10, 2019 and prepared by MAS was previously submitted to DERM, which outlined current soil and groundwater quality, along with a remedial recommendations to address impacts (see **Appendix C** for the SAR summary tables and maps). The report noted the following:

- Past soil results did not identify impacts above the FDEP's Soil Cleanup Target Levels.
- Groundwater was impacted around the UST area with Volatile Organic Compounds (VOCs) and Polynuclear Aromatic Hydrocarbons (PAHs) above the FDEP's Groundwater Cleanup Target Levels (GCTLs).
- The groundwater impact was isolated onsite, and the horizontal and vertical delineation was achieved. Groundwater flow was documented toward the west. Depth-to-water was at 2 to 4-feet below land surface (BLS) and is assumed to be tidally-influenced.
- Free floating product (FFP) had been observed in monitoring well MW-2 during past assessments and remedial action was taken in 2015 via pump-out activities.
- The report recommend a source removal of a 10 by 10-foot wide and 8-foot deep excavation around the USTs area to address the impact.
- The report also recommended the addition of a "chemical oxidant" applied to the groundwater prior to backfilling as a polishing step, and if the source removal did not prove affective, then chemical treatment or biosparging may be considered.

SECTION 2.0 TANK REMOVAL ACTIVITIES

On March 23, 24 and 25, 2020, Gulfstream Petroleum Service, Inc. (Gulfstream), a Florida-licensed Petroleum Storage Specialty Contractor (PSSC), was onsite to remove the USTs from the *Property*. A description of the events related to the removal of the USTs is presented below:

- Per online regulatory files, the Former Ocean Cadillac maintained three 2,000-gallon steel USTs located west of the main repair center. The USTs were previously used to store gasoline, new oil and used oil. The regulatory information reflected that the USTs had been filled with concrete. During the uncovering of the USTs, the PSSC discovered a fourth UST which was located immediately south of the above three tanks. The fourth UST appeared to be 1,000-gallons in capacity and filled with product that appeared to be used oil. The USTs locations are shown in **Figure 3**.
- The contents of the fourth UST were pumped out via a vacuum truck and the tank was inerted with dry ice prior to removal.
- The three concrete-filled USTs were excavated and the steel around the USTs was removed, pressure washed and then hauled offsite for recycling. The fourth UST was excavated, cut open, pressure washed and then hauled for offsite recycling. A copy of the recycling and disposal manifests provided in **Appendix D**.
- A Miami-Dade County DERM representative was onsite March 25, 2020 to inspect the USTs and excavation. A copy of the DERM inspection report is provided as **Appendix E**.
- During the UST removal work, staining was observed on the exterior of the USTs and stained soils were present within the excavation area. Further, free floating product (FFP) was observed atop the exposed groundwater table within the excavation area. Based on these observations (and the recommendation within the 2019 SAR), remedial action was warranted to address the impacted soils and FFP. Initial Source Removal (ISR) actions are further discussed in Section 3.0.

SECTION 3.0

REMOVAL OF OTHER IN-GROUND STRUCTURES

During demolition activities of the Former Ocean Cadillac, KVC Constructors removed hydraulic lifts, oil-water separators, and storm water drainage structures at the *Property*. The following is a summary of these removal activities.

Hydraulic Lift Removals

Two hydraulic lifts located ~ 20-feet east of the initial UST excavation area was located in an area that had historically identified petroleum impacts. When this lift was removed, product was observed within the piston and around the top of the equipment. Gulfstream Petroleum conducted two test pit excavations between the UST area and the hydraulic lift area, and the soils appeared to be petroleum impacted at or below the watertable interface in between the two areas. The ISR soil excavation area was expanded to encompass where these former lifts were located (see **Figure 4**).

As part of demolition activities, the general contractor (KVC Constructors) removed the remaining automotive hydraulic lifts from within the former auto repair center, which was located further east of the aforementioned UST removal area. KVC reported that these other lifts were aboveground, and no other in-ground lifts or cylinders were encountered during the demolition.

OWS & Car Wash Drainage Structure Removal

During the demolition work, an oil-water separator (OWS) was identified south of the former repair center building (see **Figure 3** for a map illustrating the location). Further, a car wash reclamation and sand filtration tank was identified adjoining to the west of the OWS. The interior of the OWS was partially filled with oily petroleum contact water. The interior of the reclamation tank was filled with sand and water. Both structures were pumped out with a vacuum truck. The interior of the OWS also was pressure washed. The OWS structure could not be completely cleaned and was crushed and placed with the stockpiled soils removed from the UST excavation area. The excavation was expanded to encompass both the OWS and the car wash reclamation tank area (see **Figure 4**).

Following removal of the OWS structure, the excavation was inspected and a minor amount of stained soils were observed immediately around the former OWS. These soils were excavated and placed in the same stockpile as the source removal from the USTs area. No stained soils were noted within the reclamation tank excavation area; therefore, no source removal was performed in this area.

SECTION 4.0 INTERIM SOURCE REMOVAL – UST/LIFT AREA

On March 25 thru 30, 2020, source removal activities were conducted to address impacts in the area of the USTs and hydraulic lift. The removal included the excavation of soils from both areas and the removal of FFP from the UST / piston area. The following is a summary of the excavation areas and work.

Following removal of the USTs and hydraulic lifts, a soil source removal was conducted in this area (see **Figure 4**). The final excavation area was ~ 50 by 50-feet wide and ~ 6 to 8-feet deep. Excavated soils were temporarily stockpiled atop and covered by visqueen.

FFP was removed from the excavation via a vacuum truck over the course of three events. A total of 8,150-gallons of FFP / petroleum contact water / sludge was pumped from the UST pumpout, washing and excavation skimming events. A total of 746.57-tons of impacted soils were removed from the combined USTs/lift and OWS / reclamation tank areas. The soils were transported to Clean Earth of Southern Florida for proper disposal. Disposal manifests for the FFP and soils are provided in **Appendix D**.

The excavation area was backfilled with clean crushed limestone imported from a local quarry. During the backfilling, GTBS applied Oxygen Releasing Compounds (ORC-A) per GBTS's April 15, 2020 *Expedited Interim Remedial Action Plan* previously submitted to the DERM. This application included 440 pounds of ORC-A which was placed at and below the watertable interface. An excerpt of the plan and the DERM and FDEP approval letters are provided in **Appendix F**.

Post-Removal Soil Assessment – UST/Lift Area

During source removal, the soils along the excavation walls were field-screened with an organic vapor analyzer (OVA) equipped with a flame ionization detector (FID). The samples were analyzed with and without a charcoal filter to separate naturally-occurring methane from hydrocarbons vapors. OVA results generated from field testing of soils were compared with the action level established in the FDEP's "Guidelines for Assessment and Source Removal of Petroleum Contaminated Soils" dated May 1998. The OVA/FID soil sampling locations are depicted in **Figure 5**. The OVA/FID screening results are summarized in **Table 1**.

- None of the post-excavation wall soil samples collected above the water table exhibited elevated net OVA/FID readings above the 10-ppm action level, except for the 0 to 2-feet BLS interval of the UST Sidewall-1 location, which exhibited 110-ppm. However, these soils exhibited a natural organic odor and confirmation soil sampling did not reveal the presence of elevated petroleum constituents' concentrations.
- Soils collected at/below the water table (2 to 4-feet BLS interval) exhibited slight petroleum odors and elevated net OVA/FID readings in the southwestern portion of the excavation area. GBTS utilized groundwater sampling data to interpret the effect of residual petroleum-affected soils below the water table, and results were below cleanup target levels.

Characterization composite samples (Comp 1 - 3) were collected from the petroleum-affected stockpiled soils and analyzed for the following parameters, then utilized by the disposal facility (Clean Earth):

- Total Arsenic, Cadmium, Chromium and Lead by EPA Method 6010
- Volatile Organic Compounds (VOCs) by EPA Method 8260
- Polycyclic Aromatic Hydrocarbons (PAHs) by EPA Method 8270
- Total Petroleum Hydrocarbons (TPHs) by Method FL-PRO
- Polychlorinated Biphenyls (PCBs) by EPA Method 8082
- Toxicity by EPA Method 9023

Following completion of the source removal, eight sidewall locations were selected for confirmation analysis. These sample locations included the following; Sidewall A thru Sidewall F & UST East Sidewall and Southwest Sidewall. Samples from these eight locations were collected from the 0 to 2-feet and 2 to 3-feet BLS depth intervals (just above watertable interface). The locations of the confirmation sidewall samples are presented as **Figure 6**. These 16 soil samples were analyzed for the following parameters:

- Total Arsenic, Cadmium, Chromium and Lead by EPA Method 6010
- VOCs by EPA Method 8260
- PAHs by EPA Method 8270
- TPHs by Method FL-PRO
- PCBs by EPA Method 8082

Copies of the laboratory analytical reports, chain-of-custody forms, and field logs are provided in **Appendix G**. The soil analytical results are provided as **Tables 2** and **3**, and depicted in **Figure 6**.

Soil analytical results were compared with the FDEP's *Contaminant Cleanup Target Levels*, per Chapter 62-777, FAC, which regulates Soil Cleanup Target Levels (SCTLs) for *residential-use direct exposure* (SCTL-R), *commercial-use direct exposure* (SCTL-C) and *leachability* (SCTL-L) concerns.

The following is a summary of the post-excavation sidewall soil analytical findings:

- Confirmation soil samples collected from the excavation walls did not exhibit elevated concentrations of the analyzed parameters above the FDEP SCTLs, with the exception of total arsenic.
- Total arsenic was detected in all 16 samples at concentrations ranging from 4.4 milligrams per kilogram (mg/Kg) to 20.0 mg/Kg. All 16 samples contained a total arsenic concentration of above the 2.1 mg/Kg SCTL-R. Samples collected from Sidewall-A (0 to 2-feet BLS), Sidewall-E (2 to 3-feet BLS), Sidewall-F (0 to 2-feet BLS) and UST SW Sidewall (2 to 3-feet) contained total arsenic at concentrations above the SCTL-C. Fourteen of the 16 samples also exceeded the 5.2 mg/Kg anthropogenic background concentration for the 0 to 2-feet BLS depth interval established by the Miami-Dade County Department of Environmental Resources Management (DERM). This issue is further discussed in Section 6.0.

Post-Removal Groundwater Assessment – UST/Lift Area

On May 20, 2020, following backfilling, GBTS retained a Florida-licensed water drilling to install five shallow-interval temporary groundwater monitoring wells in and around the source removal area. These monitoring wells were designated MW-1 thru MW-5. The wells were 1.5-inches in diameter, extended to a total depth of 12-feet BLS, and the included 10-feet of pre-packed well screen and sufficient solid PVC riser to extend ~ 3-feet above grade. Monitoring well MW-1 was placed in the center of the excavation which was considered the source area, and the perimeter wells MW-2 thru MW-5 were placed ~ 25-feet in each ordinate direction around the excavation limits. The monitoring well details are provided within the Well Construction Logs (**Appendix G**) and illustrated as **Figure 8**.

On May 20, 2020, GBTS collected groundwater grab samples from a temporary well sampling point, labeled GW-1D. The sampling point was screened from 25 to 30-feet BLS.

On May 21, 2020, GBTS collected groundwater samples from monitoring wells MW-1 through MW-5. Groundwater sampling conducted in accordance with the FDEPs Standard Operating Procedures (SOPs) per Chapter 62-160 of the Florida Administrative Code (FAC). Groundwater samples were analyzed for the following parameters:

- Total 8 RCRA Metals by EPA Method 6010 / 7470 (MW-1 only)
- PCBs by EPA Method 8082 (MW-1 only)
- VOCs by EPA Method 8260 (all wells and GW-1D)
- PAHs by EPA Method 8270 (all wells and GW-1D)
- TPHs by Method FL-PRO (MW-1 thru MW-5 only)

On June 22, 2020, GBTS also collected groundwater samples from monitoring wells MW-1, MW-3 and MW-5 for Total Dissolved Solids (TDS) by EPA Method SM5240C.

Copies of the laboratory analytical reports, chain-of-custody forms, and field logs are provided in **Appendix G**. The groundwater analytical results are provided as **Table 9**, and depicted in **Figure 9**.

The groundwater analytical results were compared with the FDEP Groundwater Cleanup Target Levels (GCTLs) and the Natural Attenuation Default Source Concentrations (NADSCs) per Chapter 62-777, FAC.

The following is a summary of the groundwater analytical findings and observations:

- Groundwater results from monitoring wells MW-1 thru MW-5 did not exhibit elevated concentrations of the analyzed parameters above their respective FDEP GCTLs with the exception TDS in samples from MW-1 (4,590 mg/L), MW-3 (1,870 mg/L) and MW-5 (1,070 mg/L). These results exceeded the 500 mg/L GCTL, but were below the 5,000 mg/L NADSC
- No evidence of FFP or sheen was observed within the groundwater samples.

SECTION 5.0 INTERIM SOURCE REMOVAL – OWS AREA

On April 2, 2020, source removal activities were conducted to address the limited volume of stained soils observed immediately beneath the former southern OWS. On May 4, 2020, the northeast part of the excavation was expanded to address the discovery of a low concentration of benzo(a)pyrene. The soils were transported to Clean Earth of Southern Florida for proper disposal. The OWS excavation area was backfilled with clean crushed limestone imported from a local quarry.

Post-Removal Soil Assessment – OWS Area

Prior to backfilling, one confirmation soil sample designated OWS Northeast (2 to 3-feet BLS) was collected from the excavation wall. This soil sample was analyzed for the following parameters:

- Total Arsenic, Cadmium, Chromium and Lead by EPA Method 6010
- PCBs by EPA Method 8082
- VOCs by EPA Method 8260
- PAHs by EPA Method 8270
- TPHs by Method FL-PRO

Copies of the laboratory analytical reports, chain-of-custody forms, and field logs are provided in **Appendix G**. The soil analytical results are provided as **Tables 4** and **5**. The soil results are summarized in **Figure 6**.

Soil analytical results were compared with the FDEP's SCTLs. The following is a summary of the post-excavation sidewall soil analytical findings:

- Confirmation soil sample OWS NE Sidewall (2 to 3-feet BLS) did not exhibit elevated concentrations of the analyzed parameters, above the FDEP SCTLs, with the exception of total arsenic, benzo(a)pyrene (BaP), and BaP equivalents (BaP-E).
 - Total arsenic was detected at 2.5 mg/Kg which was slightly above the 2.1 mg/Kg SCTL-R, but below DERMs 5.2 mg/Kg anthropogenic background concentration, and below the 12 mg/Kg SCTL-C.
 - BaP was detected at 0.33 mg/Kg which exceeded its 0.1 mg/Kg SCTL-R, but was below its 0.8 mg/Kg SCTL-C and 8 mg/Kg SCTL-L. The BaP-E result was 0.5 mg/Kg, which exceeded the 0.1 mg/Kg SCTL-R, but was below the 0.7 mg/Kg SCTL-C.
 - The area was further excavated on May 4, 2020, and a second confirmation soil sample collected, which was analyzed for PAHs and concentrations were below the SCTL-R and SCTL-L.

Post-Removal Groundwater Assessment – OWS Area

One shallow-interval temporary groundwater monitoring well was installed in the center of the OWS excavation area which was designated MW-6. The well was 1.5-inches in diameter, extended to a total depth of 12-feet BLS, and the included 10-feet of pre-packed well screen and sufficient solid PVC riser to extend ~ 3-feet above grade. The monitoring well MW-6 details are provided within the Well Construction Log (**Appendix G**) and illustrated as **Figure 8**.

On May 21, 2020, GBTS collected groundwater samples from monitoring well MW-6. Groundwater sampling conducted in accordance with the FDEP SOPs, per Chapter 62-160, FAC. The groundwater samples were analyzed for the following parameters:

- Total Arsenic, Cadmium, Chromium and Lead by EPA Method 6010
- PCBs by EPA Method 8082
- VOCs by EPA Method 8260
- PAHs by EPA Method 8270
- TPHs by Method FL-PRO

Copies of the laboratory analytical reports, chain-of-custody forms, along with the well construction & development, soil & groundwater sampling and equipment calibration logs are provided in **Appendix G**. The groundwater analytical results are summarized as **Table 9**. The groundwater results are summarized in **Figure 9**.

The groundwater results were compared with the FDEP's SOPs. The following is a summary of the groundwater analytical findings:

- Groundwater results from monitoring wells MW-6 not exhibit elevated concentrations of the analyzed parameters above their respective FDEP GCTLs.

SECTION 6.0 EXPANDED SOIL ARSENIC ASSESSMENT

The post-excavation sampling revealed only one contaminant of concern in soils, which was total arsenic. There have been studies by the Miami-Dade County DERM with respect to the presence of naturally-occurring and anthropogenic arsenic in soils through the County's barrier islands, which include the *Property*. The arsenic detected in the excavation side wall soils was not attributed to the former USTs or OWS, but instead was attributed to pre-existing naturally-occurring arsenic. The additional sampling and evaluation was conducted as a basis for developing both a Soil Management Plan (SMP) and Health & Safety Plan (HASP) during soil disturbance activities for construction of the Church by the Sea development.

On May 20, 2020, GBTS oversaw the advancement of 10 soil borings gridded across the *Property*. Soil samples were collected from the 0 to 2-feet and 2 to 3-feet BLS depth intervals and analyzed for Total Arsenic by EPA Method 6010. The soil sampling locations are presented as **Figure 7**. The analytical results for these soil samples are presented in **Table 6**. Copies of the laboratory analytical reports, chain-of-custody forms and sampling logs are provided in **Appendix G**. The following is a summary of the findings:

- A total of 37 soil samples were collected from the soil borings and previous sidewall sampling, including 18 soil samples from the 0 to 2-feet BLS interval, and 19 soil samples from the 2 to 3-feet BLS interval.
 - Total arsenic concentrations ranged from 0.65 mg/Kg to 25.3 mg/Kg.
 - 36 soil samples contained total arsenic concentrations in excess of the 2.1 mg/Kg SCTL-R.
 - 32 soil samples contained total arsenic concentrations in excess the 5.2 mg/Kg Miami-Dade County Barrier Island Background Level.
 - 10 soils samples contained total arsenic concentrations in excess of the 12 mg/Kg SCTL-C.
- GBTS further evaluated the arsenic data using the FDEP's 95% Upper Confidence Limit (UCL) online calculator (ProUCL), which calculated the following results:
 - The 95% UCL result calculated for the 0 to 2-feet BLS interval was 11.9 mg/Kg, which exceeded both the 2.1 mg/Kg SCTL-R and the 5.2 mg/Kg Miami-Dade County Background Level, but was below the 12 mg/Kg SCTL-C. The 95% UCL arsenic results for the 0 to 2-feet BLS depth interval are provided in **Table 7**.
 - The 95% UCL result calculated for the 2 to 3-feet BLS interval was 13.3 mg/Kg, which exceeded the 2.1 mg/Kg SCTL-R, the 5.2 mg/Kg Miami-Dade County Background Level, and the 12 mg/Kg SCTL-C. The 95% UCL arsenic results for the 2 to 3-feet BLS depth interval are provided in **Table 8**.
- The potential for leaching of arsenic was evaluated using the two source area groundwater wells. Arsenic in the groundwater samples was below laboratory method detection limits and below the 10 ug/L GCTL.

SECTION 7.0 RECOMMENDATIONS

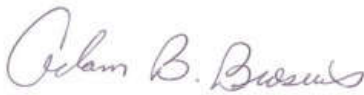
This report has documented the removal of source USTs, lifts and an OWS, along with the removal of 746.57 tons of petroleum-affected soils and 8,150-gallons of FFP/Contact Water/sludges. The post-excavation sampling was used to document that none of the remaining sidewall soils contain contaminants of concern above SCTLs associated with the source areas, and none of the groundwater samples collected contained contaminants of concern above GCTLs.

- The post-excavation sampling did reveal the presence of naturally-occurring arsenic in soils that exceed the SCTLs and the Miami-Dade County Barrier Island Natural Background Level. The presence of arsenic in onsite soils is not attributed to the former UST, lift or OWS source areas, but were in-place prior to development. The groundwater sampling did not reveal evidence of leaching, and arsenic concentrations were below the laboratory method detection limit and below the FDEP's 10 ug/L GCTL. Therefore, the presence of naturally-occurring arsenic does not pose a concern that warrants further assessment.
 - GBTS recommends that the naturally-occurring arsenic in soils be addressed with a Soil Management Plan (SMP) and Health & Safety Plan (HASP). These documents will guide the general contractor during soil disturbance activities, and will provide a protocol for soil relocation/disposal, dust control, and worker protection to minimize direct exposure concerns.
- Based on the post-removal soil and groundwater assessment findings, no further assessment is recommended. The information provided in the previous 2019 TSAR (by previous consultant on-file with DERM/FDEP), and supplemented with this extensive post-excavation TCAR sampling data, should be sufficient to conclude that SAR activities are complete.
- The post-removal assessment revealed that soil and groundwater samples are no longer impacted with petroleum constituents of concern. No further action is warranted with respect to this discharge. However, due to the use of ORCs during backfilling of the UST excavation area, as approved by DERM and FDEP, additional groundwater monitoring may be required. This will be difficult as the pile and pile cap installation is schedule to proceed in July, and by October the majority of the site will be covered with a hydrostatic concrete slab and caps. It is not feasible to pierce the hydrostatic slab for the purpose of monitoring a former petroleum discharge that has been remediated. Furthermore, the hydrostatic slab will extend to the edge of the *Property*, which may make it unfeasible to relocate wells beyond the building. Due to the impending slab installation, there is not sufficient time to complete 4 quarterly monitoring only plan (MOP) sampling events. GBTS proposes that DERM accept the groundwater sampling data presented in this TCAR to fulfill the 1st quarter MOP requirement. GBTS proposes two additional MOP semi-monthly monitoring events to provide assurance that the discharge has been addressed:
 - Collection of groundwater samples from monitoring wells MW-1 through MW-5 for VOCs (including BTEX/MTBE/IPB) by EPA Method 8260, PAHs by EPA Method 8270 and TDS by EPA Method SM2540C. Sampling will be conducted in July 2020 and September 2020.

SECTION 8.0
ENVIRONMENTAL PROFESSIONAL STATEMENT

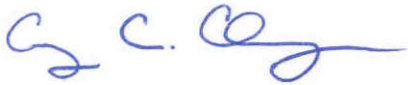
This TCAR was conducted under the supervision of the following GBTS professionals:

Report Prepared By:



Adam B. Brosius
Senior Staff Professional

and



Craig C. Clevenger, P.G.
Managing Director, Environmental Services
Gallagher Bassett Technical Services

Professional Geologist Certification:

I, Craig C. Clevenger, P.G. #1666, certify that I currently hold an active license in the state of Florida and am competent through education and experience to provide the geological consulting services documented in the aforementioned TCAR and source removal report. I further certify that, in my professional judgment, this report meets the requirements of Chapter 62-761, FAC, and Chapter 492, F.S., and was prepared by me or under my direction. Moreover, I certify that EE&G holds an active certificate of authorization #GB483 to provide geological services in the state of Florida.



Craig C. Clevenger, P.G.

July 2, 2020
Date

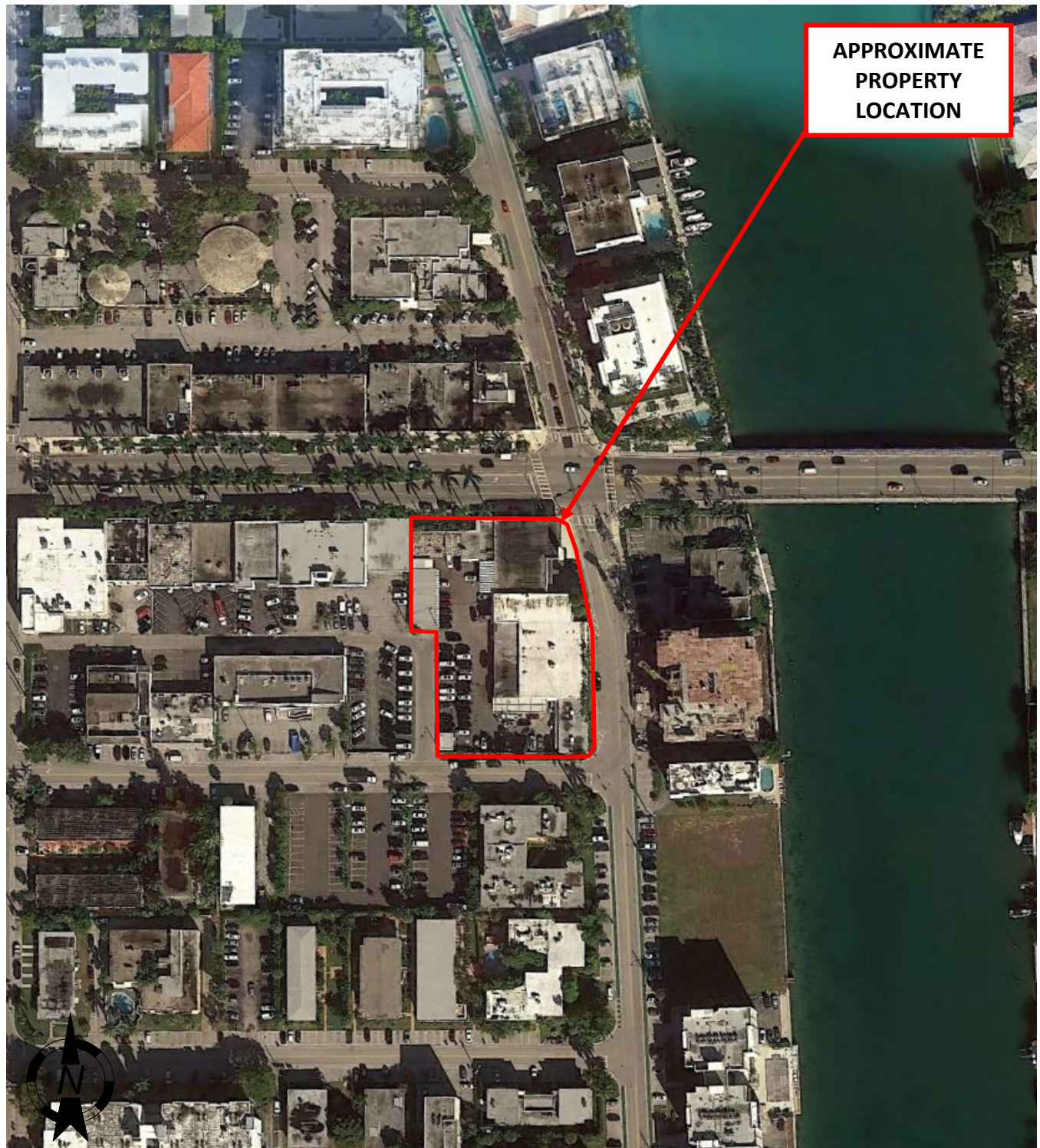
FIGURES



Church by the Sea
1000 Kane Concourse
Bay Harbor Islands, Florida 33154
Project #: 2020-3067

TOPOGRAPHIC MAP
Source: USGS

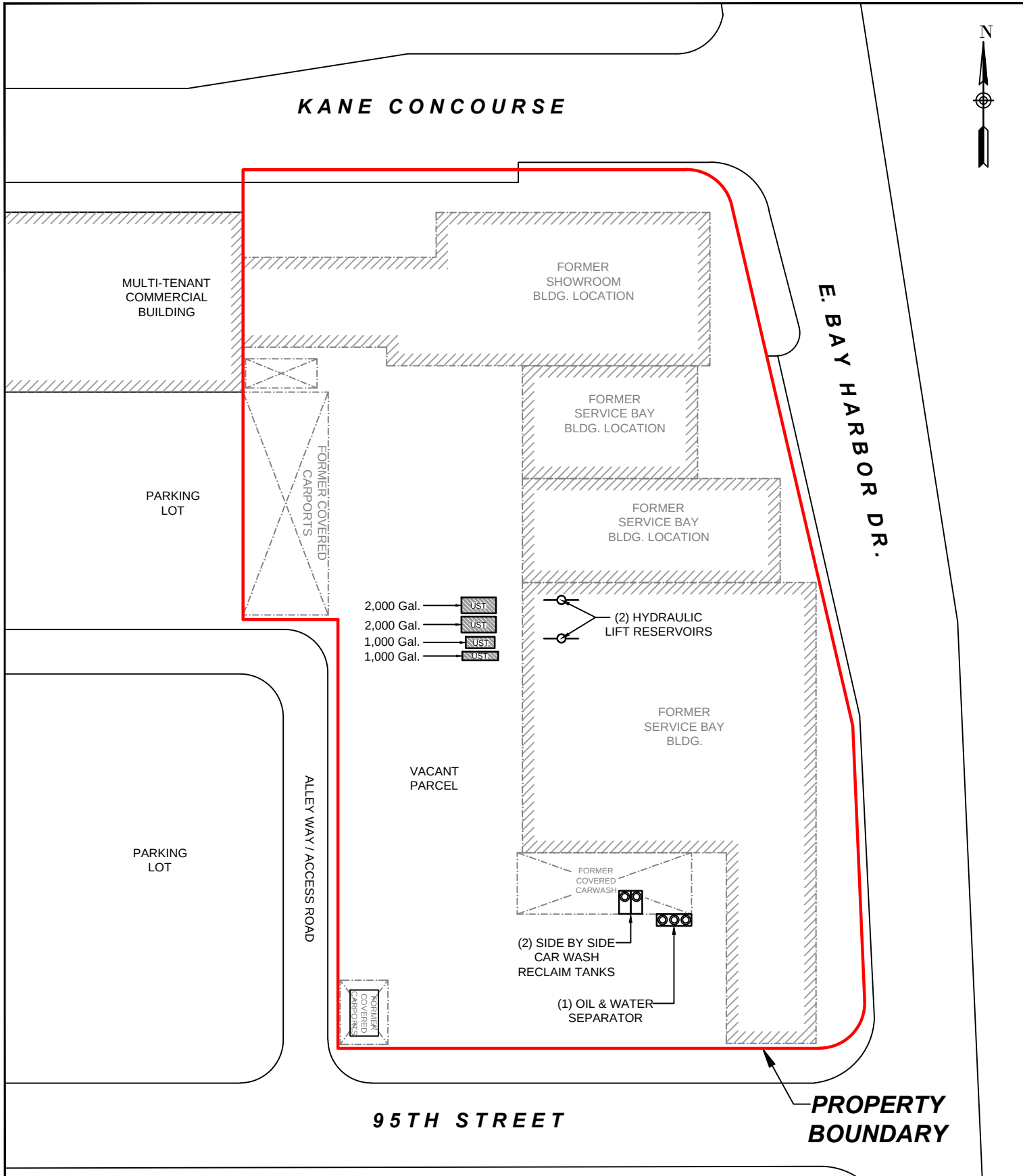
FIGURE
1



Church by the Sea
1000 Kane Concourse
Bay Harbor Islands, Florida 33154
Project #: 2020-3067

2019 AERIAL PHOTOGRAPH

**FIGURE
2**



GALLAGHER | TECHNICAL SERVICES
BASSETT

5751 MIAMI LAKES DRIVE
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Phone: (305) 374-8300
Fax: (305) 374-9004

CHURCH BY THE SEA
1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

FIGURE
3

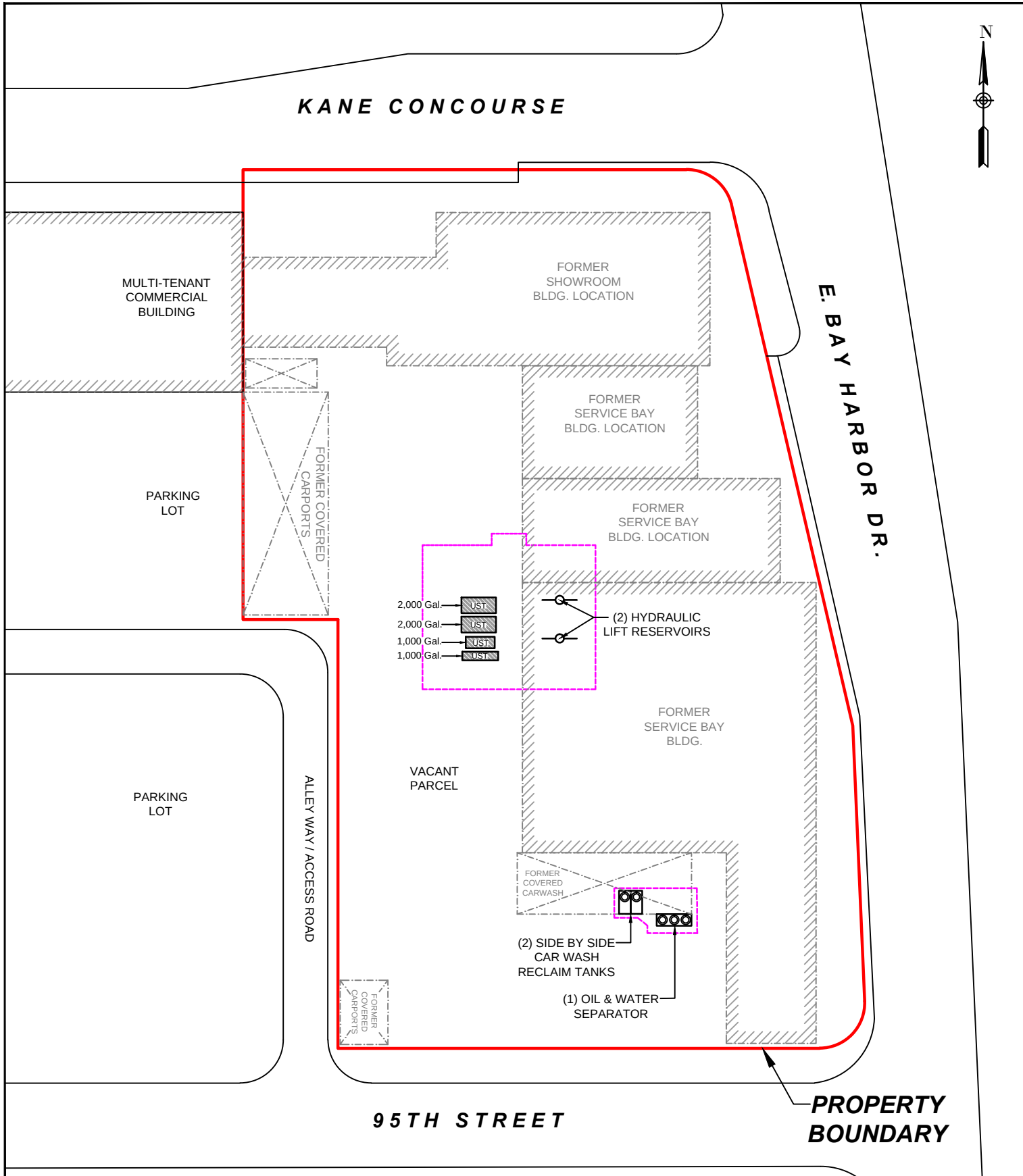
SITE LAYOUT MAP

SCALE: 1" = 50'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 2/21/2020



GALLAGHER
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CHURCH BY THE SEA
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**FIGURE
4**

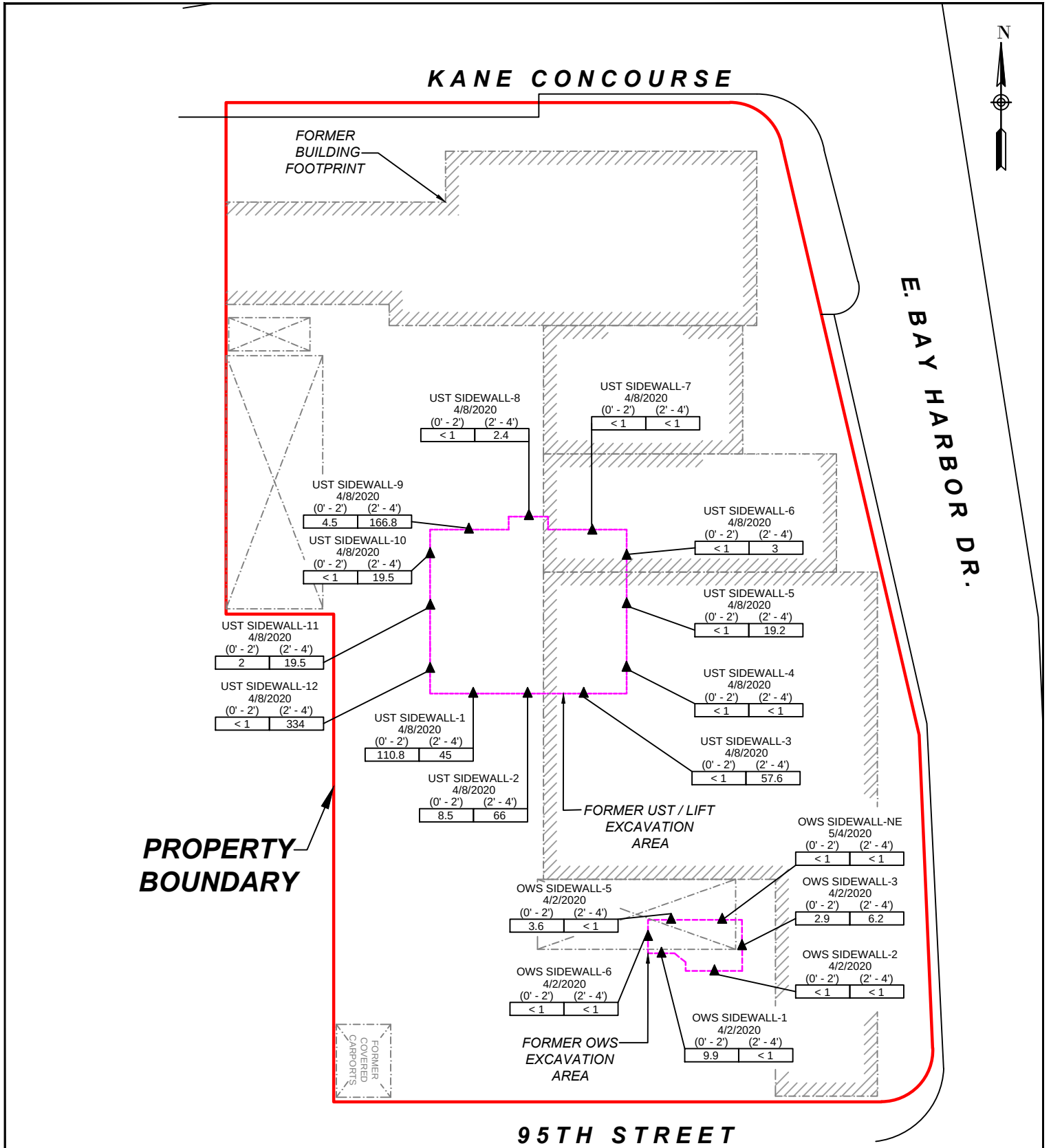
EXCAVATION MAP

SCALE: 1" = 50'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 2/21/2020



GALLAGHER BASSETT TECHNICAL SERVICES		CHURCH BY THE SEA 1000 KANE CONCOURSE BAY HARBOR ISLANDS, FLORIDA 33154	
5751 MIAMI LAKES DRIVE MIAMI LAKES, FLORIDA 33014 Phone: (305) 374-8300 Fax: (305) 374-9004		FIGURE 5	POST-EXCAVATION SOIL OVA / FID RESULTS MAP
SCALE: 1" = 40'		DRAWN BY: JL	
PROJECT: 2020-3067		DATE: 04/28/2020	

KANE CONCOURSE



FORMER
BUILDING
FOOTPRINT

E. BAY HARBOR DR.

SIDEWALL-E
4/21/2020
(0' - 2') (2' - 3')

9.9	15.5
2.3	0.79
5.9 U	20.4 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

SIDEWALL-D
4/21/2020
(0' - 2') (2' - 3')

8.4	10.2
4.4	2.5
301	6.7 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

SIDEWALL-F
4/21/2020
(0' - 2') (2' - 3')

14.9	5.6
1.8	0.73 I
21.5 U	13.2 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

UST-EAST SIDEWALL
4/21/2020 4/08/2020
(0' - 2') (2' - 3')

6.6	6.3
1.1	1.3
6.3 U	6.9 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

UST-SOUTHWEST
SIDEWALL
4/21/2020 4/08/2020
(0' - 2') (2' - 3')

6.2	15.2
0.75 I	1.4
120	8.5 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

FORMER
UST / LIFT
EXCAVATION
AREA

SIDEWALL-A
4/21/2020
(0' - 2') (2' - 3')

20.0	5.0
1.7	0.53 I
25.3 I	6.5 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

SIDEWALL-B
4/21/2020
(0' - 2') (2' - 3')

4.4	5.3
0.89	0.78
11.2 U	18.1 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

SIDEWALL-C
4/21/2020
(0' - 2') (2' - 3')

5.9	5.0
1.1	3.0
6.7 U	7.4 U
< SCTL	< SCTL
< 0.1	< 0.1
< SCTL	< SCTL
< SCTL	< SCTL

FORMER OWS
EXCAVATION
AREA

FORMER
COVERED
CARWASH

SIDEWALL-NE
4/8/2020 5/4/2020
(2' - 3') (2' - 3')

2.5	NT
41.8	NT
6.4 U	NT
0.33	NT
0.5	NT
< SCTL	< SCTL
< SCTL	NT

LEGEND:

- = AREA OF EXCAVATION
- ▲ = SIDEWALL SOIL SAMPLE
- BOLD** = ANALYTICAL RESULT EXCEEDED THE RESIDENTIAL SCTL
- BOLD** = ANALYTICAL RESULT EXCEEDED THE COMMERCIAL SCTL
- U = RESULTS BELOW THE LABORATORY METHOD DETECTION LIMITS
- I = THE REPORTED VALUE IS BETWEEN THE LABORATORY METHOD DETECTION LIMIT AND THE LABORATORY PRACTICAL QUANTITATION LIMIT
- *** = LEACHABILITY DETERMINED VIA SPLP ANALYSIS

	SCTL-R	SCTL-C	SCTL-L
ARSENIC	2.1	12	***
LEAD	400	1,400	***
TPH's	460	2,700	340
BaP	0.1	0.7	8
BaP-E	0.1	0.7	—
PAH's	VARIES PER CONSTITUENT		
VOC's	VARIES PER CONSTITUENT		



95TH STREET

PROPERTY
BOUNDARY

**GALLAGHER
BASSETT** | TECHNICAL SERVICES

**5751 MIAMI LAKES DRIVE
MIAMI LAKES, FLORIDA 33014**
Phone: (305) 374-8300
Fax: (305) 374-9004

CHURCH BY THE SEA
1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

FIGURE
6

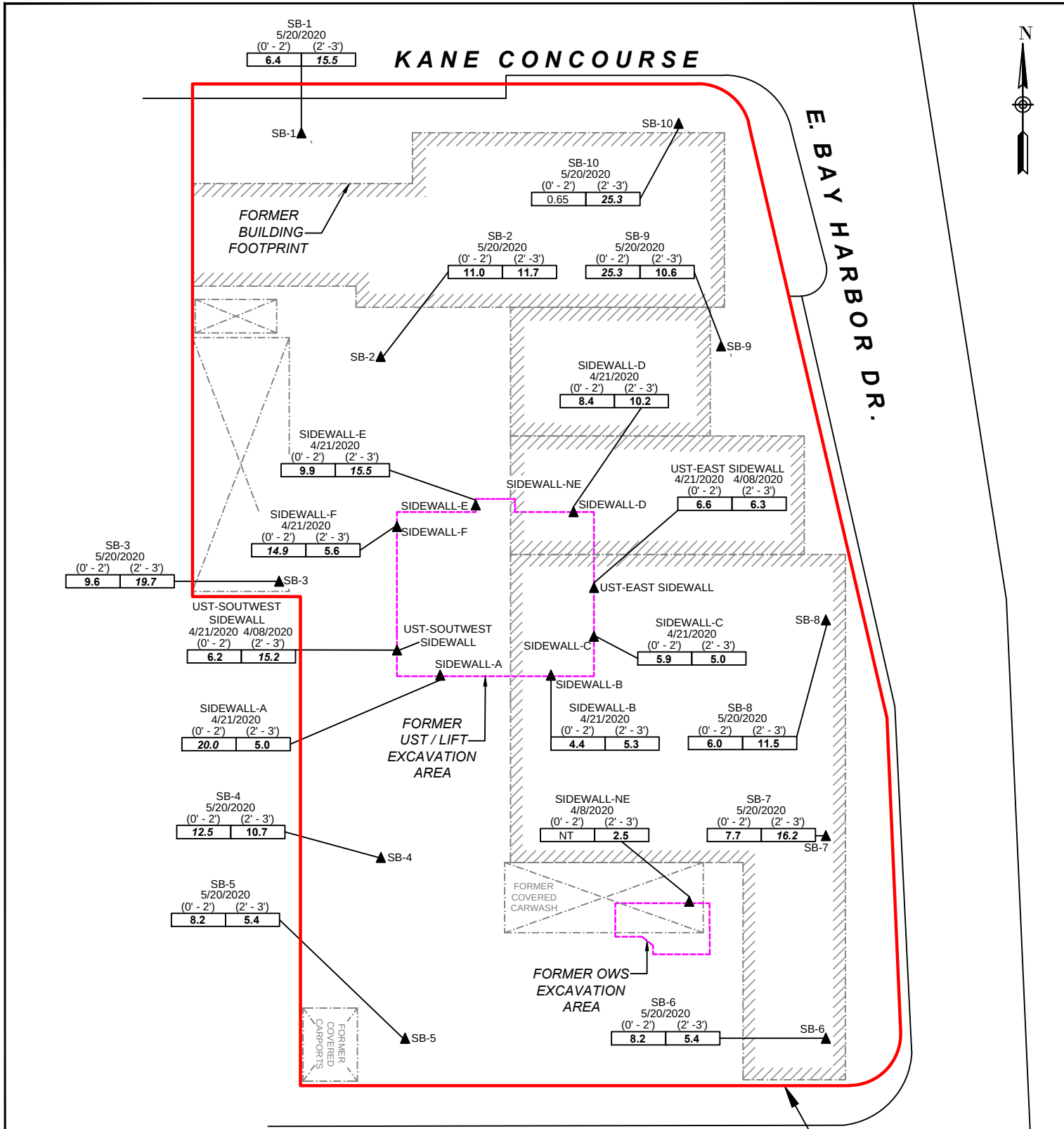
POST EXCAVATION SIDEWALL
SOIL RESULTS MAP

SCALE: 1" = 50'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 04/28/2020

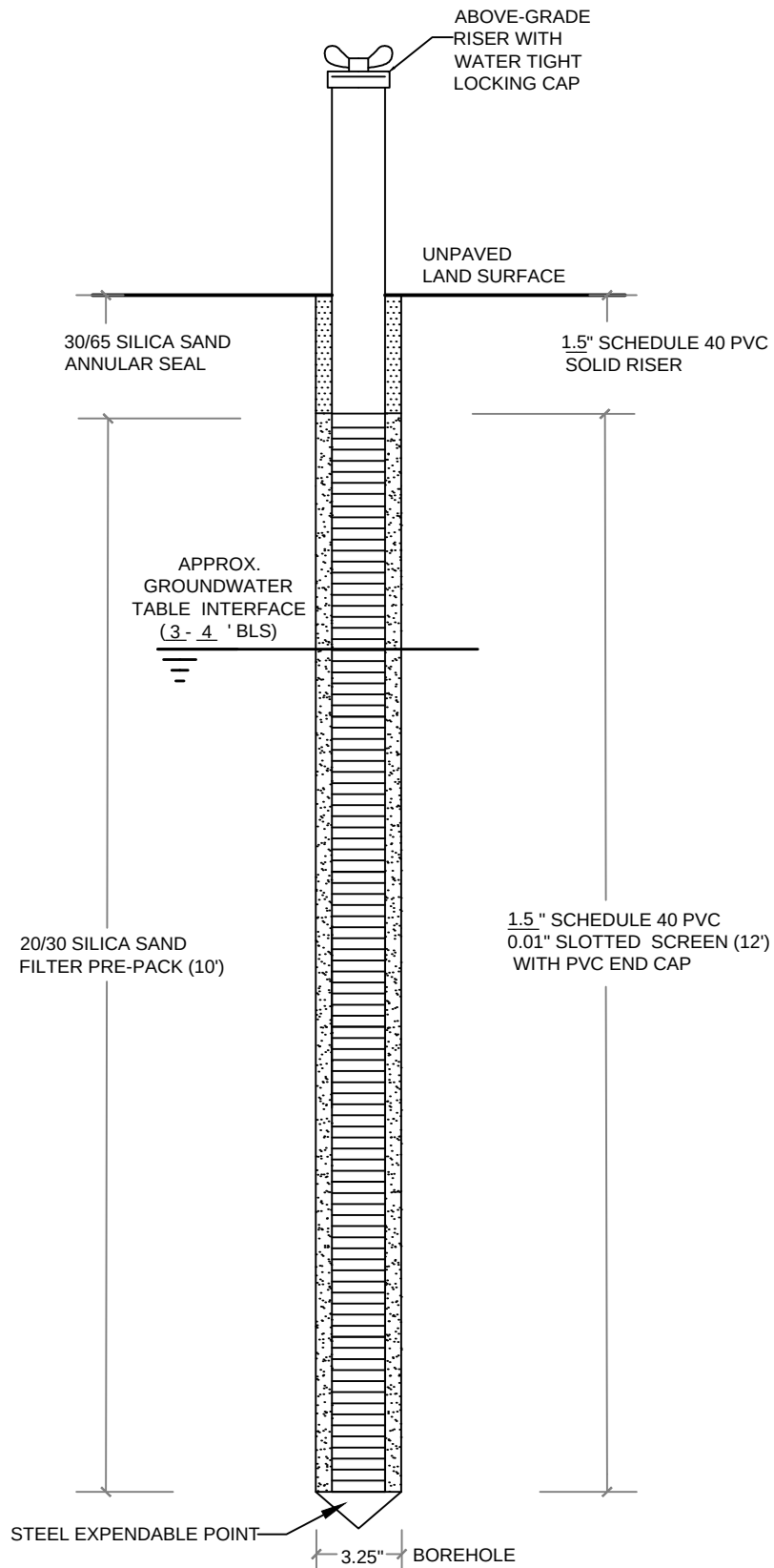


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1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

FIGURE 7	SOIL RESULTS MAP (ARSENIC)
SCALE: 1" = 40'	DRAWN BY: JL
PROJECT: 2020-3067	DATE: 5/28/2020



GALLAGHER | TECHNICAL SERVICES
BASSETT

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CHURCH BY THE SEA
1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

**FIGURE
8**

**SHALLOW MONITORING WELL
CONSTRUCTION DETAIL**

SCALE: NO SCALE

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 6/19/2020

KANE CONCOURSE



FORMER
BUILDING
FOOTPRINT

E. BAY HARBOR DR.

95TH STREET

PROPERTY
BOUNDARY

LEGEND:

- = AREA OF EXCAVATION
- = MONITORING WELL
- = DPT GROUNDWATER SAMPLE
- BOLD** = ANALYTICAL RESULT EXCEEDED THE GCTL
- BOLD** = ANALYTICAL RESULT EXCEEDED THE NADSC
- U = RESULTS BELOW THE LABORATORY METHOD DETECTION LIMITS
- I = THE REPORTED VALUE IS BETWEEN THE LABORATORY METHOD DETECTION LIMIT AND THE LABORATORY PRACTICAL QUANTITATION LIMIT
- NT = RESULTS BELOW THE LABORATORY METHOD DETECTION LIMITS

	GCTL	NADSC
ARSENIC	10	100
LEAD	15	150
TPHS	5,000	50,000
PAHS	VARIES PER CONSTITUENT	
VOCS	VARIES PER CONSTITUENT	



**GALLAGHER
BASSETT** | TECHNICAL SERVICES

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CHURCH BY THE SEA

1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

FIGURE
9

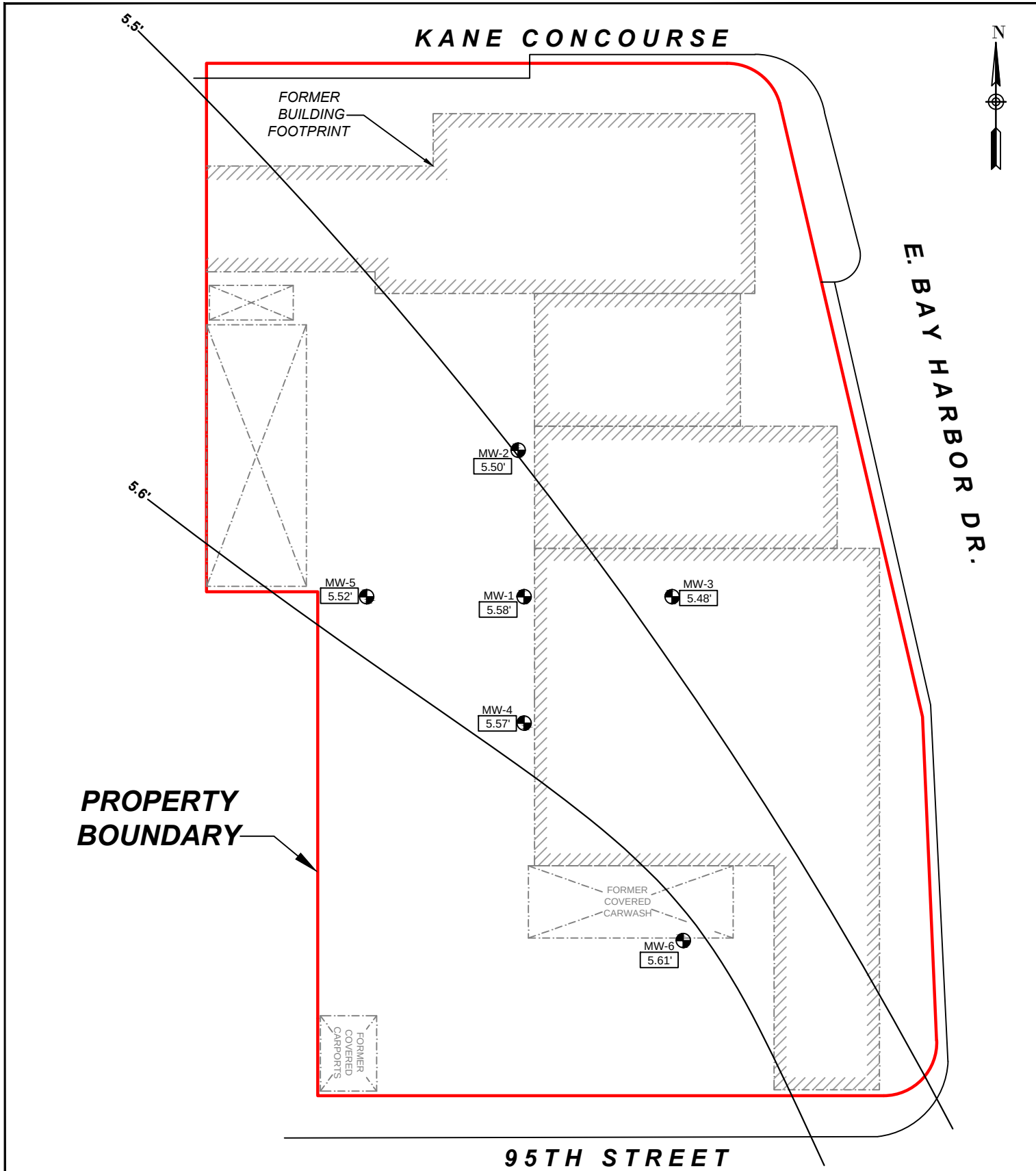
POST EXCAVATION
GROUNDWATER RESULTS MAP

SCALE: 1" = 50'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 04/28/2020



LEGEND:

● = MONITORING WELL



**5751 MIAMI LAKES DRIVE
MIAMI LAKES, FLORIDA 33014**
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Fax: (305) 374-9004

CHURCH BY THE SEA

1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

**FIGURE
10**

**GROUNDWATER ELEVATION
(LOW TIDE @ 6-10-20 / 8:23AM)**

SCALE:

1" = 40'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 6/12/2020



KANE CONCOURSE

FORMER
BUILDING
FOOTPRINT

E. BAY HARBOR DR.

95TH STREET

**PROPERTY
BOUNDARY**

MW-2
6.73'

MW-5
6.53'

MW-1
6.60'

MW-3
6.69'

MW-4
6.68'

MW-6
6.45'

FORMER
COVERED
CARWASH

FORMER
COVERED
CARPORTS

LEGEND:

● = MONITORING WELL



 **GALLAGHER
BASSETT** | TECHNICAL SERVICES

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MIAMI LAKES, FLORIDA 33014
Phone: (305) 374-8300
Fax: (305) 374-9004**

CHURCH BY THE SEA

1000 KANE CONCOURSE
BAY HARBOR ISLANDS, FLORIDA 33154

**FIGURE
11**

**GROUNDWATER ELEVATION
(HIGH TIDE @ 6-10-20 /14:09PM)**

SCALE: 1" = 40'

DRAWN BY: JL

PROJECT: 2020-3067

DATE: 6/12/2020

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Councilmembers
Town of Bay Harbor Islands

CC: Maria Lasday – Town Manager
Marlene Siegel – Town Clerk

From: Michael J. Miller, AICP *MM*
Consultant Town Planner

Date: December 18th, 2020

Subject: Brownfield Area Designation Request
Church by the Sea (CBTS)
1000 Kane Concourse
Bay Harbor Islands Acct. No. MB2016-17
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Town Council review our staff report explaining the request, and the documents submitted by The Goldstein Environmental Law Firm on behalf of Church-By-The-Sea (CBTS) requesting the Town to designate their redevelopment site as a "Brownfield Area", so that they can qualify under Chapter 376.80 Florida Statutes for certain regulatory and economic incentives under FDEP programs to assist in the expenses associated with the environmental cleanup of their sites due to the former Ocean Cadillac operations (fuel storage / oil changes / car wash / etc.). As we understand the program the Town simply designates the sites by Resolution, but the landowner is responsible for performing environmental studies / action plan for the cleanup and filing the request with the applicable governmental agencies to obtain permits and funding, if available. Any costs for advertising as required by Ch. 376.80 F.S. is to be covered by the applicant.

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial

Zoning District: B-1 Business District

General Location: 1000 Kane Concourse

Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the contract property owner at that time, the Church-by-the-Sea, Inc., submitted a Site Development Plan application to allow in early 2016 for the demolition of the former Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex will have commercial retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The Ocean Cadillac automobile dealership operated on the site for decades. The dealership sold vehicles and serviced them as well, including general repairs and fluid changes (oil / other). A car wash facility was also on the site with underground reclaim tanks. Finally, four (4) underground fuel storage tanks (2 @ 2,000 gallons / 2 @ 1,000 gallons) were on the site. While proper permits were obtained for those facilities and periodic inspections, those facilities were installed underground in the saltwater environment of the Town. Environmental laws have changed greatly over the years as well as safe construction techniques and storage tank designs. Often at / near vehicle dealerships / public works complexes / gas stations / similar & other land uses that deal with vehicle maintenance & repairs or industrial manufacturing some leakage may occur from tank leakage or spills. While containment systems have been perfected over the years older installations may not be as good as newer installations.

On July 28th, 2016 the Town's Planning and Zoning Board (PZB) approved the initial Site Development Plan for the new CBTS complex (Res. No. 2098). As the construction plans were prepared certain revisions were requested. The PZB approved a series of minor plan revisions on May 21st, 2019 (Res. No. 2177). The construction plans were modified and an application for Building Permits was made on May 31st, 2020. After Town Bldg. Dept. / other agency reviews Building Permits were issued on June 29th, 2020. Over the summer / fall of 2020 the former Ocean Cadillac buildings and site improvements were demolished / removed from the site in anticipation of the new construction. During this activity the landowner discovered the true extent of the environmental cleanup impacts (more work / higher cleanup costs than expected). That work is now complete and new construction is underway (initially foundation / vertical to follow). Modern environmental permit programs include processes for extraordinary cleanup efforts. Florida statutes (and most other states) include the "Brownfield" programs. On the federal level there are programs for so-called "Superfund Cleanup Sites" for larger polluted sites.

The Goldstein Environmental Law firm has submitted a letter explaining the site discovering issues and actions taken to date. There are requesting the Town to hold an advertised public meeting as required by Florida Statute and adopt a Resolution officially designating this site as a "Brownfield Area" which allows them to negotiate with applicable environmental permit agencies for regulatory and financial compensation (funds / tax relief / etc.). Attached to their letter are numerous exhibits with property ownership information, legal descriptions, engineering studies and a draft agreement in support of their request.

The Town will need to prepare / adopt a Resolution (applicant to provide a draft example) and advertise the matter as required by Florida Statute Ch. 376.80 prior to holding a public hearing. The cost of the advertisement must be paid by the applicant.

SUMMARY

On October 12th, 2020 the Town received an application submitted by The Goldstein Environmental Law Firm, on behalf of Church-By-The-Sea (CBTS), requesting the Town to designate their redevelopment site as a "Brownfield Area", so that they can qualify under Chapter 376.80(2)(c) Florida Statutes for certain regulatory and economic incentives under FDEP programs to assist in the expenses associated with the environmental cleanup of their sites due to the former Ocean Cadillac operations (fuel storage / oil changes / car wash / etc.). As we understand the program the Town simply designates the site by Resolution, but the landowner is responsible for performing environmental studies / action plan for the cleanup and filing the request with the applicable governmental agencies to obtain permits and funding, if available. Any costs for advertising as required by Ch. 376.80 F.S. is to be covered by the applicant.

Based on our review of the documents submitted, including the applicable provisions in Chapter 376.80 F.S., MMPA recommends the Town **APPROVE** a "Brownfield Area" designation for the collection CBTS properties. The site has now been fully cleaned up and the landowner is seeking to utilize the applicable environmental programs for regulatory and funding reimbursement due to the unexpected higher cost of required engineering studies and cleanup activities.

RESOLUTION NO. 2224

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; PROVIDING FINDINGS; DESIGNATING A BROWNFIELD AREA WITHIN THE TOWN FOR REAL PROPERTY LOCATED AT 1000 KANE CONCOURSE, BAY HARBOR ISLANDS, FLORIDA, AS DEPICTED ON EXHIBIT "A" AND LEGALLY DESCRIBED ON EXHIBIT "B", FOR THE PURPOSES OF ENVIRONMENTAL REHABILITATION, JOB CREATION, AND ECONOMIC DEVELOPMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida, in Sections 376.77 - 376.85, *Florida Statutes*, adopted the Brownfields Redevelopment Act, the purpose of which is to encourage the redevelopment and the voluntary cleanup of real property where the expansion, redevelopment or reuse of such property may be complicated by actual or perceived environmental contamination; and

WHEREAS, the Brownfields Redevelopment Act created a process whereby a local government with jurisdiction over a brownfield area must notify the Florida Department of Environmental Protection and, if applicable, the local pollution control program of its decision to designate a brownfield area; and

WHEREAS, CBS Realty Holding, LLC ("CBS"), has requested that the Town Council of the Town of Bay Harbor Islands (the "Town") designate as a brownfield area the parcels it owns located at 1000 Kane Concourse, Bay Harbor Islands, Florida, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470 (the "Subject Property") and that is depicted on Exhibit "A" and legally described on Exhibit "B" attached hereto (hereafter referred to as the "CBTS Green Reuse Area" that is incorporated herein by reference; and

WHEREAS, the Town has reviewed the relevant criteria that apply in designating a Brownfield Area as specified in Section 376.80(2)(c), *Florida Statutes*, and has determined and finds that the Subject Property qualifies for designation as a Brownfield Area because the following requirements have been satisfied:

1. CBS owns the Subject Property which is proposed for designation and has agreed to rehabilitate and redevelop it;
2. The rehabilitation and redevelopment of the Subject Property will result in economic productivity in the area and will create at least five new permanent jobs at the Subject Property that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition

or construction activities pursuant to the redevelopment of the proposed brownfield site or area;

3. The redevelopment of the Subject Property is consistent with the Town's Comprehensive Plan and is a permissible use under the Town Code;
4. Proper notice of the proposed rehabilitation of the Subject Property has been provided to neighbors and nearby residents, and CBS has provided those receiving notice the opportunity to provide comments and suggestions regarding the rehabilitation; and
5. CBS has provided reasonable assurance that it has sufficient financial resources to implement and complete a rehabilitation agreement and redevelopment plan; and

WHEREAS, the Town desires to notify the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management and the Florida Department of Environmental Protection of its resolution designating the Subject Property a Brownfield Area to further its rehabilitation and redevelopment for purposes of Sections 376.77 – 376.86, Florida Statutes; and

WHEREAS, the applicable procedures set forth in Sections 376.80 and 166.041, Florida Statutes, have been followed and proper notice has been provided in accordance with Sections 376.80(1) and 166.041(3)(c)2, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals set forth above are hereby adopted, confirmed, and incorporated herein.

Section 2. Findings. The Town Council, based upon all testimony, staff report and other evidence presented and otherwise made part of the record, finds that the CBS has met all of the Brownfield Area designation criteria set forth at Section 376.80(2)(c), Florida Statutes.

Section 3. Designation of Brownfield Area. The Town Council hereby designates the property located at 1000 Kane Concourse, Bay Harbor Islands, Florida, Folio Numbers 13-2235-004-0010 and 13-2227-001-2470, as depicted on the map attached hereto on Exhibit "A" and legally described on Exhibit "B", as a Brownfield Area to be called the "CBTS Green Reuse Area" for the purposes of Sections 376.77 – 376.84, Florida Statutes. Such designation shall not, however, render the Town liable for the cost of site rehabilitation or source removal, as those terms are defined in Section 376.79, Florida Statutes.

Section 4. **Notification.** The Town Manager or her designee is hereby authorized to notify the Florida Department of Environmental Protection and the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management of the designation of the Subject Property as a Brownfield Area for the purposes of Sections 376.77 – 376.84, Florida Statutes.

Section 5. **Severability.** If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses or provisions of this Resolution

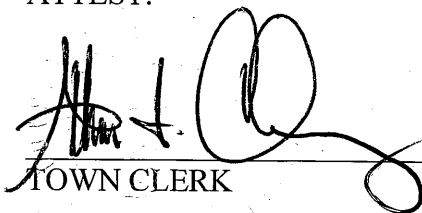
Section 5. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 14th day of April, 2021.



JOSHUA D. FULLER
MAYOR

ATTEST:



TOWN CLERK

EXHIBIT “A”

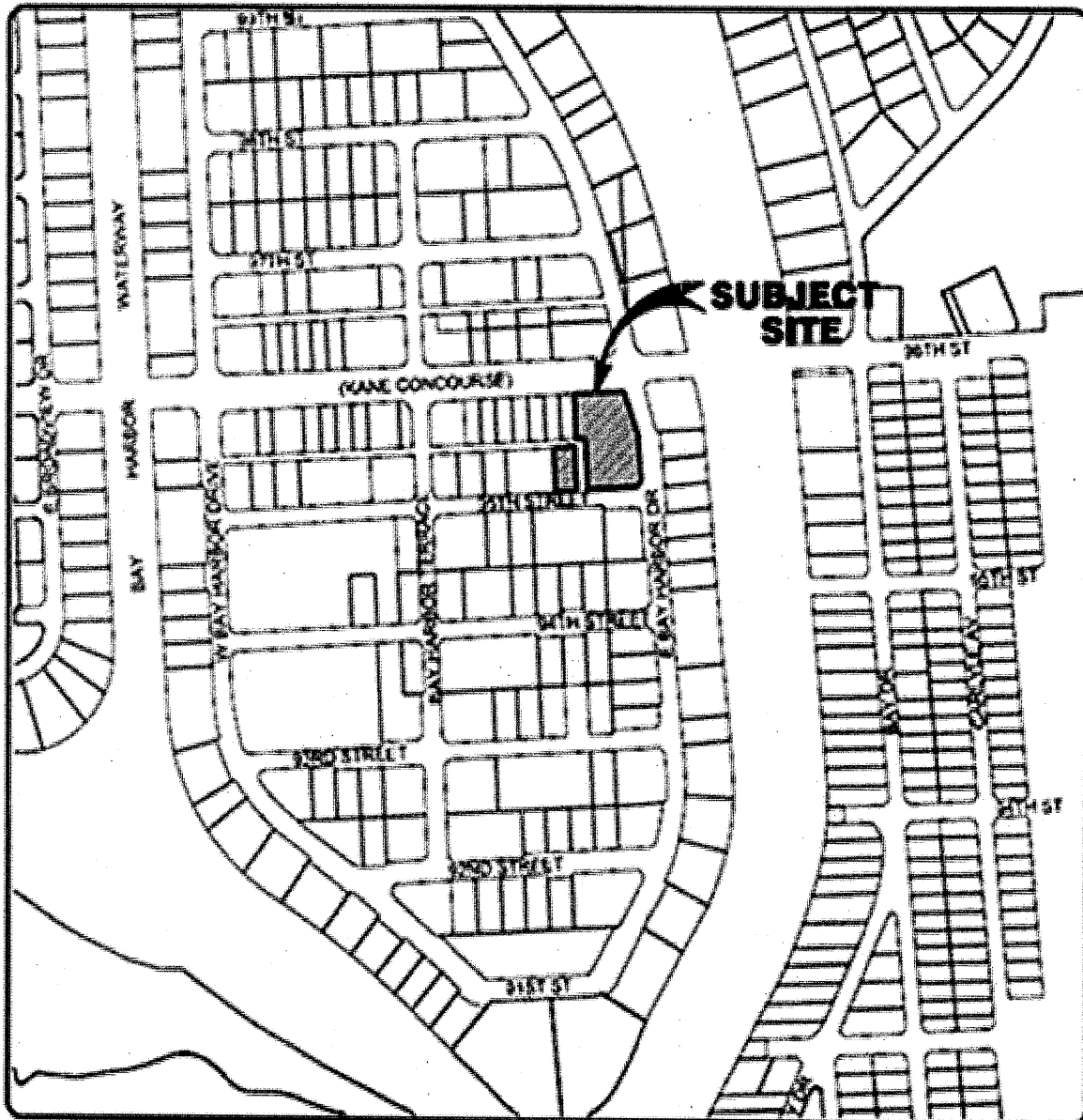
MAP OF PROPERTY

LOCATION MAP

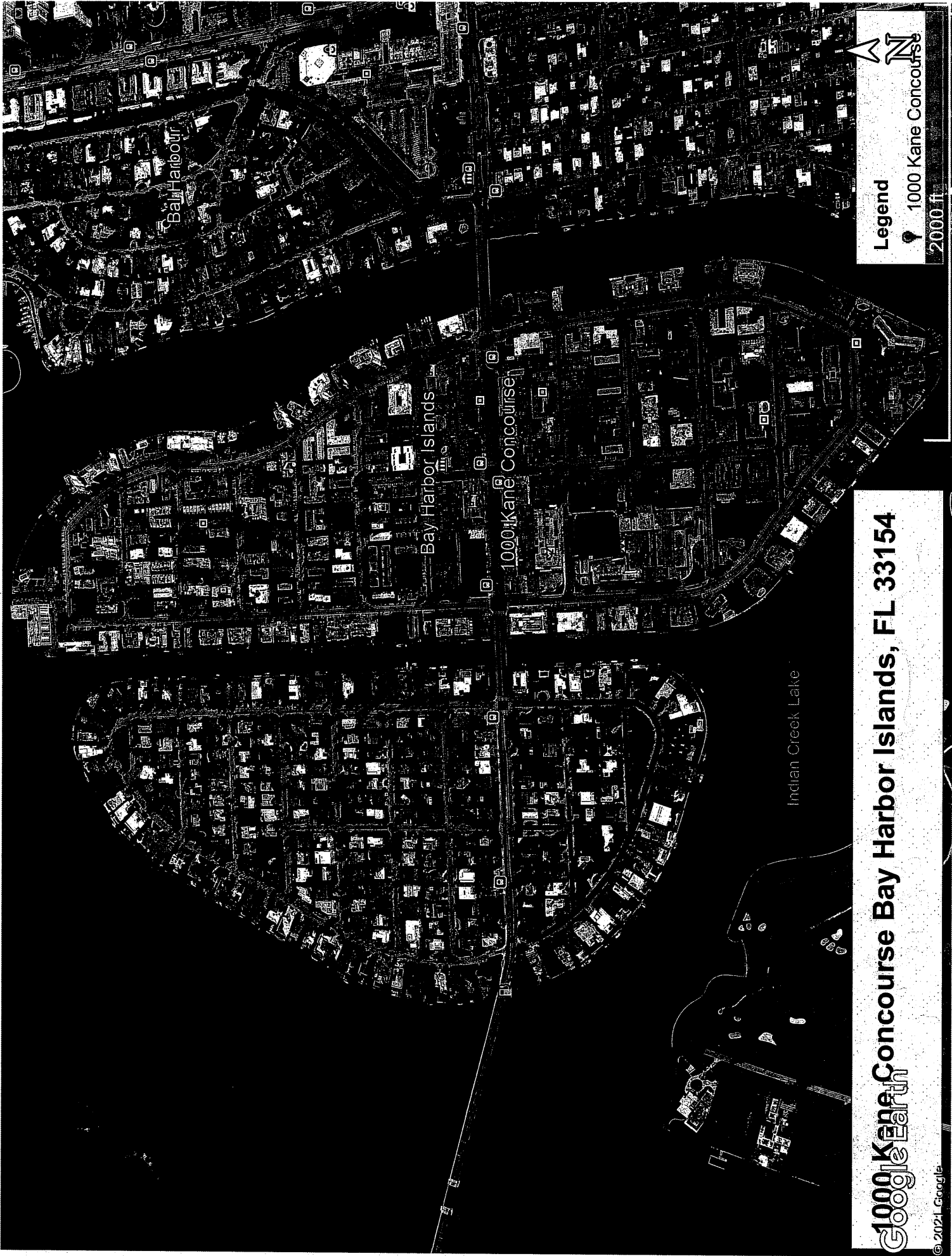
Property Address: 1000 Kane Concourse

Folio Numbers: 13-2235-004-0010 and 13-2227-001-2470

**SECTION 34 • TOWNSHIP 52 SOUTH • RANGE 42 EAST
LYING IN BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA**



LOCATION MAP
(NOT TO SCALE)



1000 Kane Concourse Bay Harbor Islands, FL 33154
Google Earth

Legend
1000 Kane Concourse
2000 ft

EXHIBIT “B”

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

LEGAL DESCRIPTION

Tract N of NOLAN BROWN, according to the Plat thereof, as recorded in Plat Book 56, Page 53, of the Public Records of Miami-Dade County, Florida

and

Lot 18, Block 12, of BAY HARBOR ISLAND, according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida

1000 Kane Concourse

Write a description for your map.



Legend

 1000 Kane Concourse

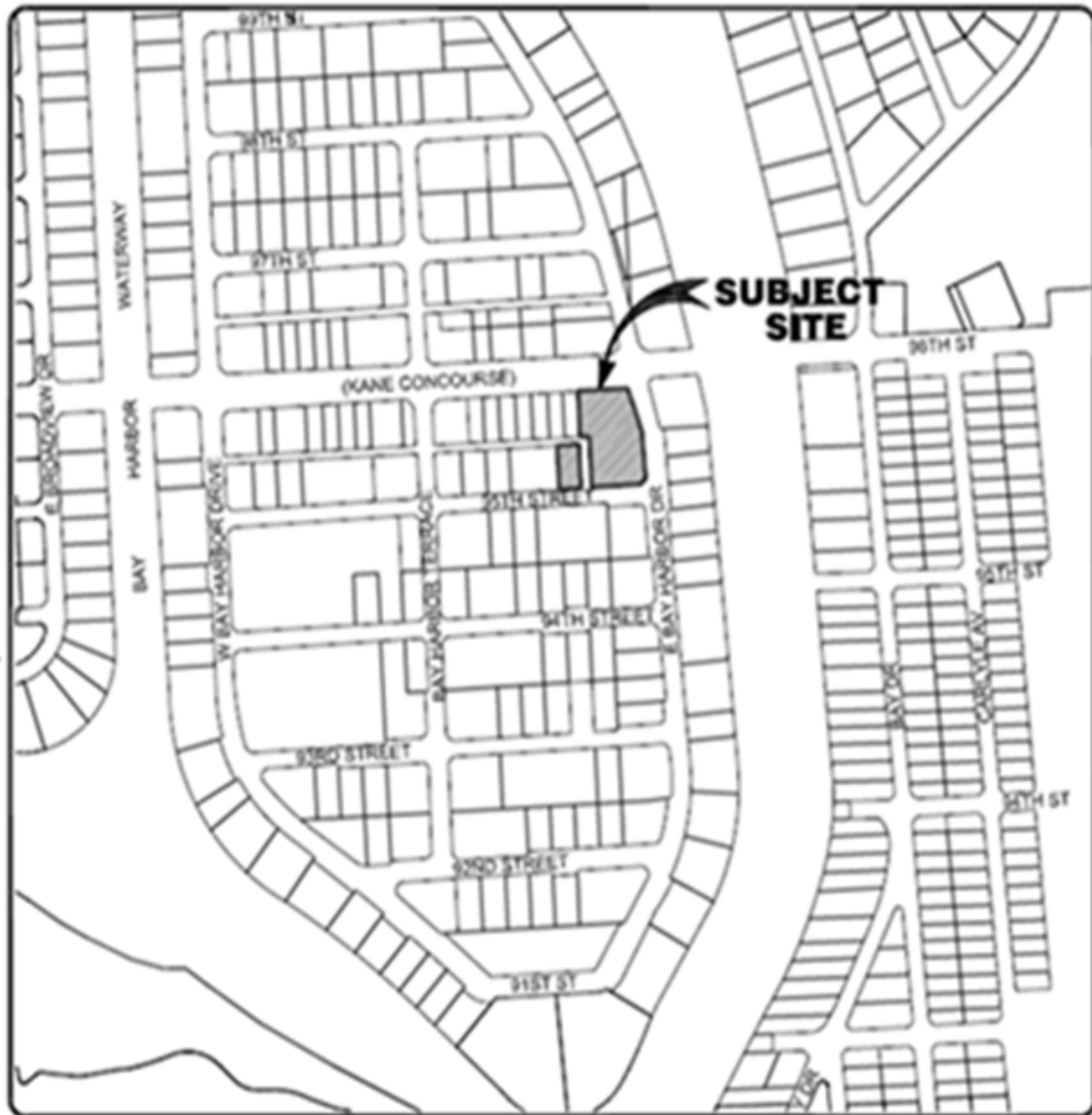
200 ft

LOCATION MAP

Property Address: 1000 Kane Concourse

Folio Numbers: 13-2235-004-0010 and 13-2227-001-2470

**SECTION 34 • TOWNSHIP 52 SOUTH • RANGE 42 EAST
LYING IN BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA**



LOCATION MAP
(NOT TO SCALE)

AGENDA ITEM REPORT

November 10, 2021

ITEM NUMBER: 2.

ITEM: Discussion and **possible action** with respect to the appeal filed by 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC regarding the Town Council approval of a Brownfield Area Designation for the property located at 1000 Kane Concourse.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk

ATTACHMENTS

None