

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: September 8, 2015

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **HPB File No. 7515. 1901 Collins Avenue – Shore Club Hotel**

The re-hearing applicant, G200 Exchange, LLC, is requesting a re-hearing of the May 12, 2015 decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition proposed for the Cromwell Hotel structure located along 20th Street. If the request for a re-hearing is granted, the matter may be heard immediately.

### **STAFF RECOMMENDATION**

Denial of Re-hearing request

### **EXISTING STRUCTURES**

Local Historic District:  
Classification:

Ocean Drive / Collins Avenue  
Contributing

### **LEGAL**

Legal Description:

All of Lot 1 and a portion of Lots 2 and 3, Block B, of the OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida and all of Lots 5, 6, 8, 9 and 10 and a portion of Lots 4 and 7, Block 1, FISHER'S FIRST SUBDIVISION OF ALTION BEACH, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida; and a portion of land lying East of and contiguous to the East line of said Blocks B and 1.

### **BACKGROUND**

On February 11, 2015, the City Commission adopted an ordinance which allows for projecting

balconies and balconies supported by columns to extend up to 30 feet from an existing building wall up to the highest habitable floor of the non-conforming building and not be considered a ground floor addition.

On March 10, 2015, the Board continued the application to the April 14, 2015 meeting.

On April 14, 2015, the Board continued the application to the May 12, 2015 meeting.

On May 12, 2015, the Board reviewed and approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition plan for the Cromwell Hotel structure fronting on 20<sup>th</sup> Street. The Board continued the demolition plan for the Cromwell building to a date certain of July 14, 2015.

The following portions of the application were approved on May 12, 2015:

- **Restoration and renovation of the existing Shore Club Hotel structure including the conversion of the entire south wing to accessory restaurant and commercial use.**
- **Conversion of the existing hotel units located within the 20-story north tower addition into 50 residential units.**
- **Design modifications to the existing 20-story tower addition including the introduction of expansive wrap around exterior terraces and expansion of existing window openings.**
- **Renovation of the pool deck area including the construction of a new pool and pool deck.**
- **Demolition of the existing 2-story cabana structure located at the rear of the property along the south property line and the construction of two 2-story cabanas within the rear yard, along the north and south property lines.**
- **A new landscape plan for the site.**
- **Construction of a new 5-story structure to the north of the Cromwell Hotel within the area currently containing a 2-level parking garage.**

On July 20, 2015, a 'Petition for Rehearing' was filed by G200 Exchange, LLC.

Section 118-537 of the Miami Beach City Code specifies that the historic preservation board may consider a petition for rehearing by the applicant, the owner(s) of the subject property, the city manager, an affected person, Miami Design Preservation League, or Dade Heritage Trust. For purposes of this section, "affected person" shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared

before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project. The petition for rehearing must demonstrate to the board that:

- a. There is newly discovered evidence which is likely to be relevant to the decision of the board;
- b. The board has overlooked or failed to consider something which renders the decision issued erroneous; or
- c. The board's action or order:
  1. Took place after May 11, 1995 and is actionable under the Bert J. Harris, Jr. Private Property Rights Protection Act, F.S. § 70.001 et seq., (referred to herein as the "Harris Act"); and
  2. Inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property (referred to herein as a "Harris Act claim").

The basis for the attached re-hearing petition submitted by the applicant is that there is newly discovered evidence which is likely to be relevant to the decision of the board and that the board overlooked or failed to consider something that makes the decision erroneous.

### **ANALYSIS**

Staff analysis is outlined in the *Memorandum of Law in Opposition to the Petition for Rehearing*, attached.

### **RECOMMENDATION**

Given the fact that the findings and conclusions of the appellant do not satisfy the re-hearing criteria in Section 118-537 of the City Code, staff would recommend that the request for a re-hearing be **DENIED**.

**HISTORIC PRESERVATION BOARD  
City of Miami Beach, Florida**

MEETING DATE: September 8, 2015

FILE NO: 7515

PROPERTY: 1901 Collins Avenue

APPLICANT: G200 Exchange, LLC

LEGAL: All of Lot 1 and a portion of Lots 2 and 3, Block B, of the OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida and all of Lots 5, 6, 8, 9 and 10 and a portion of Lots 4 and 7, Block 1, FISHER'S FIRST SUBDIVISION OF ALTION BEACH, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida; and a portion of land lying East of and contiguous to the East line of said Blocks B and 1.

IN RE: A request for a re-hearing of a previous decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition proposed for the Crowmwell Hotel structure located along 20<sup>th</sup> Street.

**ORDER**

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

**I. Certificate of Appropriateness**

- A. The subject site is located within the Ocean Drive/Collins Avenue Local Historic District.
- B. On May 12, 2015, the Board granted a Certificate of Appropriateness for the subject

development project with the exception of the demolition proposed for the Crowmwell Hotel structure located along 20<sup>th</sup> Street, which were continued to a date certain of July 14, 2015.

- C. The petition submitted by the re-hearing applicant, G200 Exchange, LLC, inclusive of all exhibits and testimony, fails to establish that the standards necessary for the granting of a re-hearing of the Certificate of Appropriateness that was granted by the Historic Preservation Board on May 12, 2015, are satisfied.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, that the request filed by the G200 Exchange, LLC, for a rehearing of the subject project is DENIED. The previous Certificate of Appropriateness granted May 12, 2015 shall remain in effect until final action on the rehearing, however no permits for demolition of the hotel structure shall be issued under such Certificate until such final action.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
PRESERVATION AND DESIGN MANAGER  
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Deborah Tackett, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

Approved As To Form:  
City Attorney's Office: \_\_\_\_\_ (                    )

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ (                    )

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CMB PLANNING DEPT

**BEFORE THE HISTORIC PRESERVATION  
BOARD OF THE CITY OF MIAMI BEACH,  
FLORIDA**

**HISTORIC PRESERVATION BOARD  
FILE NO. 7515**

**IN RE: SHORE CLUB PROPERTY OWNER, LLC  
1901 COLLINS AVENUE, MIAMI BEACH, FL**

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**CITY OF MIAMI BEACH'S MEMORANDUM OF LAW IN OPPOSITION  
TO THE PETITION FOR REHEARING OF G200 EXCHANGE LLC**

The City of Miami Beach (the "City") hereby submits this Memorandum of Law in Opposition to the Petition for Rehearing filed with the Historic Preservation Board (the "Board") by Petitioner G200 Exchange LLC ("G200" or "Petitioner"). The subject of the Petition for Rehearing is the application of Shore Club Property Owner, LLC ("Shore Club" or "Applicant") to the Board for a Certificate of Appropriateness for a redevelopment project (the "Project") at 1901 Collins Avenue, Miami Beach, Florida. The Project is located within the Ocean Drive/Collins Avenue Local Historic District. The Board heard the Shore Club

application on April 14, 2015 and May 12, 2015, and issued a Certificate of Appropriateness, with conditions, on May 18, 2015 (the "Order").<sup>1</sup>

The City respectfully requests that the Board deny Petitioner's Petition for Rehearing, because Petitioner has failed to meet the standard for a rehearing set forth in the City Code. Additionally, Petitioner's arguments are immaterial to a rehearing petition, and would be more appropriately asserted in an appeal to the special master, or in a petition to the circuit court for certiorari review.

**I. Procedural history.**

The Shore Club applied to the Board for a Certificate of Appropriateness for the partial demolition and renovation of existing contributing structures, total demolition of the existing two-story cabana structure, the construction of two two-story ground level cabana structures, the construction of a five-story amenities building, modifications to the existing 22-story non-contributing structure, and landscape and hardscape modifications. HPB File No. 7515, Staff Report & Recommendation, dated April 14, 2015, at 1, 9-12. The Board first considered the Shore Club's application at its meeting on April 14, 2015. At the conclusion of the April hearing, the Board continued the Shore Club's application until May 12,

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<sup>1</sup> Petitioner states, in its Petition for Rehearing, that "[t]he debate and discussion among the HPB leading to the Order was largely focused on, if not limited to, the massive amount of demolition initially proposed by the applicant. There [was] negligible debate and discussion, if any, as to the myriad conditions that the Order subjects approval to." Pet'r's Br. 4-5. The City requests that the Board take notice of Petitioner's failure to acknowledge or reference many of the issues discussed at the first hearing, which took place on April 14, 2015, before the Board continued the application to the Board's meeting on May 12, 2015. In fact, the May 18, 2015 Order was based upon both the April and May hearings, as well as any and all documents submitted in anticipation of both hearings.

2015. Specifically, the Board requested that the Shore Club return with additional clarification on the partial demolition of the Cromwell/Sharalton building. At the April and May hearings, the Board considered the Shore Club's application and all related plans, documents, expert testimony, and other submissions; the Planning Department's staff reports and testimony; argument and expert testimony presented by Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway, and Setai Hotel Acquisition, LLC (collectively, the "Setai Parties"); and argument and testimony presented by G200. At the conclusion of the May 12, 2015 hearing, the Board approved the Project with conditions.

G200 is an "affected person" pursuant to Section 118-537 of the City Code, and therefore has standing to petition the Board for rehearing.

**II. The Standard of Review for a Petition for Rehearing by the Historic Preservation Board.**

A petition for rehearing must demonstrate to the Board that "[t]here is newly discovered evidence which is likely to be relevant to the decision of the board" or "[t]he board has overlooked or failed to consider something which renders the decision issued erroneous." City Code Section 118-537(a)(1)(a)-(b).

**III. Petitioner has failed to establish its entitlement to a rehearing by the Board.**

In its Petition for Rehearing, Petitioner claims that "there is newly discovered evidence that is likely to be relevant to the decision of the board' and

that ‘the board overlooked or failed to consider something that makes the decision erroneous.’” Pet’r’s Br. 3. Petitioner’s mere assertion that it has met the standard for rehearing, without legal or factual support, is insufficient. The Board should therefore deny G200’s Petition for Rehearing.

A. Petitioner is unable to point to any newly discovered evidence that would entitle Petitioner to rehearing by the Board.

Petitioner fails to point to even a scintilla of “newly discovered evidence.” The City’s rehearing standard is modeled after the rehearing standard a trial court would use. To obtain a trial court rehearing based on newly discovered evidence a petitioner must establish the following:

- (1) it appears that the [new] evidence is such that it will probably change the result if a new trial is granted,
- (2) the evidence has been discovered since the trial,
- (3) the evidence could not have been discovered before the trial by the exercise of due diligence,
- (4) the evidence is material to the issue, and
- (5) the evidence is not merely cumulative or impeaching.

*Resort of Indian Spring, Inc. v. Indian Spring Country Club, Inc.*, 747 So. 2d 974, 978 (Fla. 4th DCA 1999) (applying to a rehearing petition the standard of review for a motion for new trial) (citing *Bray v. Electronic Door-Lift, Inc.*, 558 So. 2d 43, 47 (Fla. 1st DCA 1989)); *see also Morhaim v. State Farm Fire & Cas. Co.*, 559 So. 2d 1240, 1241 (Fla. 3d DCA 1990). “Rehearing is not intended as a device to present additional evidence that was available, although not presented,” at the

original hearing. *St. Petersburg Housing Auth. v. J.R. Dev.*, 706 So. 2d 1377, 1378 (Fla. 2d DCA 1998). The Petition for Rehearing raises several arguments as to why the Order was improperly entered. However, the petition fails to point to a shred of new evidence that surfaced or arose since the April 14, 2015 or May 12, 2015 hearings. The Board need not even address whether any “newly discovered evidence” would be relevant to the decision of the board, because Petitioner has not identified any such new evidence *at all*. The Board therefore may not grant Petitioner a rehearing on the basis of “newly discovered evidence.”

B. Petitioner has not demonstrated that the Board overlooked or failed to consider something that made the Board’s decision erroneous.

Petitioner frames its Petition for Rehearing by arguing, throughout the brief, that the Board overlooked or failed to consider information which renders the decision erroneous. However, rather than point to information overlooked, Petitioner instead argues that the Board’s decision to approve the application, with conditions, was not supported by competent substantial evidence. *See* Pet’r’s Br. 4-5, 8, 10-13. For instance, Petitioner inaccurately claims that the Board’s discussion was “largely focused on, if not limited to, the massive amount of demolition initially proposed by the applicant.”<sup>2</sup> Pet’r’s Br. 4-5. Petitioner argues, “[o]n the

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<sup>2</sup> Again, Petitioner fails to acknowledge the larger body of issues that were discussed at the April hearing and analyzed in the argument, testimony, and submissions of the Shore Club and Setai, as well as the City’s testimony and staff reports.

record, there is simply no competent substantial evidence to support the conditions of approval.” Pet’r’s Br. 5.

Petitioner suggests that the Board should grant a rehearing on the basis that the Board’s conditions “go well beyond what was discussed at the May 12 hearing,” fail to state whether “the conditions are met based upon proposed changes or that they will be met sometime in the future,” and “[make] no indication on the record as to any . . . delegation of authority or if [the Board] wish[es] to reserve review and approval authority.” Pet’r’s Br. 6, 8. Petitioner then summarily states, “[i]n short, there lacks competent substantial evidence to support any of these conditions of approval, and this [sic] the Order was improvidently granted.” Pet’r’s Br. 8. Petitioner conflates the standard of review on a rehearing petition with first-tier certiorari review by the circuit court, or appellate review by the special master. *See* City Code Section 118-537(b)(2) (“[i]n order to reverse amend, or modify any decision of the board, the special master shall find that the board did not do one of the following: (a) [p]rovide procedural due process; (b) [o]bserve essential requirements of law; or (c) [b]ase its decision upon substantial competent evidence.”). At this stage, the Board may not address whether competent substantial evidence supports the Board’s decision. The Board may only consider whether there is newly discovered evidence or whether the Board

overlooked or failed to consider something that made its decision erroneous. Petitioner has not established its entitlement to a rehearing on either theory.

**IV. Petitioner's arguments are beyond the limited scope of the Board's review of a petition for rehearing.**

**A. Whether the Board's decision was supported by competent substantial evidence is not pertinent to a petition for rehearing.**

Petitioner argues that “[t]he HPB failed to make a finding of competent substantial evidence to support the approval of the Certification of Appropriateness”; “the Order exceeds the scope of what was actually discussed and approved at the May 12, 2005 [sic] HPB Meeting”; “the conditions improperly seek to cure deficiencies in the developer’s application, which required the denial thereof”; and “the application does not satisfy the Certificate of Appropriateness criteria.” Pet’r’s Br. 4, 6, 8, 10. These arguments all stand for the same premise: that the May 12, 2015 Board order was not supported by competent substantial evidence.

Petitioner’s arguments are not pertinent to a rehearing petition. When reviewing a rehearing petition, the Board may only consider whether there is newly discovered evidence that is likely to be relevant to the decision of the Board, or whether the Board overlooked or failed to consider something that made its decision erroneous. *See* City Code Section 118-537(a)(1)(a)-(b). The question of whether competent substantial evidence supported a quasi-judicial decision of the

Board is a question for appellate review by the special master, or for the circuit court to address on a petition for writ of certiorari.<sup>3</sup> City Code Section 118-537(b)(2); *Miami-Dade Cnty. v. Walberg*, 739 So. 2d 115, 116-117 (Fla. 3d DCA 1999); *see also Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993); *City of West Palm Beach Zoning Bd. of Appeals v. Educ. Dev. Ctr., Inc.*, 504 So. 2d 1385, 1385 (Fla. 4th DCA 1987).

Petitioner relies on a portion of the opinion in *Premier Developers III Assoc. v. City of Fort Lauderdale*, 920 So. 2d 852 (Fla. 4th DCA 2006), which addressed an applicant's petition for second-tier certiorari review. The Fourth District Court of Appeal affirmed the circuit court's decision upholding the Ft. Lauderdale Planning and Zoning Commission's denial of an applicant's site plan application, on the basis that the circuit court "(1) afforded procedural due process; and (2) applied the correct law." *Premier Developers*, 920 So. 2d at 852. This case has no relevance whatsoever to the Petition for Rehearing before the Board. The Shore Club's application is not currently before an appellate court on second-tier certiorari review. Once again, the Board is constrained to the standard of review for a petition for rehearing.

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<sup>3</sup> A decision by the Board to grant or deny a Certificate of Appropriateness may be appealed to the special master. A decision regarding a variance may be appealed by petition to the circuit court for a writ of certiorari.

B. Whether the Board has the authority to impose conditions requiring further review by the City's Planning Department is beyond the scope of a petition for rehearing.

Petitioner argues that, in several instances, the Board improperly delegated its authority to City staff. Specifically, Petitioner points to Sections 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 2 of the Order. Pet'r's Br. 5. Petitioner asserts, "[l]ocal legislative or quasi-judicial bodies may not delegate their decision-making power to administrative boards, committees or staff members," and "[i]f such power is improperly delegated to an unelected body[,] . . . no amount of due process can cure the problem." *Id.* Petitioner argues that the Board's allegedly improper delegation of authority is a legal basis for the Board to grant a rehearing petition.

On a petition for rehearing, the Board is constrained by the City Code and Florida case law to examining whether there is newly discovered evidence, or whether the Board overlooked or failed to consider something. The Board need not address Petitioner's argument that "no amount of due process" could cure the Board's conditions requiring further review by City staff. Whether the Board afforded the parties procedural due process is a question for appeal. *See Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs*, 794 So. 2d 1270, 1274 (Fla. 2001) (citing *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)); *see also* City Code Section 118-537(b)(2).

Nonetheless, the City's land development regulations provide limited but broad guidance on the authority to impose conditions on a Certificate of Appropriateness:

In granting a certificate of appropriateness, the historic preservation board and the planning department may prescribe appropriate conditions and safeguards, either as part of a written order or on approved plans. Violation of such conditions and safeguards, when made a part of the terms under which the certificate of appropriateness is granted, shall be deemed a violation of these land development regulations.

City Code Section 118-561(b). "The board shall approve, deny, approve with conditions or continue action on all applications for a certificate of appropriateness." City Code Section 118-563(b). The plain language of the City Code expressly and broadly authorizes the Board to impose conditions in a Certificate of Appropriateness.

C. Whether the conditions in the Board order are supported by competent substantial evidence is a question for appeal.

Petitioner objects to the conditions imposed by the Board in its May 18, 2015 Order. Petitioner argues that the conditions "are vague and nondescript, and lack measurable standards for assessing performance." Pet'r's Br. 6. Petitioner argues that the conditions in the Order "go well beyond what was discussed at the May 12 hearing, approved upon Motion, or contained in the Staff Reports." *Id.* For instance, Petitioner points to the condition requiring the Shore Club to provide "a

fully enclosed air conditioned trash room that is sufficiently sized to handle the entire trash load of the building . . . to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or directions from the Board.” Pet’r’s Br. 7 (citing HPB Order, dated May 18, 2015, ¶ I.C.i). Petitioner asserts that there was “no discussion on the record or in any of the applicant’s prior submissions or City Staff reports of” Conditions I.C.1.c, d, e, f, g, h, i, or j; I.C.2.A.a, b, or c; or III.A, B, D, E, F, G, H, I, or J. Pet’r’s Br. 8. Once again, Petitioner’s argument is irrelevant at this stage. Whether competent substantial evidence supports the Board’s imposition of any conditions is beyond the scope of the Board’s review of the Petition for Rehearing.

### **CONCLUSION**

The Board considered analysis by City staff, the Applicant, Setai Parties, and Petitioner, before it approved the Certificate of Appropriateness, with conditions. Petitioner has failed to point to any evidence overlooked by the Board or to newly discovered evidence that would warrant a rehearing of the application. The City respectfully requests that the Board uphold the Certificate of Appropriateness dated May 18, 2015, and deny Petitioner’s request for rehearing.

Respectfully submitted,

**RAUL J. AGUILA, CITY ATTORNEY  
CITY OF MIAMI BEACH**

1700 Convention Center Drive, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

Telephone: (305) 673-7470

Facsimile: (305) 673-7002

nickkallergis@miamibeachfl.gov



Nicholas E. Kallergis

Assistant City Attorney

Florida Bar No. 105278

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served via email to Marcie Oppenheimer Nolan and Kevin Markow, counsel for Petitioner G200 Exchange LLC, at mnolan@bplegal.com and kmarkow@bplegal.com; Kent Harrison Robbins, Esquire, counsel for Petitioners Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway, and Setai Hotel Acquisition, LLC, at khr@khrlawoffices.com; Eve A. Boutsis, Esquire, Deputy City Attorney, City of Miami Beach, at eveboutsis@miamibeachfl.gov; and Alfredo J. Gonzalez, Esquire, counsel for Applicant, at gonzalezaj@gtlaw.com, this 24th day of August, 2015.



Nicholas E. Kallergis