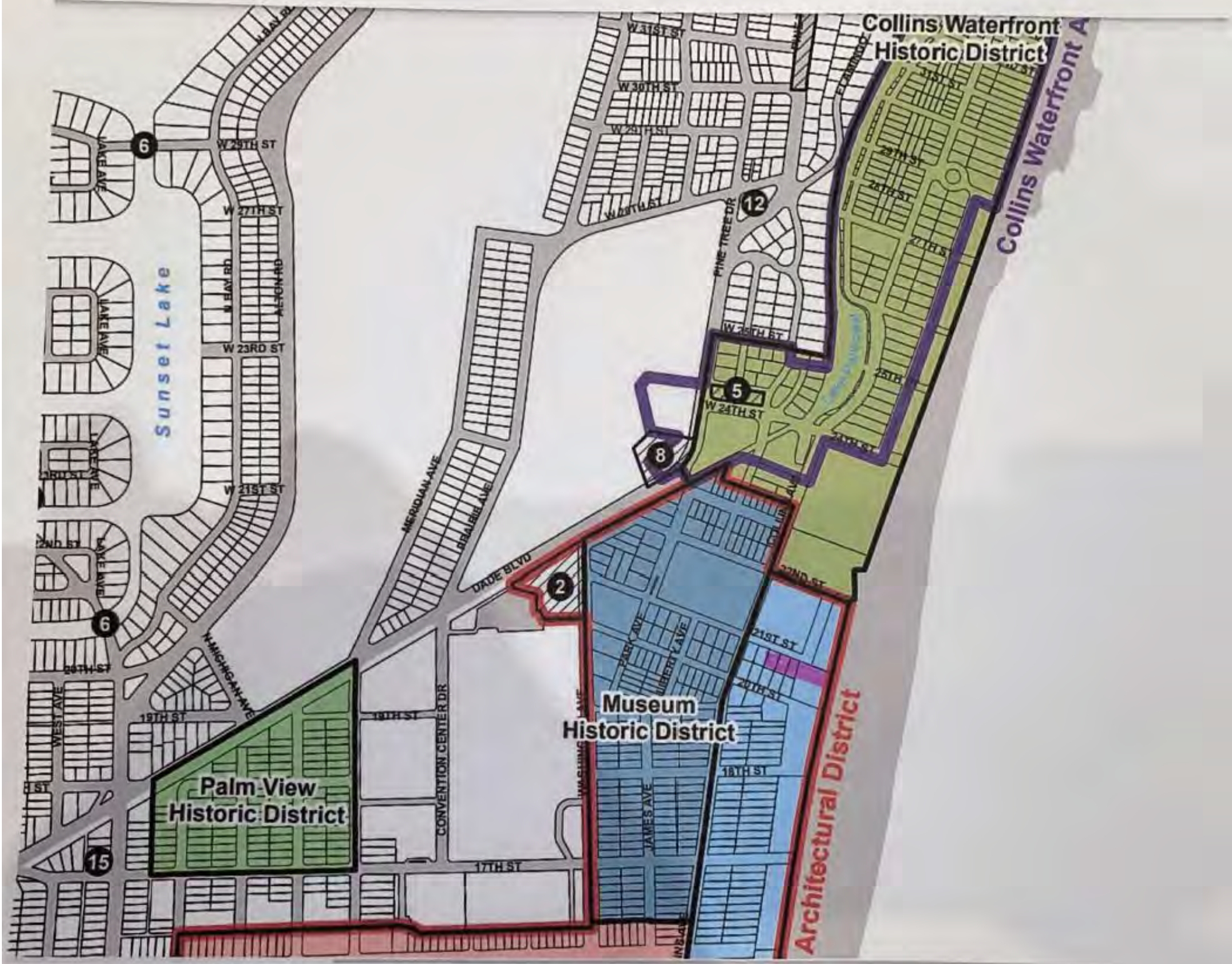


LOCATION





Sunset Lake

Collins Waterfront Historic District

Collins Waterfront A

Palm View Historic District

Museum Historic District

Architectural District

6

6

15

2

8

5

12





SEAGULL HOTEL



RENDER OF PROPOSED DESIGN





RENDER OF PROPOSED DESIGN





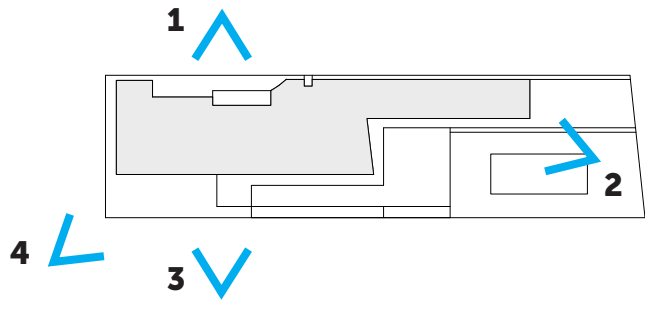




RENDER OF PROPOSED DESIGN

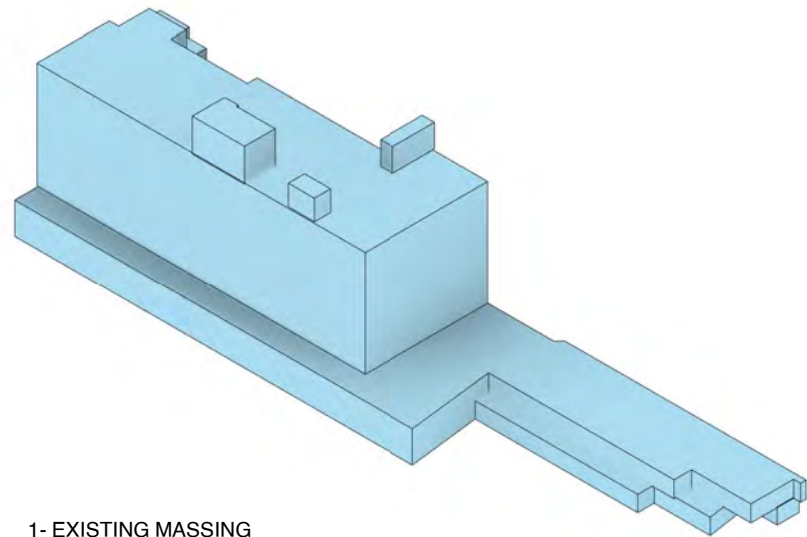


3D VIEWS

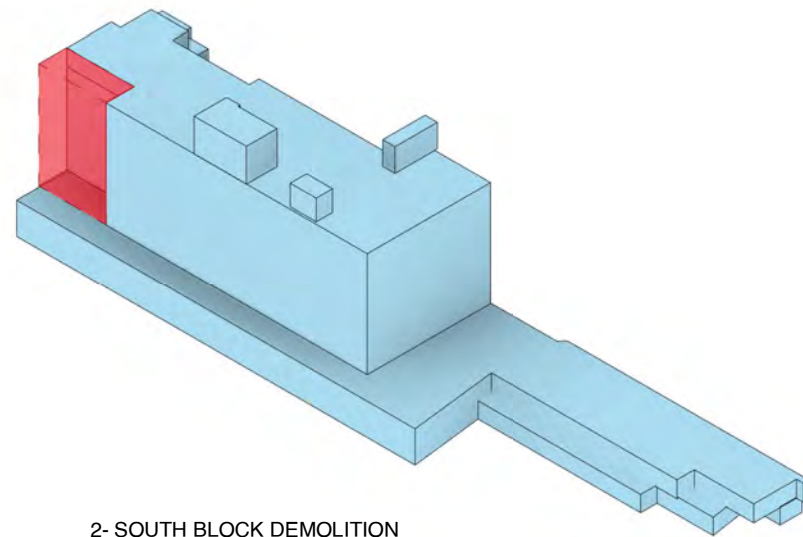


MASSING DIAGRAM

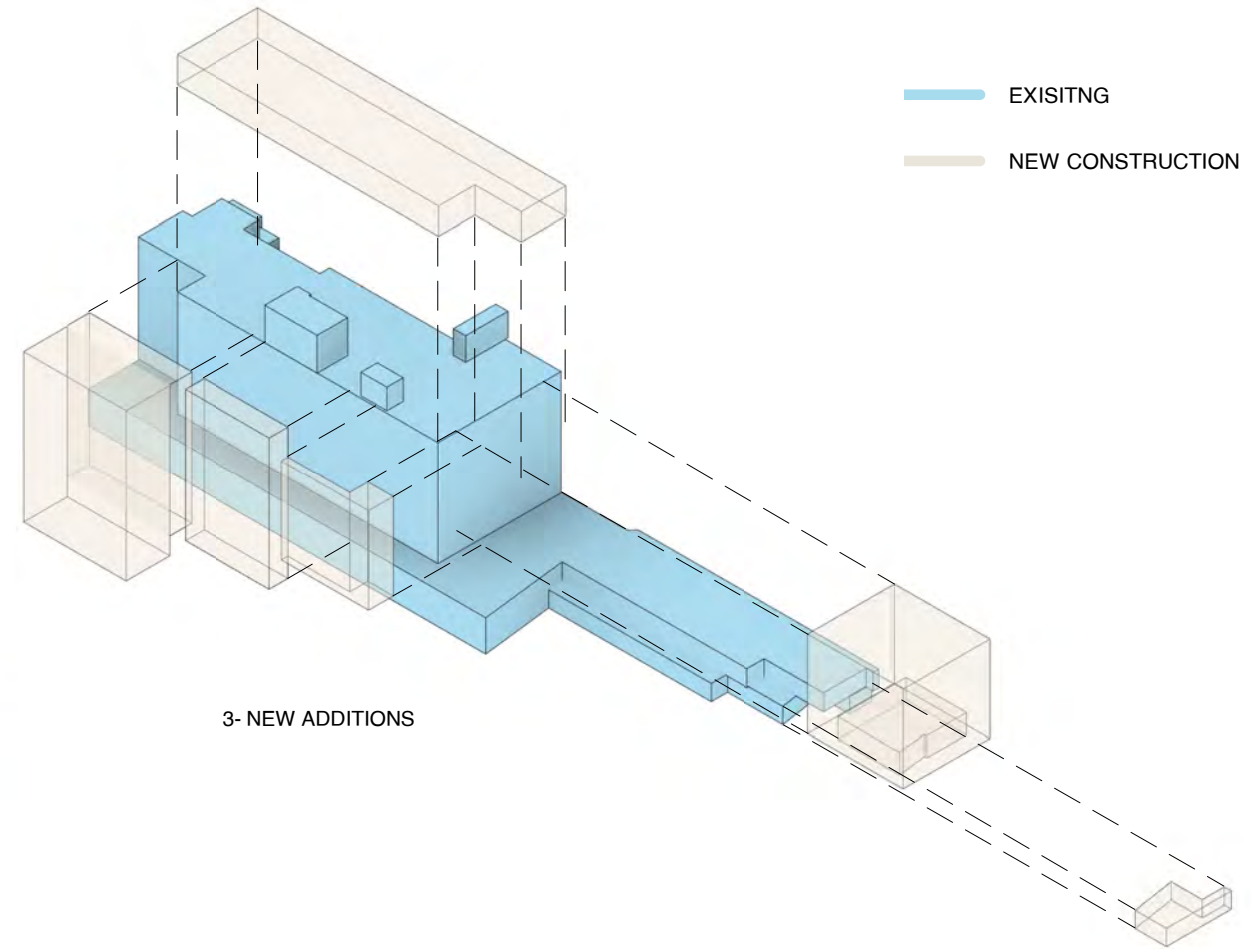
EXISTING
NEW CONSTRUCTION



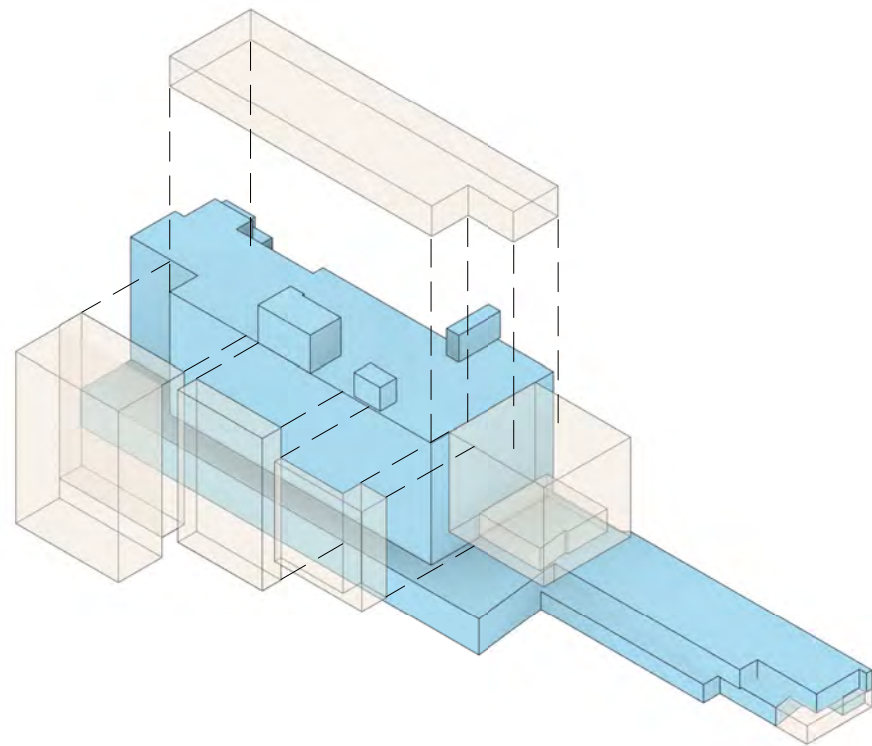
1- EXISTING MASSING



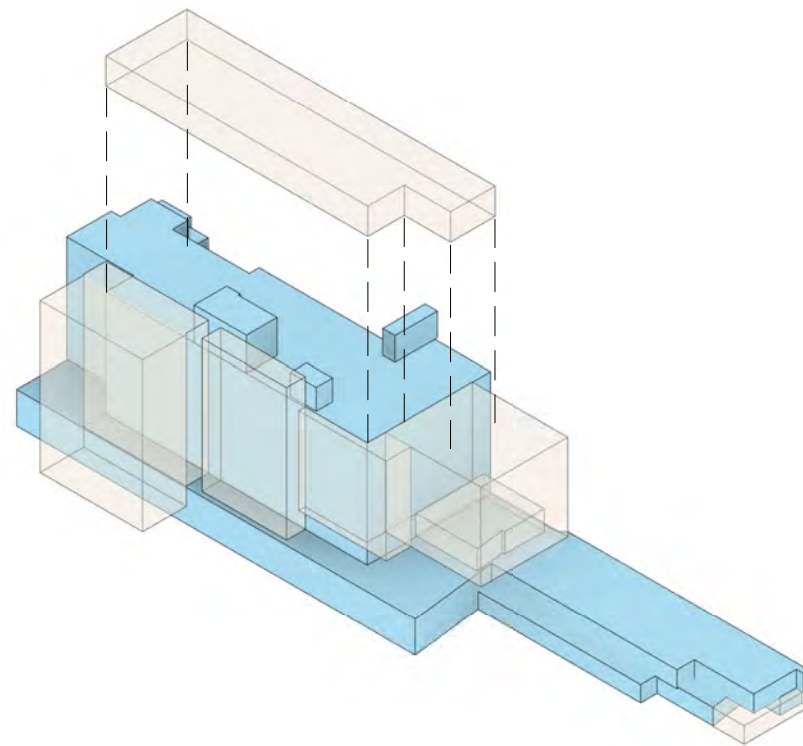
2- SOUTH BLOCK DEMOLITION



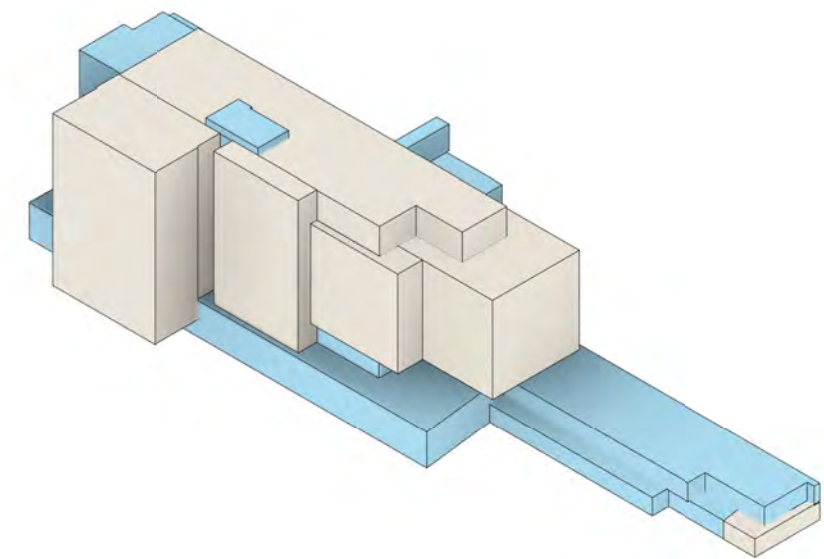
3- NEW ADDITIONS



4- EAST BLOCK ADDITION



5- SOUTH BLOCK ADDITION



6- ROOF BLOCK ADDITION

Proposed Revisions to Seagull Building

Removal of 40+ Hotel Rooms

Additions Add Approximately 13,472 Square Feet

Building Height of 105'11"

Maximum Floor Area Ratio Remains 2.0

An aerial photograph of a coastal city, likely Miami Beach, showing a dense cluster of hotels and buildings along the oceanfront. A sandy beach and the ocean are visible on the right side of the image. Several blue callout boxes are overlaid on the image, pointing to specific hotels and displaying their names and ratings. A white box in the top right corner contains the text 'Oceanfront FAR'.

Oceanfront FAR

W Hotel — 2.99

Seagull — 2.0

The Setai — 4.24

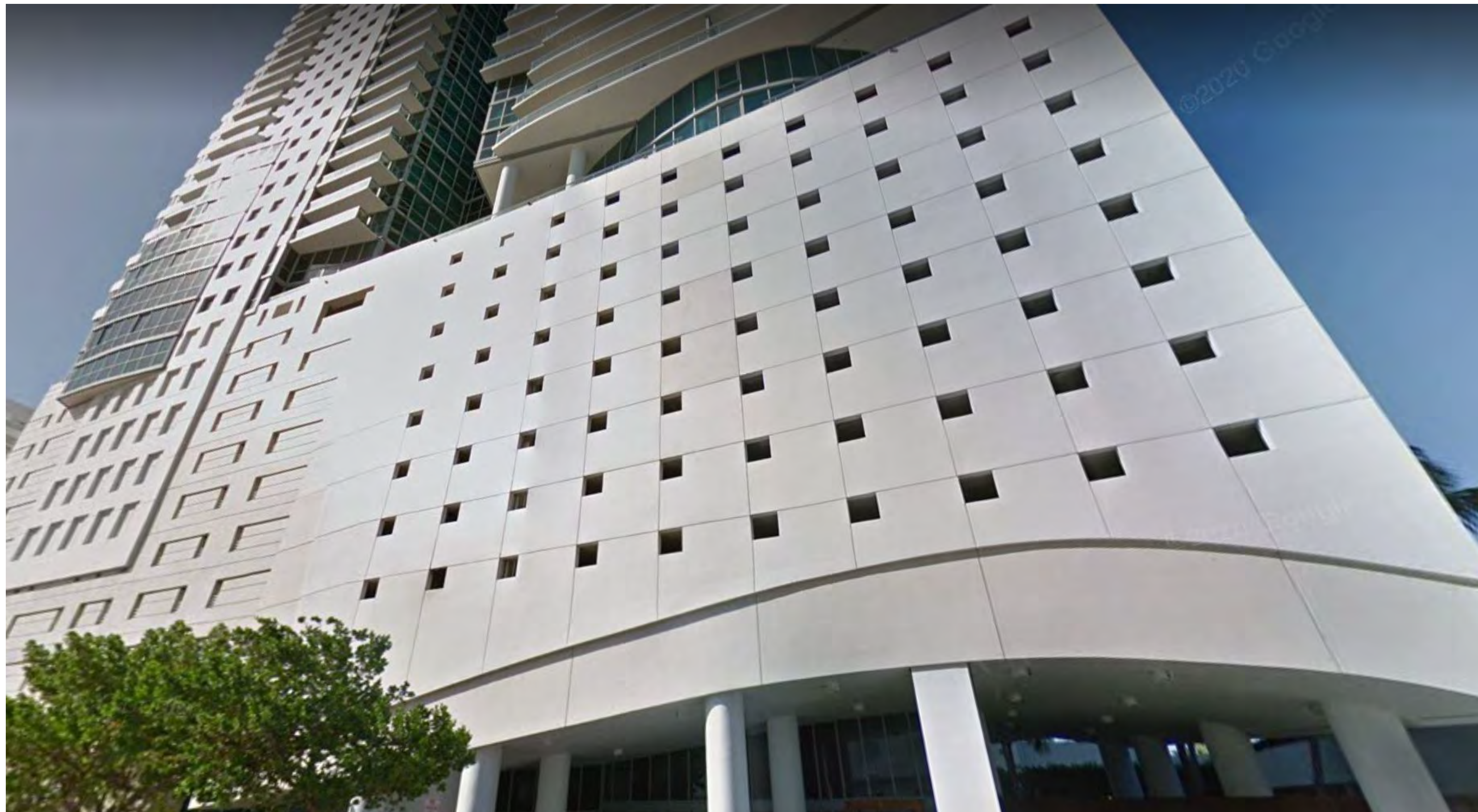
Shore Club — 3.0

Shelborne — 3.32

Raleigh Assemblage — 2.0







2 SETAI PODIUM SOUTH FACADE



1 SETAI PODIUM NORTH FACADE

BUILDING DATA COMPARISON

SETAI

F.A.R. 4.24

HEIGHT 393'-7" N.G.V.D.
HIGHEST ARCH. PROJECTION

38 FLOORS

BVLGARI

F.A.R. 2.0

HEIGHT 122'-8"
HIGHEST ARCH. PROJECTION (PROPOSED)

9 FLOORS

SETAI
107'-9" N.G.V.D.
TOP OF PARAPET

BVLGARI
105'-11" N.G.V.D.
TOP OF ROOF ELEVATION

20TH STREET

21TH STREET

SOUTH PROPERTY LINE

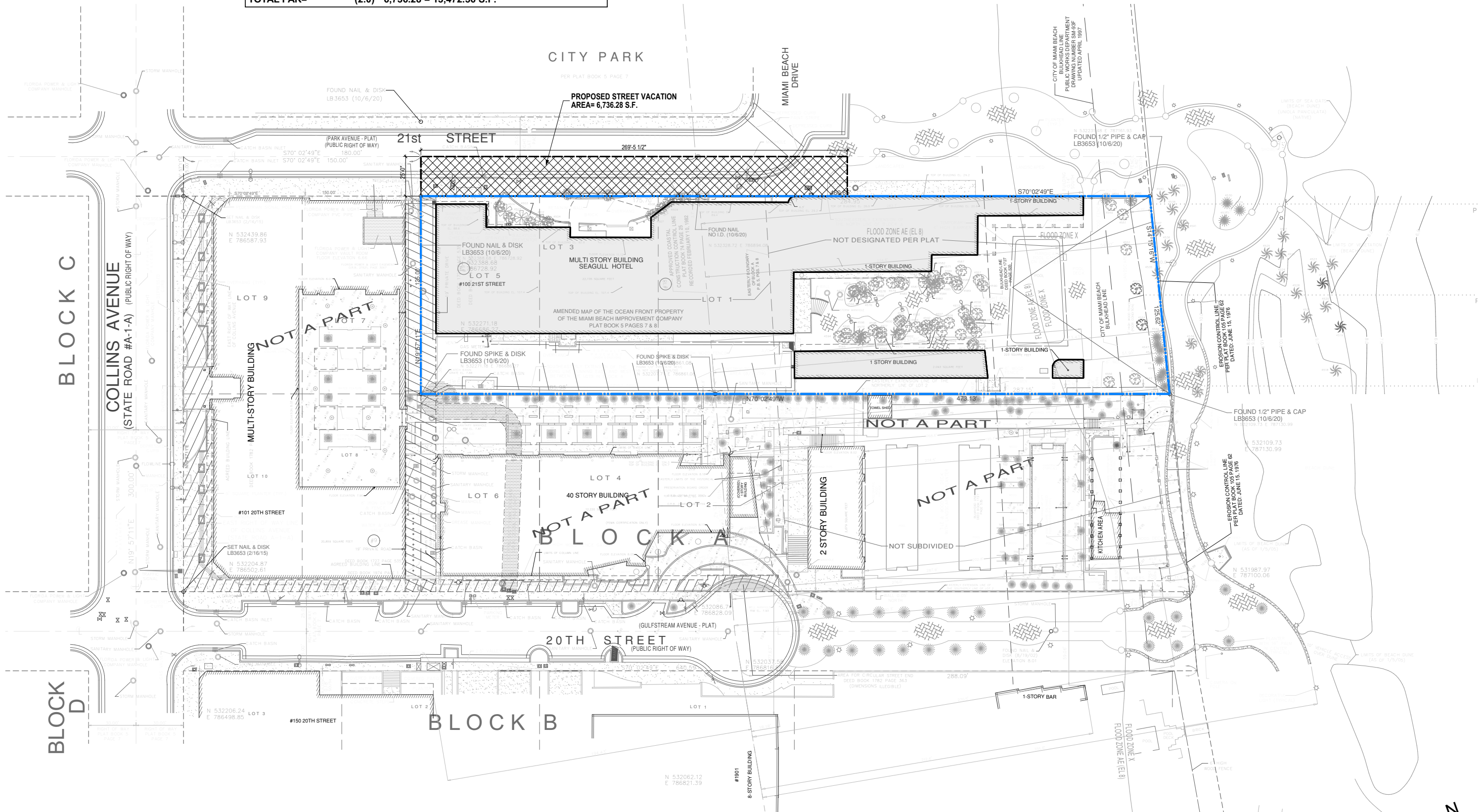
NORTH PROPERTY LINE

EL. +45' N.G.V.D.
EL. +1' N.G.V.D.
LOBBY LEVEL
GRADE LEVEL

RENDER OF PROPOSED DESIGN



ZONING DISTRICT: RM-3 / RESIDENTIAL MULTI-FAMILY / HIGH INTENSITY
 FAR= 2.0
 VACATED AREA= 6,736.28 S.F.
 TOTAL FAR= (2.0) * 6,736.28 = 13,472.56 S.F.



1 PROPOSED STREET VACATION - SITE PLAN
 SCALE: 1" = 30'

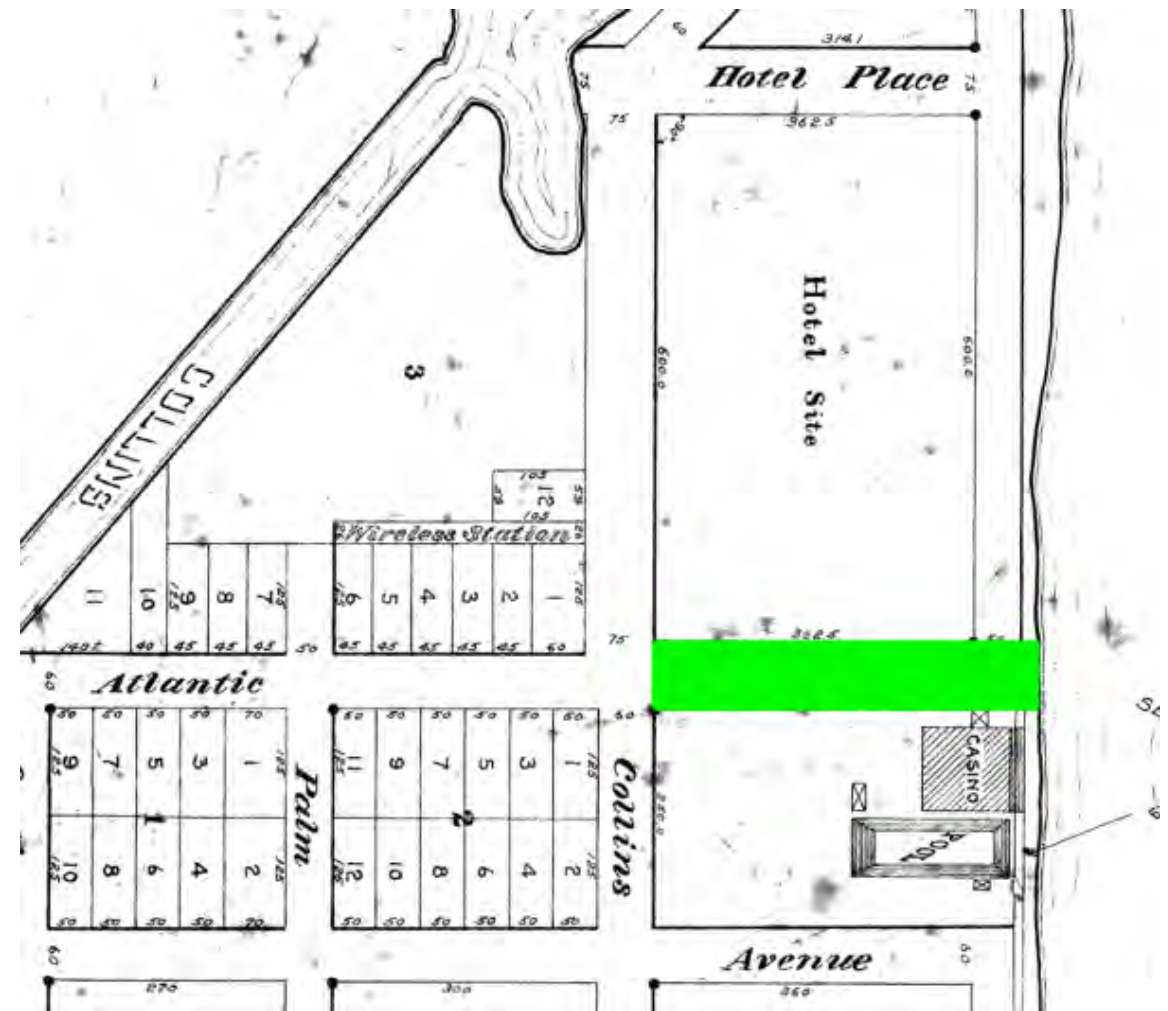


Proposed Vacation

- City Releases Easement Through Vacation.
- In Exchange, Owner Will Provide New Easement Providing Same Public Access and Use.
- No Changes to the Road Other than Typical Project Improvements.

City Vacations – 1917

Ordinance 96
Vacated 23rd Street
East of Collins for
Roney Plaza
Development



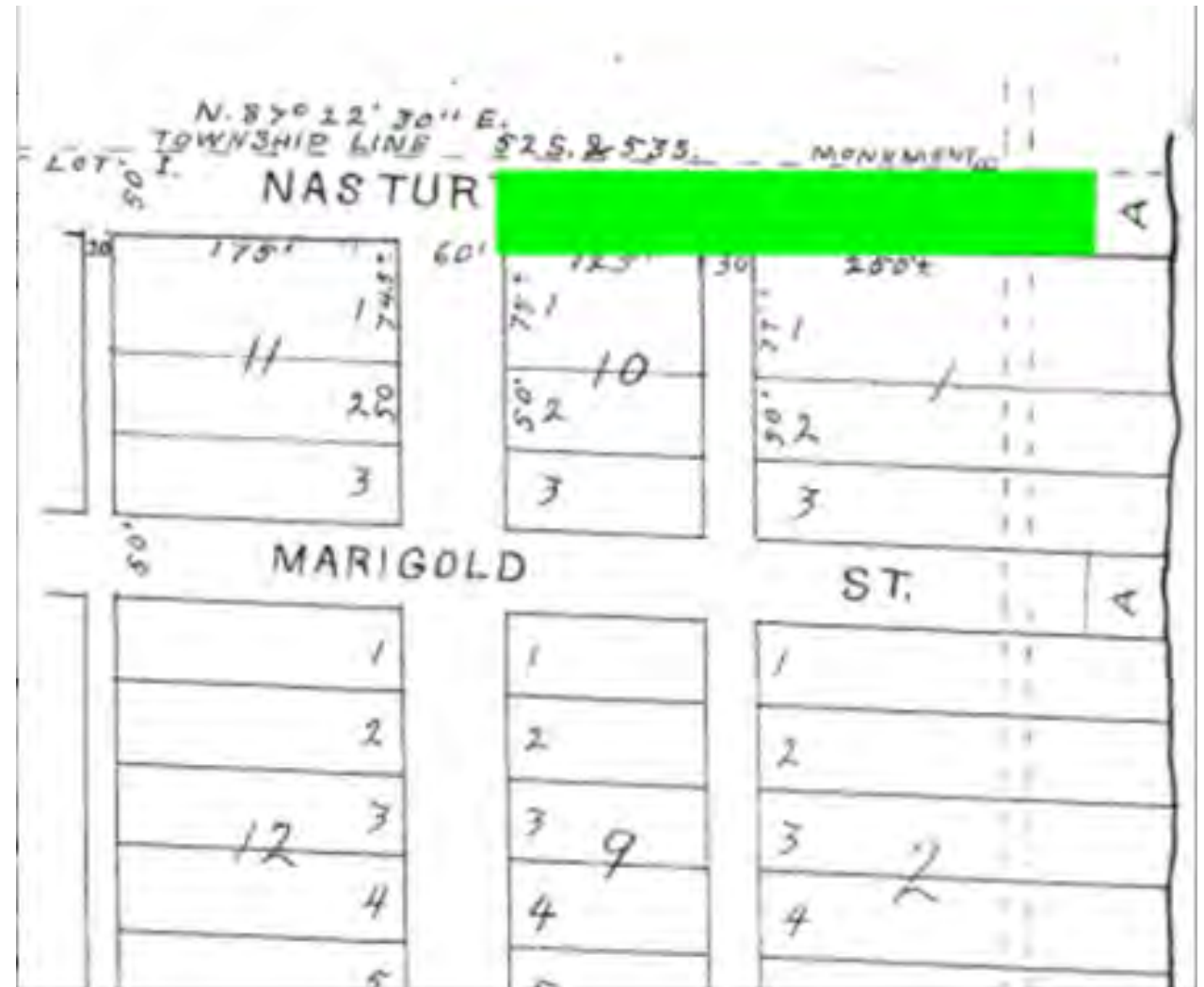
City Vacations – 1998

**Resolution 98-22750
Vacated Portion of
Lincoln Road East of
Collins for Ritz
Carlton**



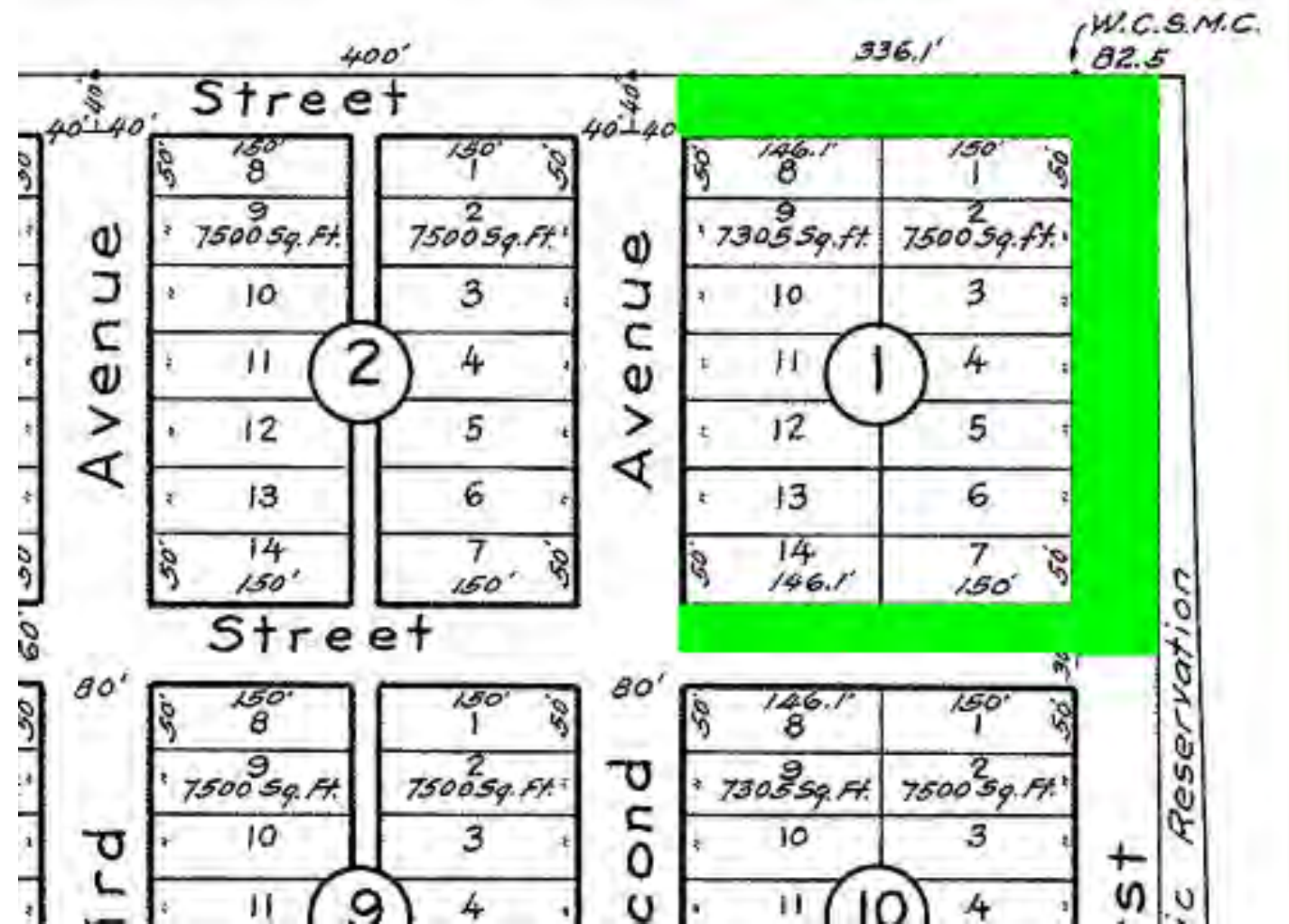
City Vacations – 2014

Resolution
2014-28754
Vacated 87
Terrace East of
Collins for 87 Park
Redevelopment



City Vacations – 2019

Resolution
2019-30927 Vacated
Portions of Three
Roads East of Collins
for Ocean Terrace
Redevelopment



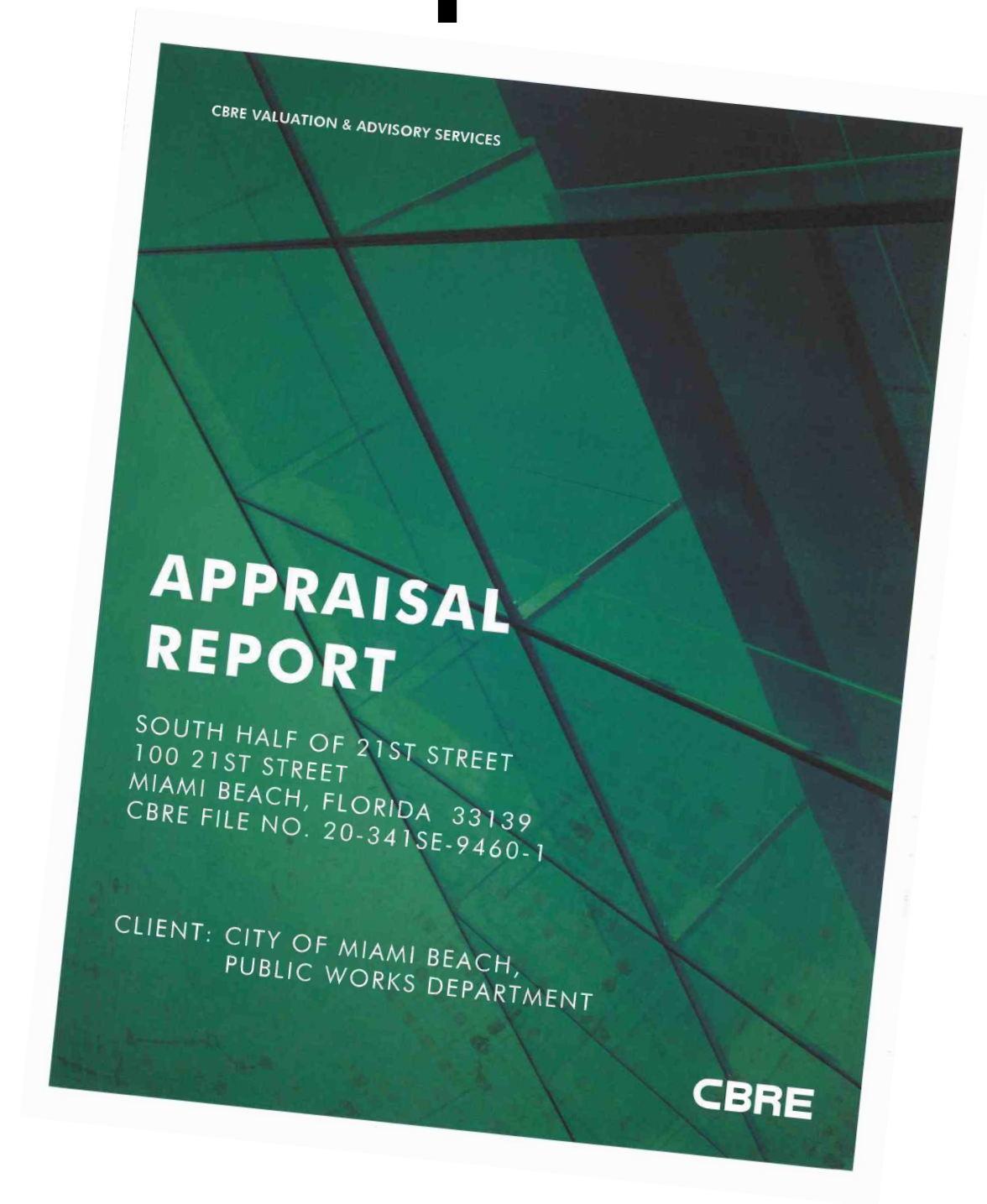
Proposed Public Benefits

Public Benefit Payment of \$7,400,000

**Beach Access Walk Improvements and
Perpetual Maintenance**

City Appraisal Report

Based on
Comparable Sales,
Value is \$549.26
Per Square Foot of
Floor Area or
\$7,400,000



Proposed Public Benefit Payment Schedule

\$750,000	30 Days Following Development Board Approvals Becoming Final and Non-Appealable
\$3,325,000	Prior to the Issuance of Building Permit for New Construction
\$3,325,000	Prior to the Issuance of a TCO for New Construction Allowing Public Occupancy

Beachwalk Improvements

New Public Access to Property

Existing Access to Property

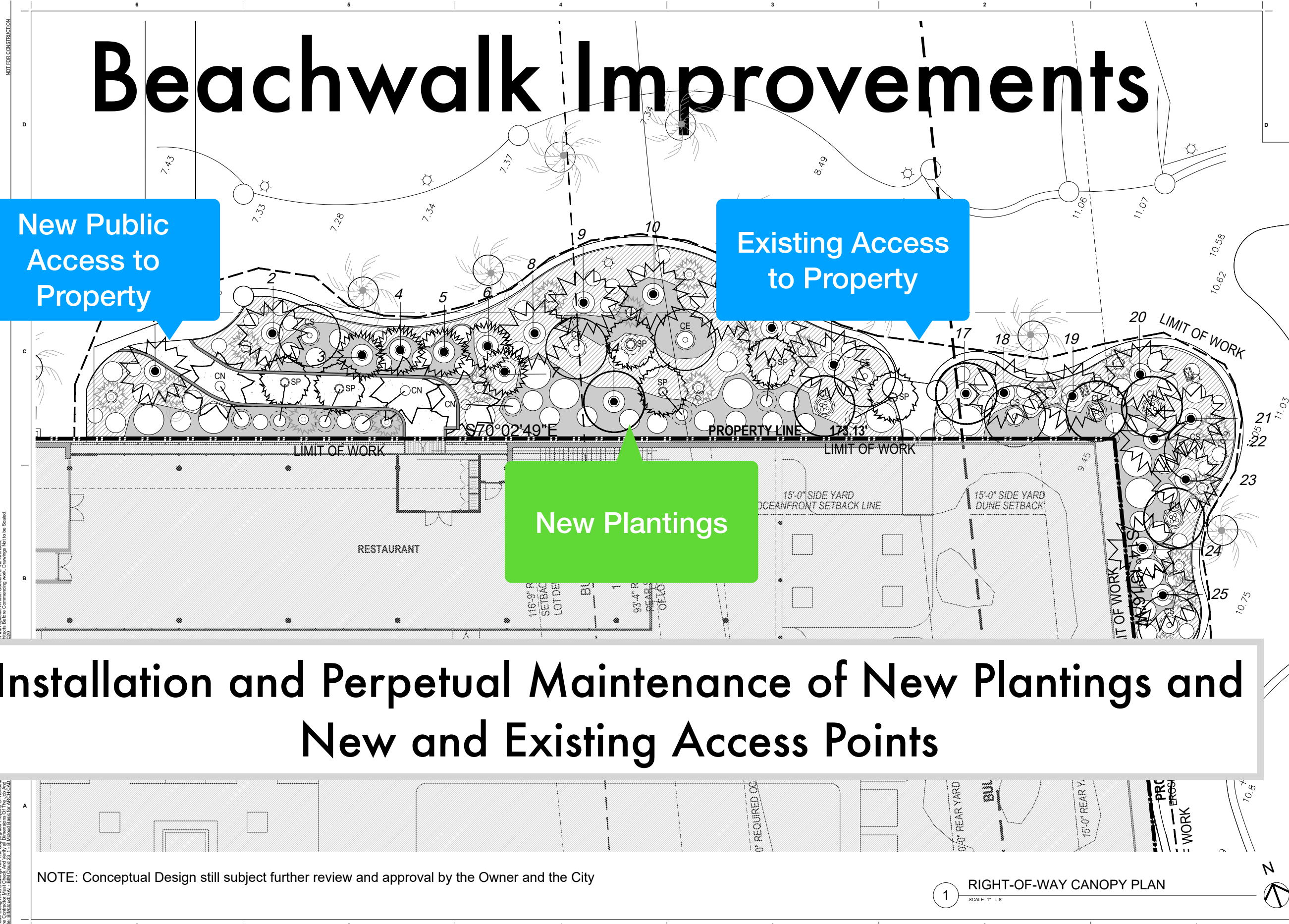
New Plantings

Installation and Perpetual Maintenance of New Plantings and New and Existing Access Points

NOTE: Conceptual Design still subject further review and approval by the Owner and the City

1 RIGHT-OF-WAY CANOPY PLAN
SCALE: 1" = 8'

These Design And Drawing Are The Original Property Of The Client. The Client Shall Be Liable For Any Copying, Reproduction, Distribution, Or Use In Any Manner Without The Written Consent Of The Architect. No Part Of These Drawings May Be Reused, Copied, Reproduced, Distributed, Or Used In Any Manner Without The Written Consent Of The Architect.



Beachwalk Improvements

The Owner shall install and maintain all Enhancements in a manner consistent with the quality the Owner provides to the open areas of the Owner's Property and in accordance with the City's Routine Ground Maintenance Specifications

Beachwalk Improvements

Monitoring of the City Property. The Owner shall include the City Property within its security monitoring plan for the Owner's Property to the extent authorized by the City and allowable under applicable law. Such authorized security monitoring plan shall require, at a minimum, 24/7 video recording of the City Property and all such video recordings shall be retained by the Owner for a period of at least thirty (30) days. As the Owner's security staff only has limited (citizen) arrest powers, and in order to enhance public safety within the City Property, the Owner's security staff shall coordinate any enforcement action pertaining to alleged criminal law violation(s) with the Miami Beach Police Department.

Estimated Economic Benefits of Development

717 Non-Recurring Direct and Indirect Construction Jobs
321 Recurring Direct and Indirect Jobs

\$48,000,000 in Non-Recurring Gross Domestic Product

\$33,000,000 in Recurring Gross Domestic Product

Estimated Recurring Fiscal Benefits to City

\$450,000 in Annual Ad Valorem Taxes

**\$1,700,000 in Annual Hotel Occupancy,
Sales, and Local Business Taxes**



Code Revisions

		additions to contributing structures in a historic district and individually designated historic buildings—200.		
--	--	---	--	--

(c) Notwithstanding the above, for oceanfront lots located within a locally designated historic district or site, but not within the architectural district, with less than 400 feet of lineal frontage along Collins Avenue and containing at least one contributing structure, the maximum building height for ground floor additions to existing structures, whether attached or detached, shall be as follows:

- (1) For existing structures greater than five stories in height, the maximum height shall be limited to ten stories or the height of the roof line of the main structure on site, whichever is less. At the discretion of the historic preservation board, the maximum height of the ground floor addition may exceed ten stories if the existing and surrounding structures are greater than five stories in height, provided the addition is consistent with the scale and massing of the existing structure.
- (2) For existing structures five stories or less in height, the maximum height shall be limited to five stories.

Additionally, the proposed addition shall not substantially reduce existing or established view corridors, nor impede the appearance or visibility of architecturally significant portions of an existing structure, as determined by the historic preservation board.

(d) Notwithstanding the above, for oceanfront lots with no frontage on Collins Avenue located in the architectural district, the overall height of an attached ground floor additions may exceed five stories and 50 feet, but shall not exceed the height of the roof line of the structure attached to, provided all of existing contributing structure plus the height of any rooftop addition approved by the historic preservation board in accordance with 142-1161(d)(5), up to a maximum height of 120 feet, if the following conditions are satisfied:

- ~~(1) The proposed addition shall consist of the expansion of existing hotel units only and shall not result in an increased number of units.~~
- ~~(2) The proposed additions shall be for hotel units only. A restrictive covenant, running with the land, or other similar instrument enforceable against the owner(s), acceptable to and approved as to form by the city attorney, shall be required to ensure that the units remain as hotel units for a minimum of 30 years. If the applicant is unable to provide such a covenant, this requirement may be waived by the city manager if it is demonstrated that the project provides an extraordinary public benefit to the surrounding area.~~
- (1) The proposed addition shall not be attached to front, or street side ~~or oceanfront~~ elevations, nor along any other principal elevations or facades, as determined by the historic preservation board.
- (2) The proposed additions shall not substantially reduce existing or established view corridors, nor impede the appearance or visibility of architecturally significant portions of an existing structure, as determined by the historic preservation board.

~~(e) A ground floor addition relocating existing hotel units shall also meet the following conditions,~~

in addition to subsection ~~(d)(2)~~—(4) above:

- ~~(1) There shall be no neighborhood impact establishment, dancehall or entertainment use in the area of the proposed addition;~~
- ~~(2) No new outdoor or open air entertainment establishment shall be created on the property. Outdoor or open air entertainment establishments existing as of the effective date of this subsection (November 24, 2012) may continue but shall not be expanded if a property avails itself of this provision.~~
- ~~(3) Upon approval of the proposed addition by the historic preservation board, no building greater than two stories or 25 feet in height shall be constructed between the rear of the building and westward line of the dune overlay district. This provision shall not be subject to variance.~~
- ~~(4) Notwithstanding the provisions in subsection 142-1161(d), if the building presently contains unoccupied but built spaces enclosed on at least three sides by existing walls of a height that would conceal a new roof, such as false parapets or storage rooms, those spaces may be further enclosed as habitable floor area, up to the permitted floor area; and~~
- ~~(5) No new commercial uses shall be permitted on the rooftop or any open air decks of the existing structure or proposed addition.~~

~~(f)~~(e) Notwithstanding the above, for oceanfront lots located in the architectural district, with a lot area greater than 115,000 square feet, a ground floor addition, whether attached or detached, may exceed 50 feet in height, but shall not exceed 200 feet in height, in accordance with the following provisions:

- (1) Placement of the structure. The ground floor addition shall be located internal to the site, and shall be set back a minimum of 100 feet from the front property line, 75 feet from the street side property lines, and 100 feet from the rear (oceanfront) property line.
- (2) Limits on the floorplate of additions exceeding 50 feet in height. The maximum floor plate size for the portion of an addition that exceeds 50 feet in building height is 15,000 square feet per floor, excluding projecting balconies. The historic preservation board may approve an increase in this overall floor plate, up to a maximum of 20,000 square feet per floor, excluding balconies, in accordance with the certificate of appropriateness criteria in chapter 118, article X of these land development regulations.

SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article IV "Supplementary District Regulations" Division 5 "Height Regulations" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

DIVISION 5. - HEIGHT REGULATIONS

Sec. 142-1161. - Height regulation exceptions.

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

* * *

(d) Rooftop additions.

- (1) *Restrictions.* There shall be no rooftop additions to existing structures in the following areas: oceanfront lots ~~within~~ with frontage on Collins Avenue in the Miami

Beach Architectural District in the RM-3 or ~~CD-3~~ zoning districts; non-oceanfront lots fronting Ocean Drive in the MXE zoning district. No variance from this provision shall be granted.

- (2) *Additional regulations.* Existing structures within an historic district shall only be permitted to have habitable one-story rooftop additions (whether attached or detached), with a maximum floor to ceiling height of 12 feet except as hereinafter provided. No variance from this provision shall be granted. The additions shall not be visible when viewed at eye level (5'—6" from grade) from the opposite side of the adjacent right-of-way; for corner properties, said additions shall also not be visible when viewed at eye level from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way. Notwithstanding the foregoing, the line-of-sight requirement and maximum ceiling height may be modified as deemed appropriate by the historic preservation board based upon the following criteria: (i) the addition enhances the architectural contextual balance of the surrounding area; (ii) the addition is appropriate to the scale and architecture of the existing building; (iii) the addition maintains the architectural character of the existing building in an appropriate manner; and (iv) the addition minimizes the impact of existing mechanical equipment or other rooftop elements.
- (3) *Lincoln Road hotel additions.* Notwithstanding the foregoing, a multistory rooftop addition, for hotel uses only, may be permitted for properties on Lincoln Road, located between Pennsylvania Avenue and Lenox Avenue, in accordance with the following provisions:
 - a. For properties on the north side of Lincoln Road, a multistory rooftop addition shall be set back at least 75 feet from Lincoln Road and at least 25 feet from any adjacent side street. Additionally, the multistory addition may be cantilevered over a contributing building.
 - b. For properties located on the south side of Lincoln Road, a multistory rooftop addition shall be set back at least 65 feet from Lincoln Road.
 - c. The portion of Lincoln Lane abutting the subject property, as well as the remaining portion of Lincoln Lane from block-end to block-end, shall be fully improved subject to the review and approval of the public works department.
 - d. Participation in the public benefits program, pursuant to subsection 142-337(d), shall be required in order for a hotel project to avail itself of a multistory rooftop addition.
 - e. There shall be a limit of 500 hotel units for hotel projects including a multistory rooftop addition that are constructed between Pennsylvania Avenue and Lenox Avenue.
- (4) *[Placement and manner of attachment.]* The placement and manner of attachment of all additions (including those which are adjacent to existing structures) are subject to historic preservation board approval.
- (5) *Collins Waterfront Historic District, ~~and~~ Morris Lapidus/Mid-20th Century Historic District and oceanfront lots with no frontage on Collins Avenue within the Miami Beach Architectural District in the RM-3 zoning district.* Notwithstanding the foregoing provisions of subsection 142-1161(d)(2), certain types of existing

structures located within the Collins Waterfront Historic District and Morris Lapidus/Mid-20th Century Historic District and oceanfront lots with no frontage on Collins Avenue within the Miami Beach Architectural District may be permitted to have habitable rooftop additions (whether attached or detached) according to the following requirements:

- a. Height of rooftop additions permitted for structures of five stories or less:
 1. Existing buildings of five or less stories may not have more than a one story rooftop addition, in accordance with the provisions of subsection 142-1161(d)(2). Additionally, at the discretion of the historic preservation board, pursuant to certificate of appropriateness criteria, the maximum floor to ceiling height may be increased to 15 feet within the Morris Lapidus/Mid-20th Century Historic District.
 - b. Height of rooftop additions permitted for hotel structures of greater than five stories:
 1. For those structures determined to be eligible by the historic preservation board for rooftop additions of greater than one story in height according to the provisions of subsection ~~6~~ (7) below, one story is allowed per every three stories of the existing building on which the addition is to be placed, to a maximum of four additional rooftop addition stories, with a maximum floor to floor height of 12 feet, and a maximum floor to roof deck height of 12 feet at the highest new story. The additional stories shall only be placed on the underlying structure creating the eligibility for an addition. Additionally, at the discretion of the historic preservation board, pursuant to certificate of appropriateness criteria, the maximum floor to ceiling height may be increased to 15 feet within the Morris Lapidus/Mid-20th Century Historic District, and on oceanfront lots with no frontage on Collins Avenue within the Miami Beach Architectural District for up to two floors of a permitted roof-top addition.
 2. Rooftop additions permitted under this subsection, which are greater than one story, shall be for the sole purpose of hotel unit development. A restrictive covenant in a form acceptable to the city attorney committing the property to such hotel use, subject to release by the historic preservation board when such board determines that the restriction is no longer necessary, shall be recorded prior to the issuance of any building permit for a rooftop addition greater than one story.
- (6) *North Beach Resort Historic District.* Notwithstanding the foregoing provisions of subsection 142-1161(d)(2), existing structures located within the North Beach Resort historic district may be permitted to have habitable rooftop additions (whether attached or detached) according to the following requirements:
- a. Existing buildings of five or less stories may not have more than a one story rooftop addition, in accordance with the provisions of subsection 142-1161(d)(2).
 - b. For those structure determined to be eligible by the historic preservation board for rooftop additions of greater than one story in height, according to the provisions of subsection (7) ~~(5)~~ below, existing buildings six or more stories may have a two story rooftop addition with a maximum floor to floor height of

12 feet, and a maximum floor to roof deck height of 12 feet at the highest new story. The additional stories shall only be placed on that portion of the underlying structure creating the eligibility for an addition.

- (7) *Design and appropriateness guidelines.* In determining if existing structures are eligible for rooftop additions, the historic preservation board, in addition to any and all other applicable criteria and guidelines contained in these land development regulations, shall consider whether:
- a. The design of an existing structure (or part thereof) to which a new rooftop addition is to be attached is of such nature or style that it does not contain any significant original architectural crown element(s) or other designed composition of significant architectural features, nor does the overall profile of the structure including its rooftop design features have a distinctive quality that contributes to the special character of the historic district, as determined by the historic preservation board. Significant rooftop or upper facade elements or features may include but shall not be limited to towers, domes, crowns, ziggurats, masts, crests, cornices, friezes, finials, clocks, lanterns, original signage and other original architectural features as may be discovered.
 - b. The proposed rooftop addition shall be designed, placed and attached to an existing structure in a manner that:
 1. Does not obscure, detract from, or otherwise adversely impact upon other significant architectural features of the existing structure, inclusive of significant features that are to be, or should be, restored or reconstructed in the future;
 2. maintains the architectural contextual balance of the surrounding area and does not adversely impact upon or detract from the surrounding historic district;
 3. Is appropriate to the scale and architecture of the existing building;
 4. Maintains the architectural character of the existing building in an appropriate manner;
 5. Does not require major demolition and alterations to existing structural systems in such manner as would compromise the architectural character and integrity of the existing structure; and
 6. Minimizes the impact of existing mechanical equipment or other rooftop elements.
 - c. The placement and manner of attachment of additions (including those which are adjacent to existing structures) are subject to the historic preservation board granting a certificate of appropriateness for any demolition that may be required as well as for the new construction.
 - d. The entire structure shall be substantially rehabilitated.
 - e. Notwithstanding the foregoing, the overall height of any structure located in the Collins Waterfront Historic District or the North Beach Resort Historic District may not exceed the height limitations of the underlying zoning district. No additional stories may be added under this section through height variances from the underlying zoning district regulations.



KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [Obolensky v. Trombley](#), Vt., February 6, 2015

114 So.2d 357

District Court of Appeal of Florida,
Third District.

FONTAINEBLEAU HOTEL CORP., a
Florida corporation, and Charnofree
Corporation, a Florida corporation, Appellants,

v.

FORTY-FIVE TWENTY-FIVE, INC.,
a Florida corporation, Appellee.

No. 59-450.

|
Aug. 27, 1959.

|
Rehearing Denied Sept. 23, 1959.

Synopsis

Action to enjoin owners from continuing with construction of fourteen-story addition to their hotel on a beach facing the Atlantic Ocean. The Circuit Court, Dade County, Robert H. Anderson, J., entered an order temporarily enjoining owners from continuing with the construction and they appealed. The District Court of Appeal held that where a structure serves a useful and beneficial purpose, it does not give rise to a cause of action, either for damages or for an injunction under the maxim sic utere tuo ut alienum non laedas, even though it causes injury to another by cutting off the light and air and interfering with the view that would otherwise be available over adjoining land in its natural state, regardless of the fact that the structure may have been erected partly for spite.

Reversed with directions.

West Headnotes (6)

[1] Constitutional Law 🔑 Relationship to police power or public welfare in general

The maxim sic utere tuo ut alienum non laedas, does not mean that one must never use his own property in such a way as to do any injury to his neighbor, but means only that one must use his

property so as not to injure the lawful rights of another.

[2] Adjoining Landowners 🔑 Right to and Obstruction of Light, Air, or View

At common law, a landowner had no legal right, in the absence of an easement or uninterrupted use and enjoyment for a period of 20 years, to unobstructed light and air from the adjoining land.

[5 Cases that cite this headnote](#)

[3] Easements 🔑 Acquisition of rights as to light, air, and view

The English doctrine of “ancient lights” has been unanimously repudiated in the United States.

[4] Adjoining Landowners 🔑 Motive in erecting obstruction

Injunction 🔑 Encroachments by buildings, fences, and other structures

Where a structure serves a useful and beneficial purpose, it does not give rise to a cause of action, either for damages or for an injunction under the maxim sic utere tuo ut alienum non laedas, even though it causes injury to another by cutting off the light and air and interfering with the view that would otherwise be available over adjoining land in its natural state, regardless of the fact that the structure may have been erected partly for spite.

[12 Cases that cite this headnote](#)

[5] Zoning and Planning 🔑 Modification or amendment; rezoning

If public policy demands that a landowner in the Miami Beach area refrain from constructing buildings on his premises that will cast a shadow on the adjoining premises, an amendment of its comprehensive planning and zoning ordinance, applicable to the public as a whole, is the means by which such purpose should be achieved.

[6] Injunction 🔑 **Other particular cases**

Where construction of a 14-story addition was proceeding under a permit issued by the city pursuant to mandate of the District Court of Appeal in a previous action between owners of the addition and an adjoining landowner, and such mandate authorized completion of the addition according to plan showing a 76-foot setback from the ocean bulkhead line, and adjoining landowner's objection to the distance of the structure from the ocean was made for the first time in a suit to enjoin further work on the structure, and such suit was filed almost a year after the beginning of the construction of the addition, at a time when it was roughly eight stories in height, and represented an expenditure by owners of several million dollars, adjoining landowner stated no cause of action for equitable relief based on violation of setback requirement of an applicable city ordinance, even if there was in fact a violation of such ordinance.

Attorneys and Law Firms

*358 Sibley, Grusmark, Barkdull & King, Miami Beach, for appellants.

Anderson & Nadeau, Miami, for appellee.

Opinion

PER CURIAM.

This is an interlocutory appeal from an order temporarily enjoining the appellants from continuing with the construction of a fourteen-story addition to the Fontainebleau Hotel, owned and operated by the appellants. Appellee, plaintiff below, owns the Eden Roc Hotel, which was constructed in 1955, about a year after the Fontainebleau, and adjoins the Fontainebleau on the north. Both are luxury hotels, facing the Atlantic Ocean. The proposed addition to Fontainebleau is being constructed twenty feet from its north property line, 130 feet from the mean high water mark of the Atlantic Ocean, and 76 feet 8 inches from the ocean bulkhead line. The 14-story tower will extend 160 feet above grade in height and is 416 feet long from east to west. During the winter months, from around two o'clock in the afternoon

for the remainder of the day, the shadow of the addition will extend over the cabana, swimming pool, and sunbathing areas of the Eden Roc, which are located in the southern portion of its property.

In this action, plaintiff-appellee sought to enjoin the defendants-appellants from proceeding with the construction of the addition to the Fontainebleau (it appears to have been roughly eight stories high at the time suit was filed), alleging that the construction would interfere with the light and air on the beach in front of the Eden Roc and cast a shadow of such size as to render the beach wholly unfitted for the use and enjoyment of its guests, to the irreparable injury of the plaintiff; further, that the construction of such addition on the north side of defendants' property, rather than the south side, was actuated by malice and ill will on the part of the defendants' president toward the plaintiff's president; and that the construction was in violation of a building ordinance requiring a 100-foot setback from the ocean. It was also alleged that the construction would interfere with the easements of light and air enjoyed by plaintiff and its predecessors in title for more than twenty years and 'impliedly granted by virtue of the acts of the plaintiff's predecessors in title, as well as under the common law and the express recognition of such rights by virtue of Chapter 9837, Laws of Florida 1923 * * *.' Some attempt was also made to allege an easement by implication in favor of the plaintiff's property, as the dominant, and against the defendants' property, as the servient, tenement.

*359 The defendants' answer denied the material allegations of the complaint, pleaded laches and estopped by judgment.

The chancellor heard considerable testimony on the issues made by the complaint and the answer and, as noted, entered a temporary injunction restraining the defendants from continuing with the construction of the addition. His reason for so doing was stated by him, in a memorandum opinion, as follows:

'In granting the temporary injunction in this case the Court wishes to make several things very clear. The ruling is not based on any alleged presumptive title nor prescriptive right of the plaintiff to light and air nor is it based on any deed restrictions nor recorded plats in the title of the plaintiff nor of the defendant nor of any plat of record. It is not based on any zoning ordinance nor on any provision of the building code of the City of Miami Beach nor on the decision of any court, nisi prius or appellate. It is based solely on the proposition that no one has a right to use his property to the injury of another. In this case it is clear from the evidence that the

proposed use by the Fontainebleau will materially damage the Eden Roc. There is evidence indicating that the construction of the proposed annex by the Fontainebleau is malicious or deliberate for the purpose of injuring the Eden Roc, but it is scarcely sufficient, standing alone, to afford a basis for equitable relief.'

[1] This is indeed a novel application of the maxim *sic utere tuo ut alienum non laedas*. This maxim does not mean that one must never use his own property in such a way as to do any injury to his neighbor. [Beckman v. Marshall, Fla.1956, 85 So.2d 552](#). It means only that one must use his property so as not to injure the lawful *rights* of another. [Cason v. Florida Power Co., 74 Fla. 1, 76 So. 535, L.R.A.1918A, 1034](#). In [Reaver v. Martin Theatres, Fla.1951, 52 So.2d 682, 683, 25 A.L.R.2d 1451](#), under this maxim, it was stated that 'it is well settled that a property owner may put his own property to any reasonable and lawful use, so long as he does not thereby deprive the adjoining landowner of any right of enjoyment of his property *which is recognized and protected by law, and so long as his use is not such a one as the law will pronounce a nuisance.*' [Emphasis supplied.]

[2] [3] No American decision has been cited, and independent research has revealed none, in which it has been held that—in the absence of some contractual or statutory obligation—a landowner has a legal right to the free flow of light and air across the adjoining land of his neighbor. Even at common law, the landowner had no legal right, in the absence of an easement or uninterrupted use and enjoyment for a period of 20 years, to unobstructed light and air from the adjoining land. [Blumberg v. Weiss, 1941, 129 N.J.Eq. 34, 17 A.2d 823; 1 Am.Jur., Adjoining Landowners, § 51](#). And the English doctrine of 'ancient lights' has been unanimously repudiated in this country. [1 Am.Jur., Adjoining Landowners, § 49, p. 533; Lynch v. Hill, 1939, 24 Del.Ch. 86, 6 A.2d 614](#), overruling [Clawson v. Primrose, 4 Del.Ch. 643](#).

[4] There being, then, no legal right to the free flow of light and air from the adjoining land, it is universally held that where a structure serves a useful and beneficial purpose, it does not give rise to a cause of action, either for damages or for an injunction under the maxim *sic utere tuo ut alienum non laedas*, even though it causes injury to another by cutting off the light and air and interfering with the view that would otherwise be available over adjoining land in its natural state, regardless of the fact that the structure may have been erected partly for spite. See the cases collected

in the annotation in [133 A.L.R. at pp. 701 et seq.; 1 Am.Jur., Adjoining Landowners, § 54, p. 536; *360 Taliaferro v. Salyer, 1958, 162 Cal.App.2d 685, 328 P.2d 799; Musumeci v. Leonardo, 1950, 77 R.I. 255, 75 A.2d 175; Harrison v. Langlinais, Tex.Civ.App.1958, 312 S.W.2d 286; Granberry v. Jones, 1949, 188 Tenn. 51, 216 S.W.2d 721; Letts v. Kessler, 1896, 54 Ohio St. 73, 42 N.E. 765; Kulbitsky v. Zimnoch, 1950, 196 Md. 504, 77 A.2d 14; Southern Advertising Co. v. Sherman, Tenn.App.1957, 308 S.W.2d 491.](#)

[5] We see no reason for departing from this universal rule. If, as contended on behalf of plaintiff, public policy demands that a landowner in the Miami Beach area refrain from constructing buildings on his premises that will cast a shadow on the adjoining premises, an amendment of its comprehensive planning and zoning ordinance, applicable to the public as a whole, is the means by which such purpose should be achieved. (No opinion is expressed here as to the validity of such an ordinance, if one should be enacted pursuant to the requirements of law. Cf. [City of Miami Beach v. State ex rel. Fontainebleau Hotel Corp., Fla.App.1959, 108 So.2d 614, 619; certiorari denied, Fla.1959, 111 So.2d 437](#).) But to change the universal rule—and the custom followed in this state since its inception—that adjoining landowners have an equal right under the law to build to the line of their respective tracts and to such a height as is desired by them (in the absence, of course, of building restrictions or regulations) amounts, in our opinion, to judicial legislation. As stated in [Musumeci v. Leonardo, supra \[77 R.I. 255, 75 A.2d 177\]](#), 'So use your own as not to injure another's property is, indeed, a sound and salutary principle for the promotion of justice, but it may not and should not be applied so as gratuitously to confer upon an adjacent property owner incorporeal rights incidental to his ownership of land which the law does not sanction.'

We have also considered whether the order here reviewed may be sustained upon any other reasoning, conformable to and consistent with the pleadings, regardless of the erroneous reasoning upon which the order was actually based. See [McGregor v. Provident Trust Co. of Philadelphia, 119 Fla. 718, 162 So. 323](#). We have concluded that it cannot.

The record affirmatively shows that no statutory basis for the right sought to be enforced by plaintiff exists. The so-

called Shadow Ordinance enacted by the City of Miami Beach at plaintiff's behest was held invalid in *City of Miami Beach v. State ex rel. Fontainebleau Hotel Corp.*, supra. It also affirmatively appears that there is no possible basis for holding that plaintiff has an easement for light and air, either express or implied, across defendants' property, nor any prescriptive right thereto—even if it be assumed, arguendo, that the common-law right of prescription as to 'ancient lights' is in effect in this state. And from what we have said heretofore in this opinion, it is perhaps superfluous to add that we have no desire to dissent from the unanimous holding in this country repudiating the English doctrine of ancient lights.

The only other possible basis—and, in fact, the only one insisted upon by plaintiff in its brief filed here, other than its reliance upon the law of private nuisance as expressed in the maxim *sic utere tuo ut alienum non laedas*—for the order here reviewed is the alleged violation by defendants of the setback line prescribed by ordinance. The plaintiff argues that the ordinance applicable to the Use District in which plaintiff's and defendants' properties are located, prescribing 'a front yard having a depth of not less than one hundred (100) feet, measured from the ocean, * * *,' should be and has been interpreted by the City's zoning inspector as requiring a setback of 100 feet from an established ocean bulkhead line. As noted above, the addition to the Fontainebleau is set back only 76 feet 8 inches from the ocean bulkhead line, although it is 130 feet from the ocean measured from the mean high water mark.

***361 [6]** While the chancellor did not decide the question of whether the setback ordinance had been violated, it is our view that, even if there was such a violation, the plaintiff would have no cause of action against the defendants based on such violation. The application of simple mathematics to the sun studies filed in evidence by plaintiff in support

of its claim demonstrates conclusively that to move the existing structure back some 23 feet from the ocean would make no appreciable difference in the problem which is the subject of this controversy. Cf. *Taliaferro v. Salyer*, supra. The construction of the 14-story addition is proceeding under a permit issued by the city pursuant to the mandate of this court in *City of Miami Beach v. State ex rel. Fontainebleau Hotel Corp.*, supra, which permit authorizes completion of the 14-story addition according to a plan showing a 76-foot setback from the ocean bulkhead line. Moreover, the plaintiff's objection to the distance of the structure from the ocean appears to have been made for the first time in the instant suit, which was filed almost a year after the beginning of the construction of the addition, at a time when it was roughly eight stories in height, representing the expenditure by defendants of several million dollars. In these circumstances, it is our view that the plaintiff has stated no cause of action for equitable relief based on the violation of the ordinance—assuming, arguendo, that there has been a violation.

Since it affirmatively appears that the plaintiff has not established a cause of action against the defendants by reason of the structure here in question, the order granting a temporary injunction should be and it is hereby reversed with directions to dismiss the complaint.

Reversed with directions.

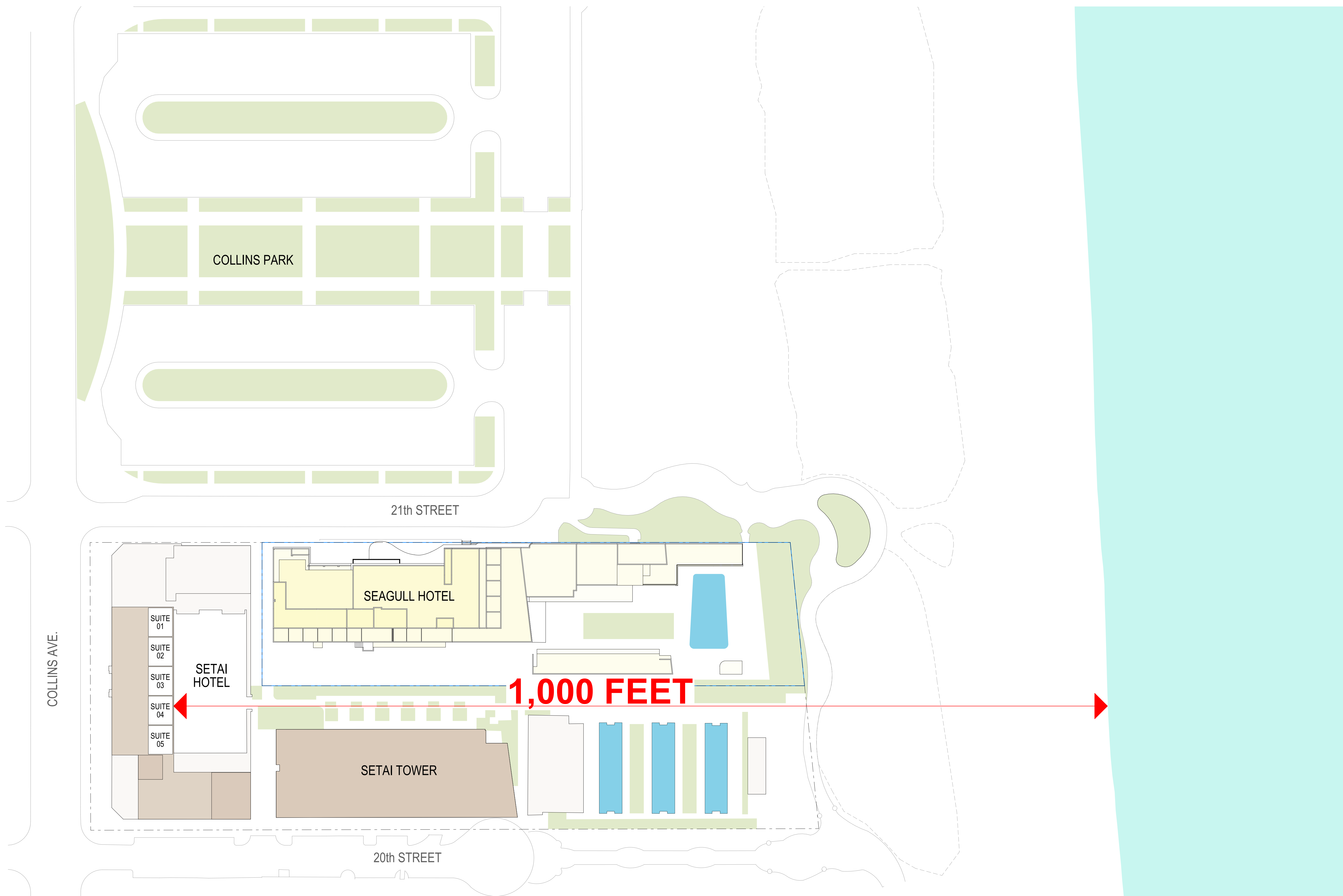
HORTON, C. J., and CARROLL, CHAS., J., and CABOT, TED, Associate Judge concur.

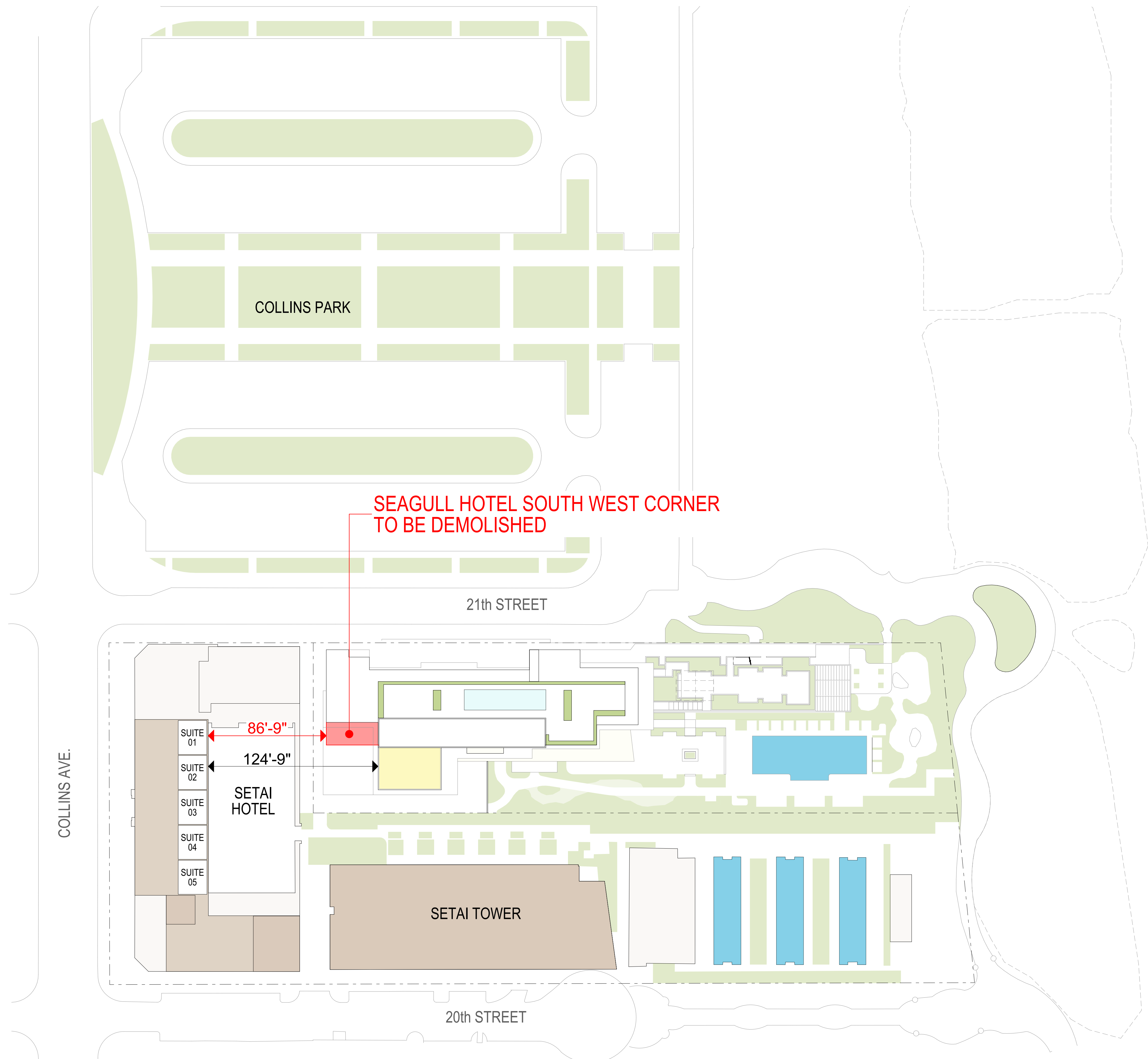
All Citations

114 So.2d 357

RELATIONSHIP BETWEEN THE SEAGULL HOTEL AND THE SETAI TOWER

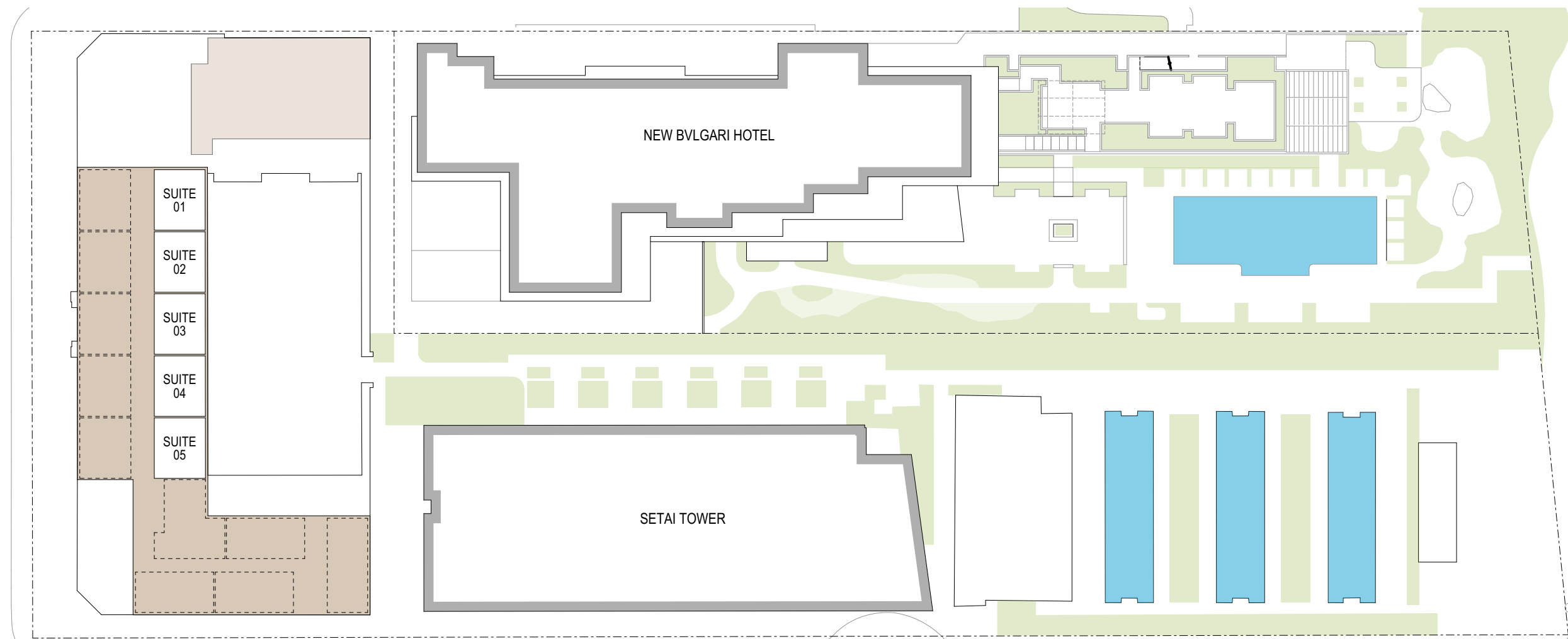
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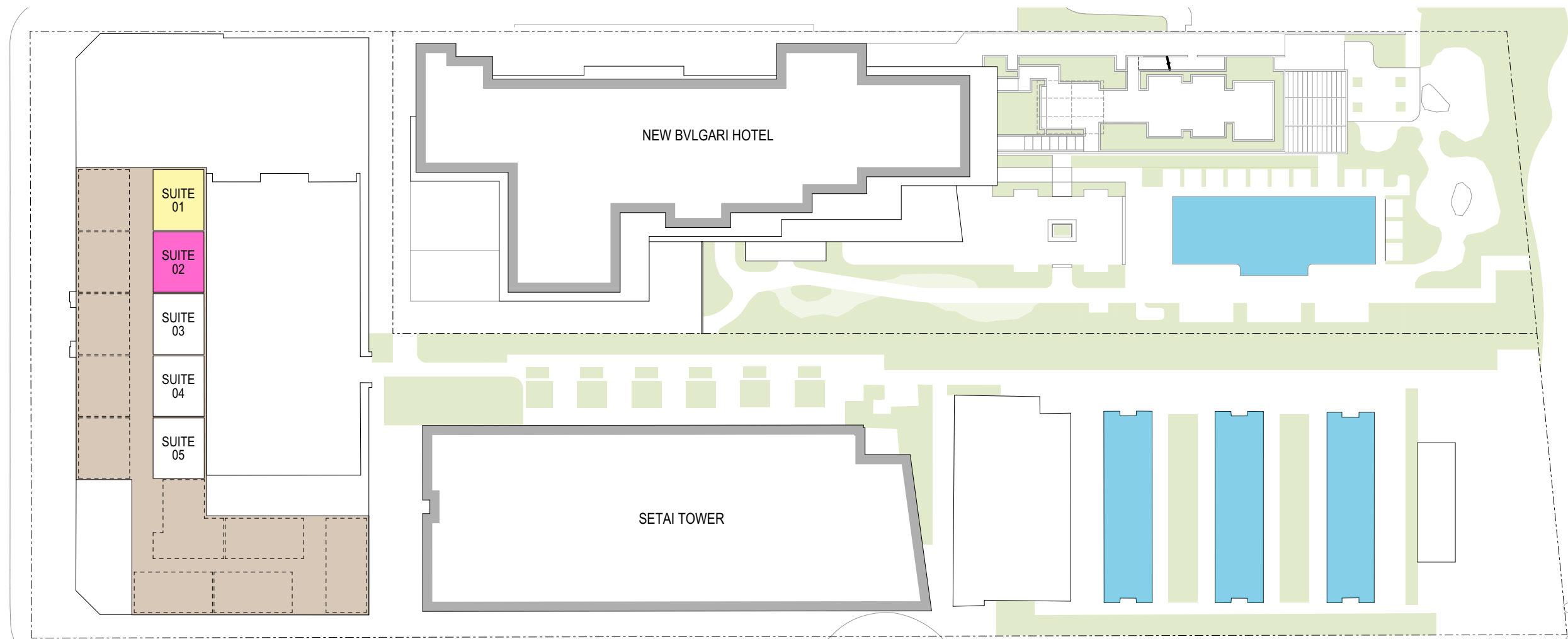


LEGEND

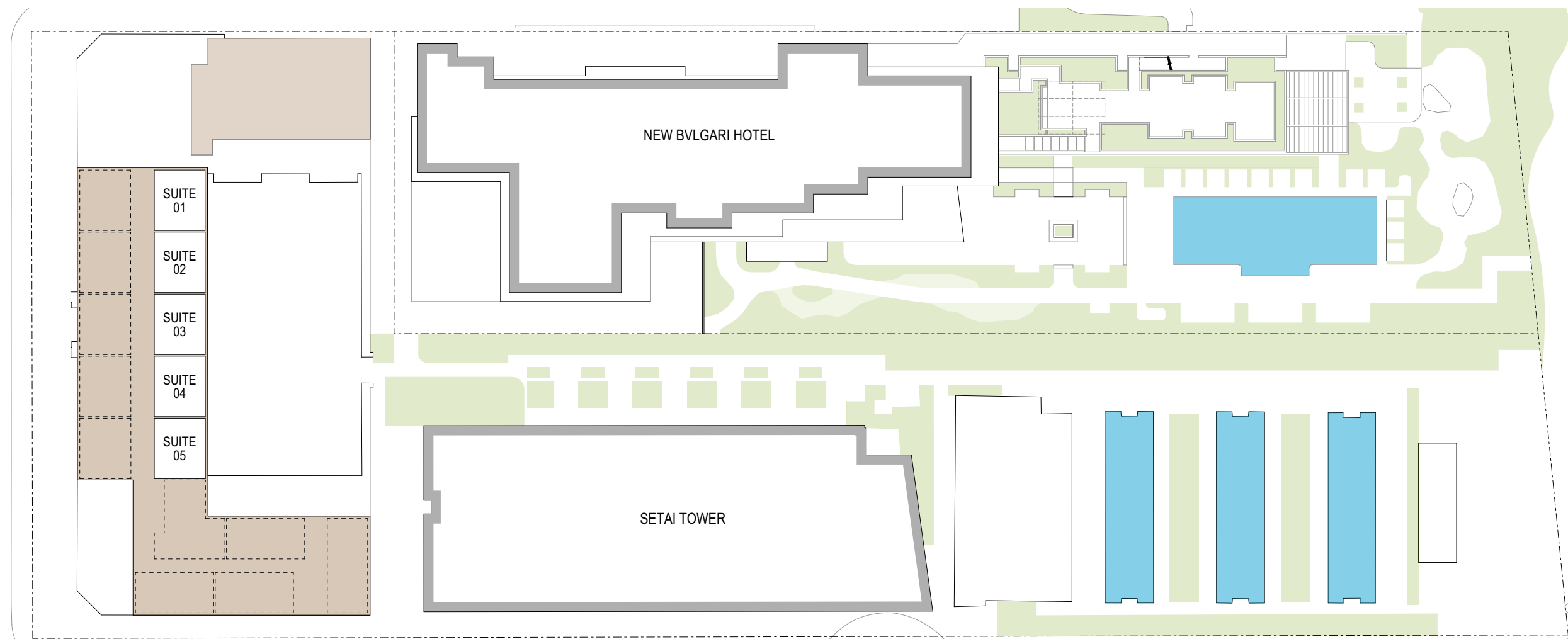
- SEAGULL SOUTH ADDITION
- SEAGULL SOUTH WEST CORNER AREA TO BE DEMOLISHED



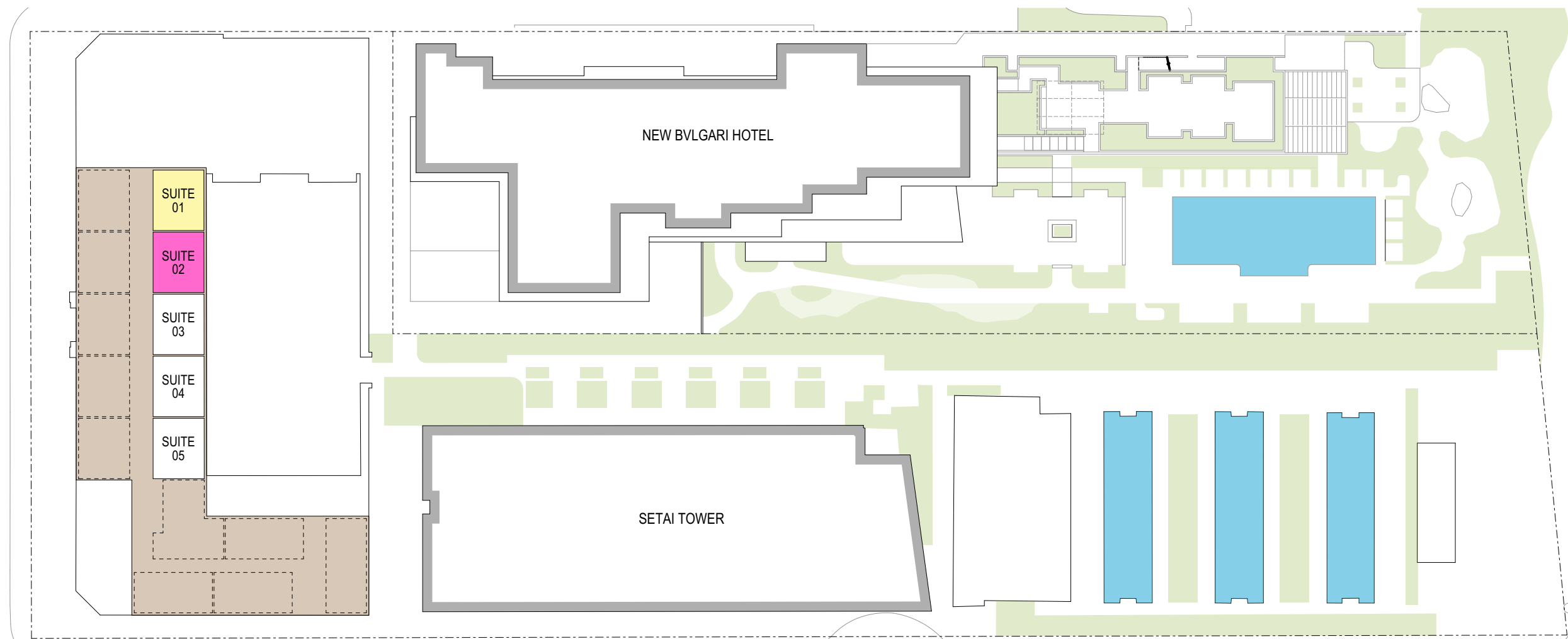
SETAI HOTEL FLOOR PLAN LEVEL 2
EXISTING VIEWS FULLY BLOCKED BY VEGETATION



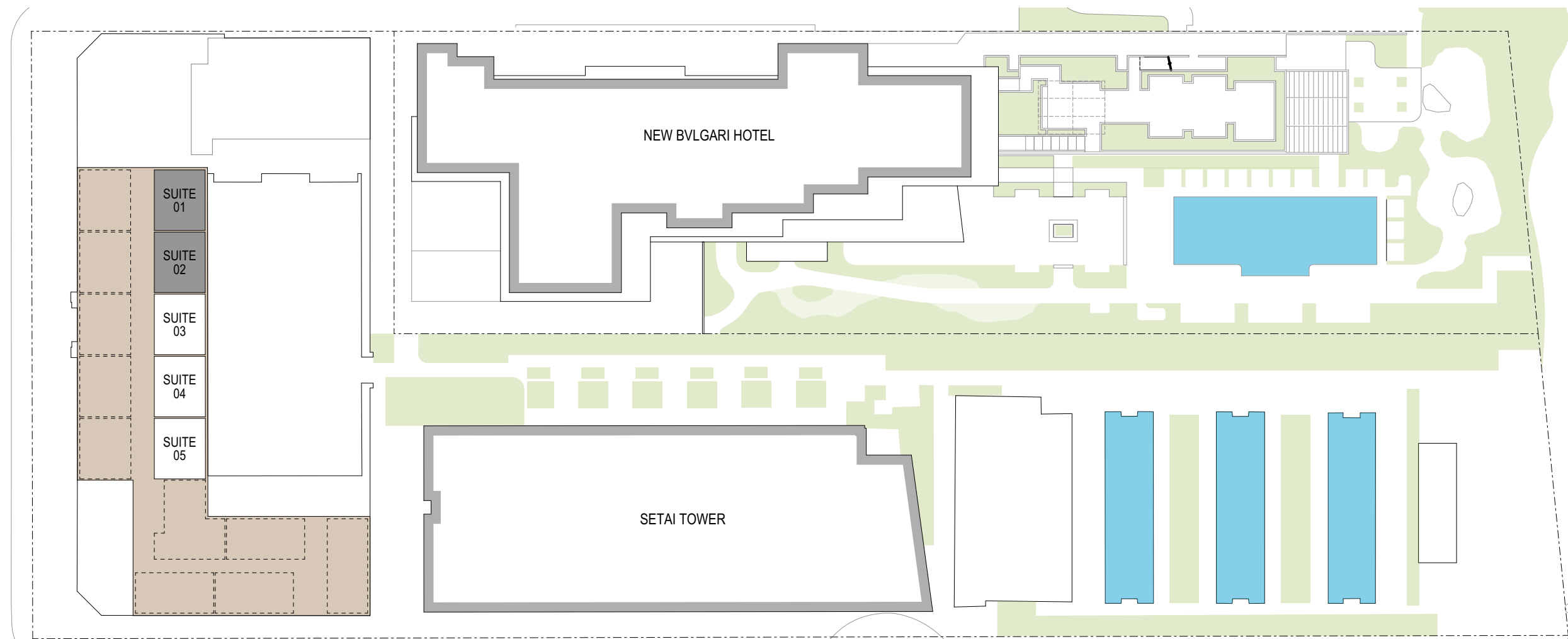
SETAI HOTEL FLOOR PLAN LEVEL 5
OCEAN VIEWS



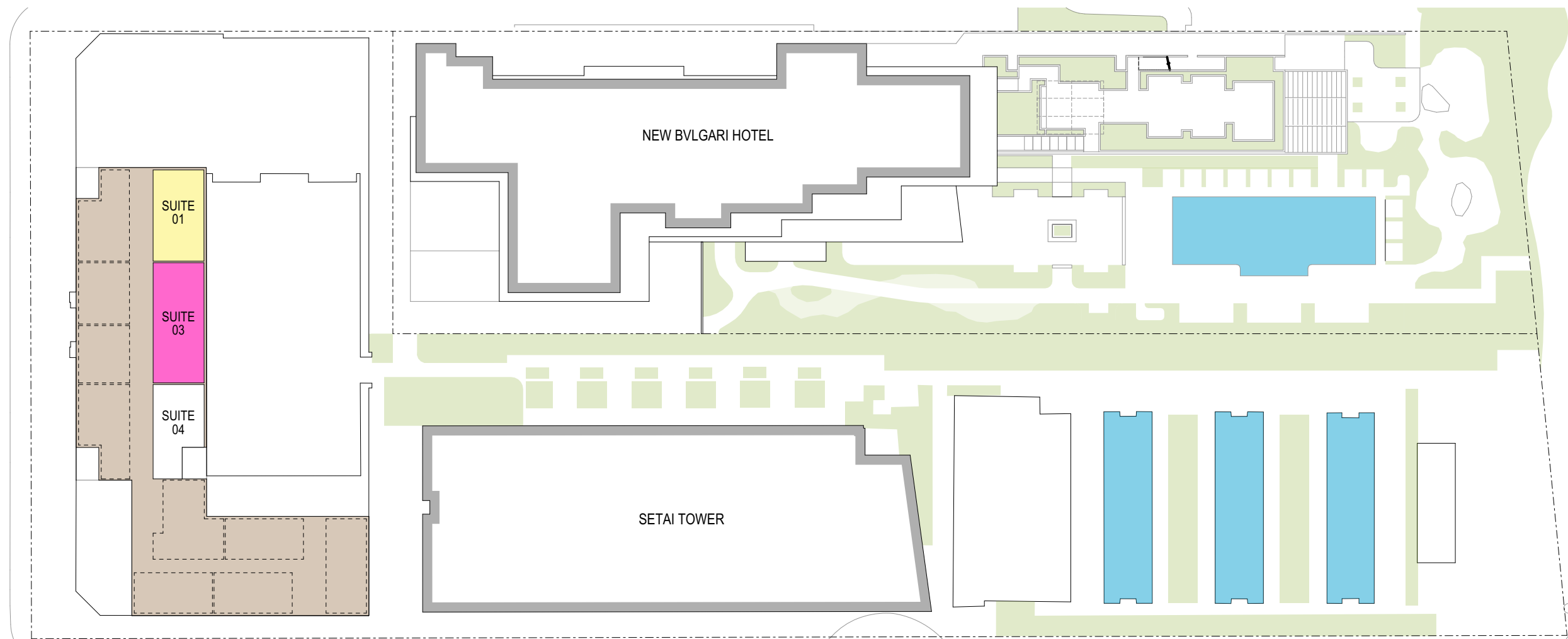
SETAI HOTEL FLOOR PLAN LEVEL 3
EXISTING VIEWS FULLY BLOCKED BY VEGETATION



SETAI HOTEL FLOOR PLAN LEVEL 6
OCEAN VIEWS



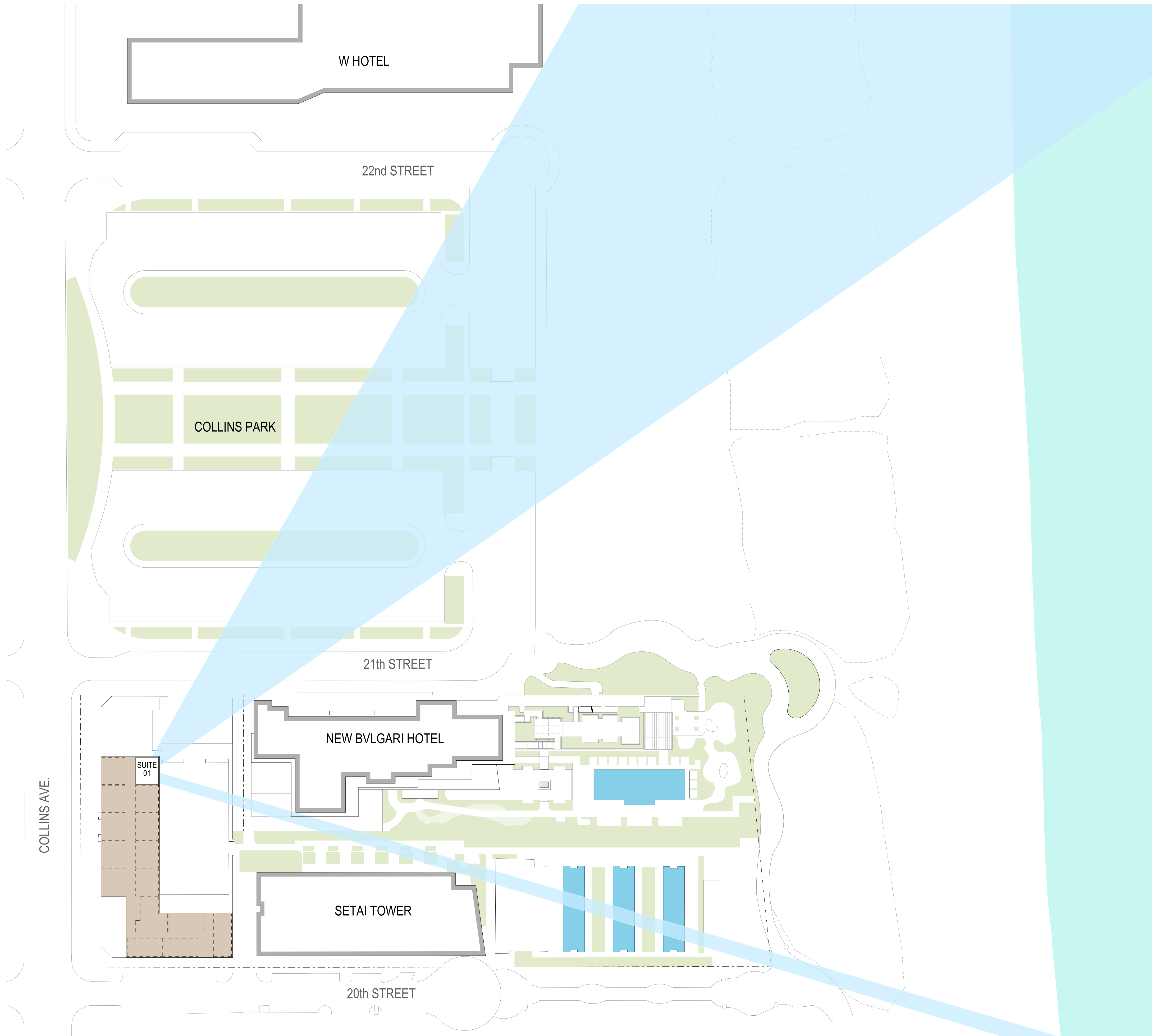
SETAI HOTEL FLOOR PLAN LEVEL 4
EXISTING VIEWS EXTREMELY LIMITED THROUGH TOP OF VEGETATION

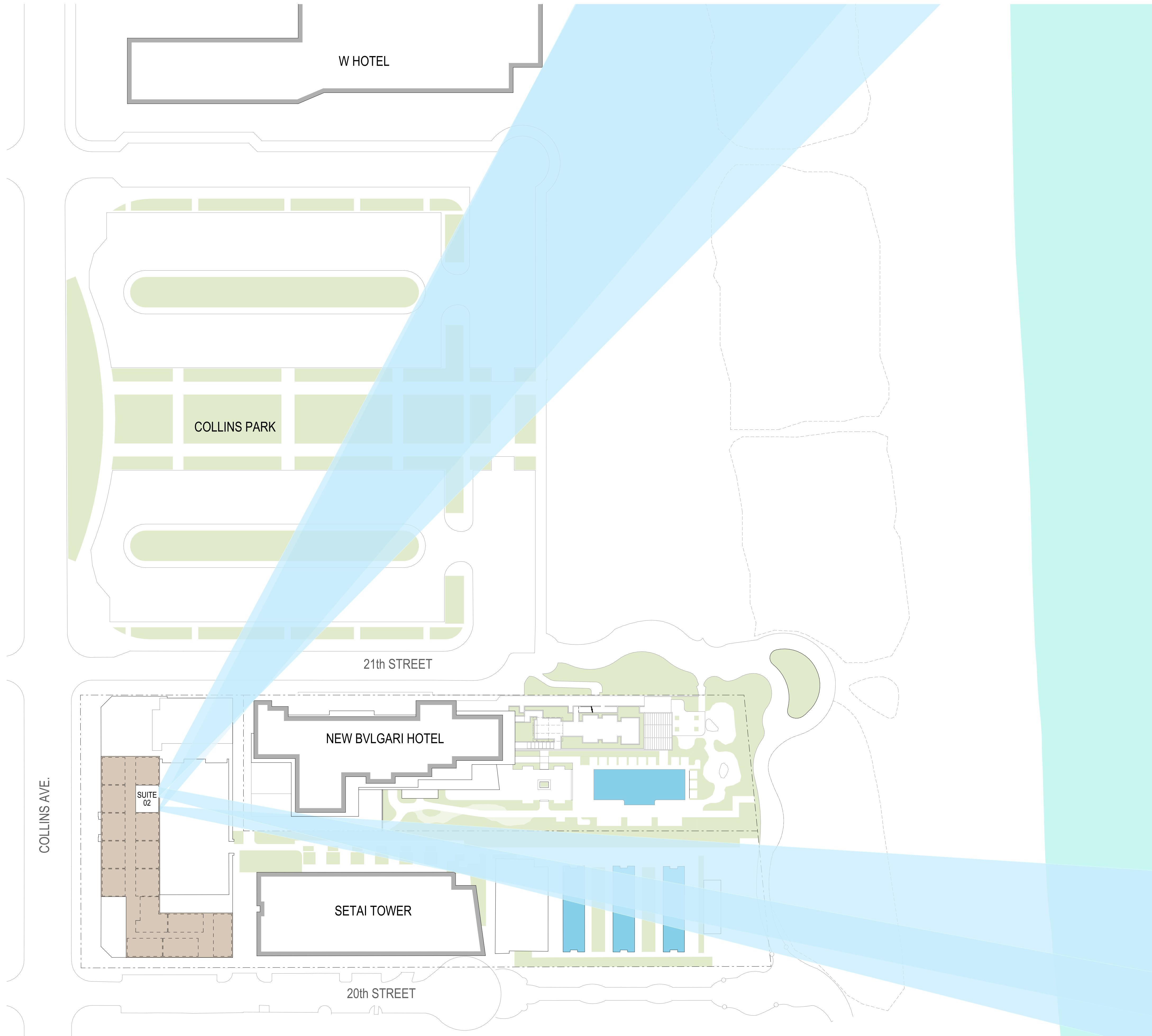


SETAI HOTEL FLOOR PLAN LEVEL 7
OCEAN VIEWS

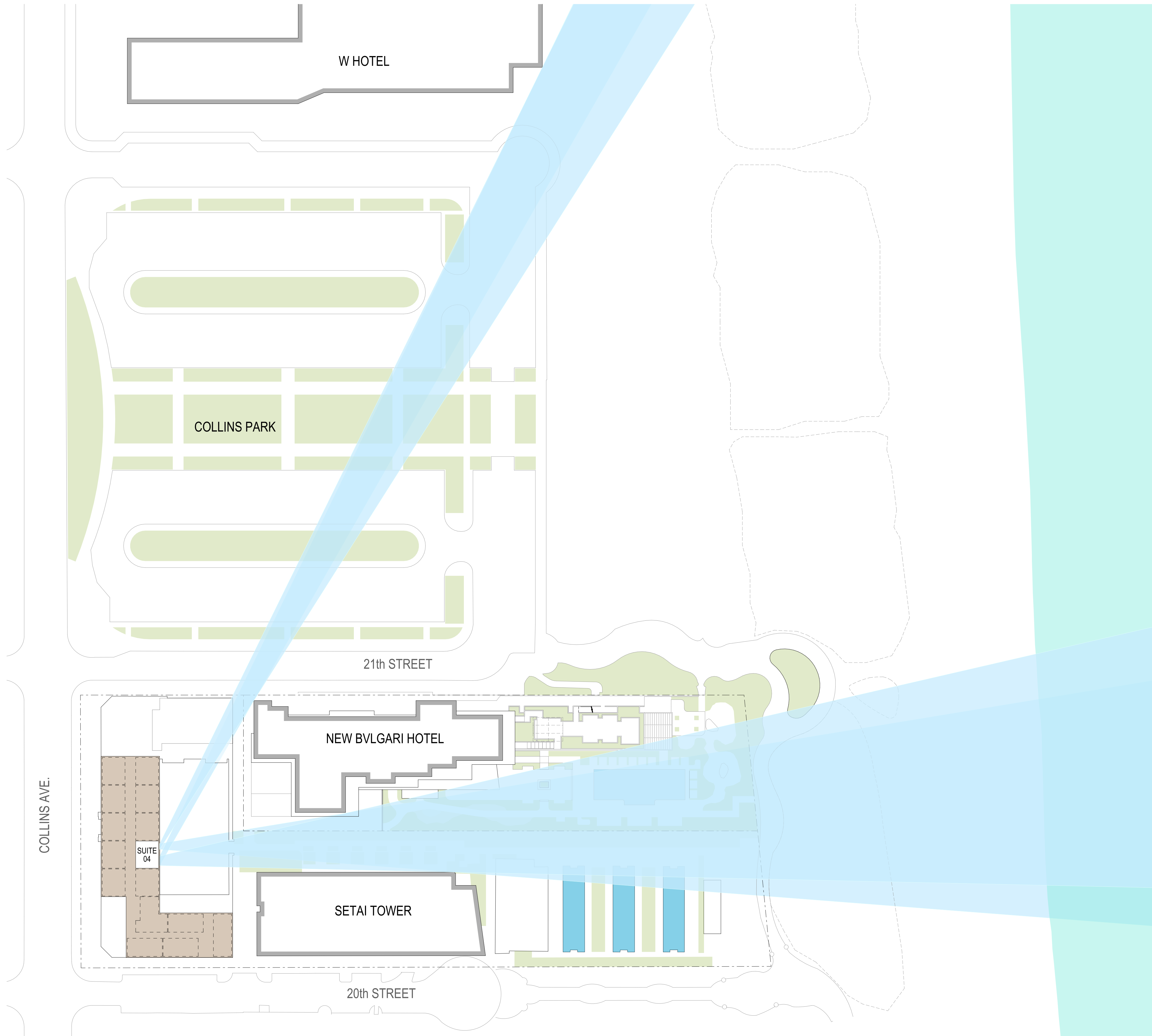
SETAI HOTEL
- TOTAL 87 KEYS
- UNOBSTRUCTED OCEAN VIEWS BETWEEN SEAGULL AND SETAI TOWER STARTING ON LEVEL 5

LEGEND
 3 SETAI KEYS HAVE EXISTING AND UNOBSTRUCTED DIAGONAL VIEWS PARTIALLY AFFECTED BY SEAGULL SOUTH ADDITION
 3 SETAI KEYS HAVE STRAIGHT VIEWS AFFECTED BY SEAGULL SOUTH ADDITION



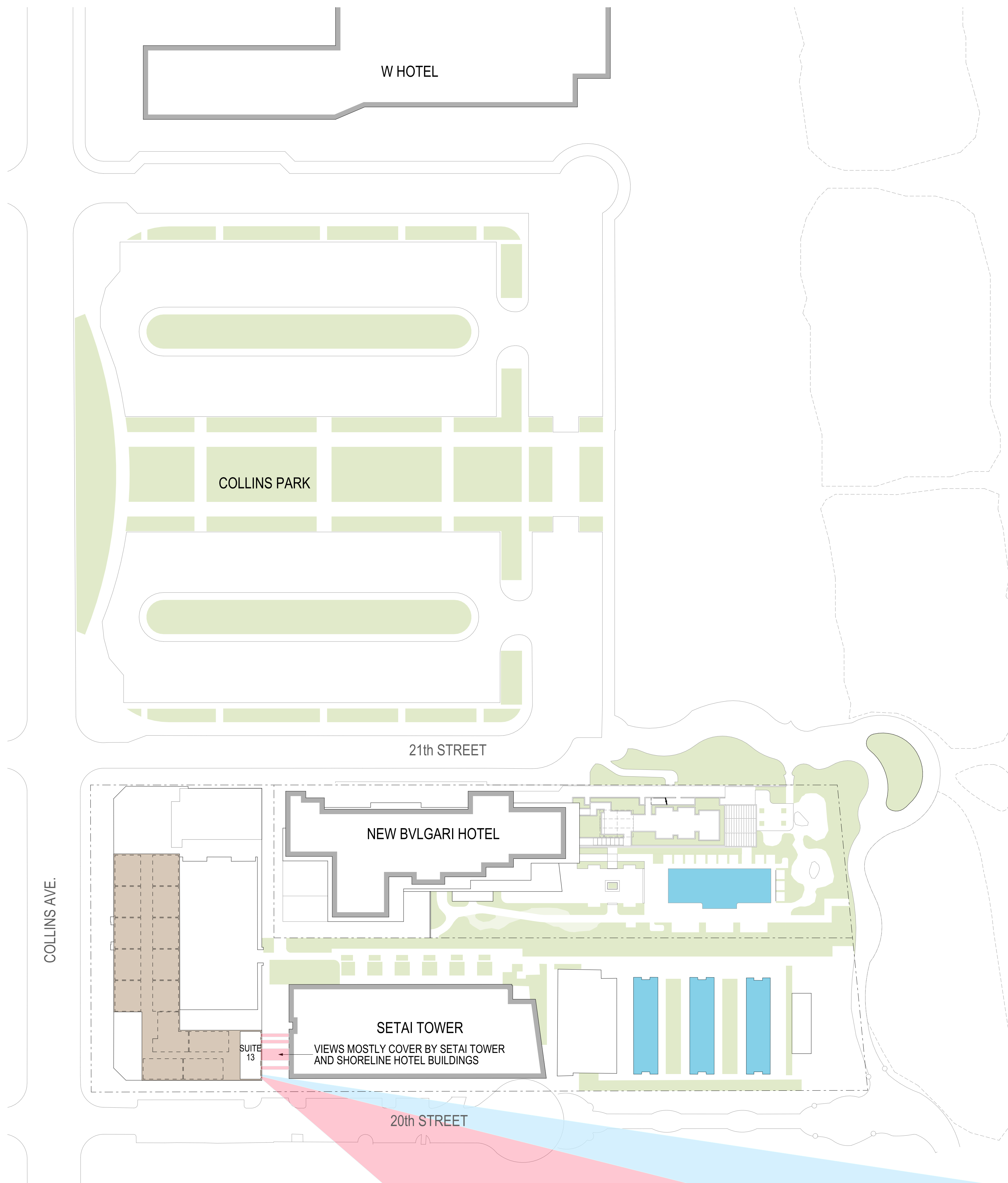














LEVEL 8
 LEVEL 7
 LEVEL 6
 LEVEL 5
 LEVEL 4
 NO OCEAN VIEWS BELOW LEVEL 4

SUITE 01, 02, 03, 04 & 05 HAVE OCEAN VIEWS THROUGH COLLINS PARK

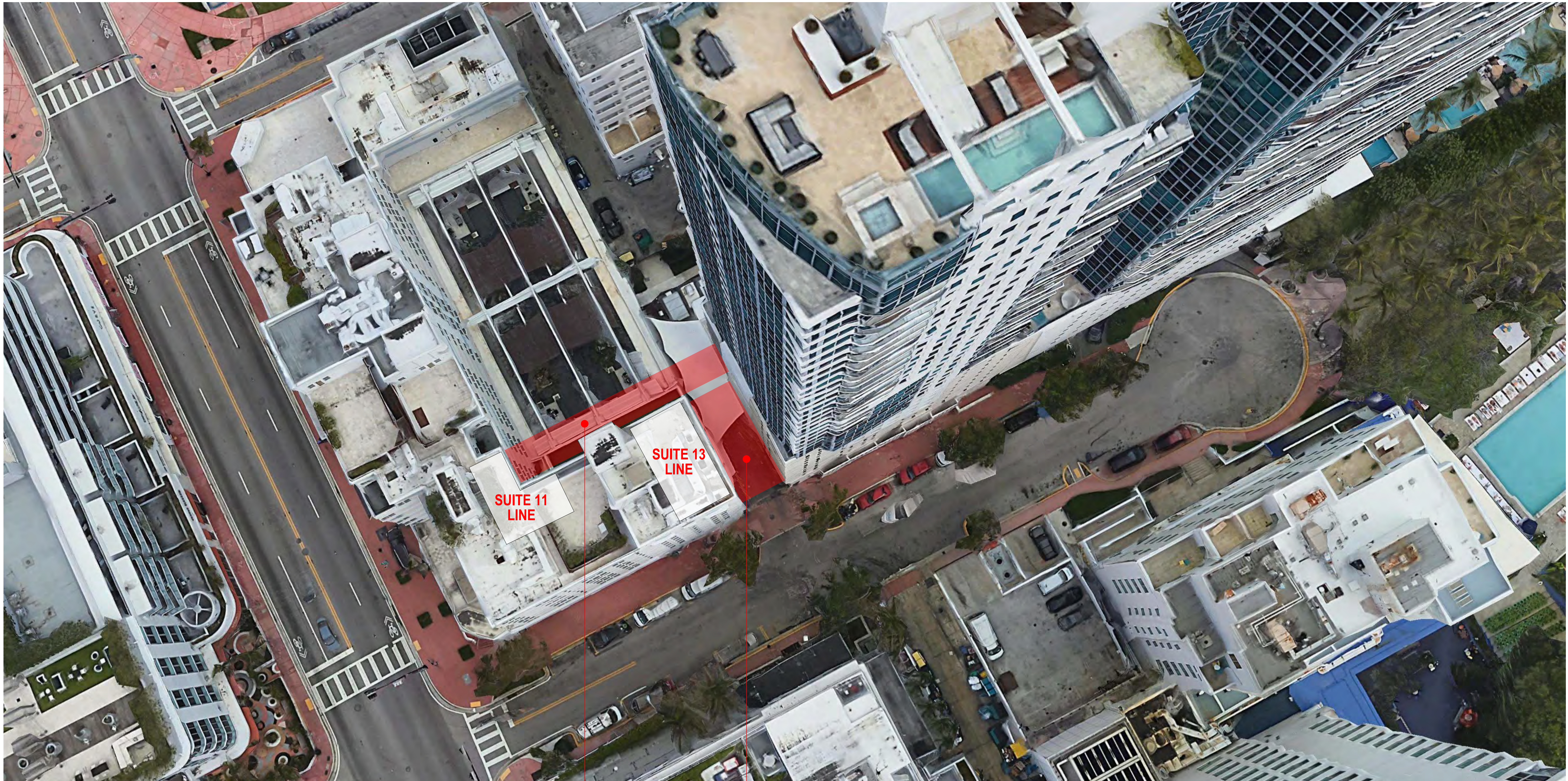
OCEAN VIEWS THROUGH COLLINS PARK



SETAI HOTEL KEYS 01 THROUGH 05 VIEW THROUGH COLLINS PARK



VIEW FROM SUITE 01 ABOVE LEVEL 4



SETAI HOTEL SUITE 13 AFFECTED BY
SETAI TOWER PARKING GARAGE

SETAI HOTEL SUITE 11 AFFECTED BY
SETAI TOWER PARKING GARAGE