

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: November 03, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: Design Review File No. 23204
31 Venetian Way

The applicant, Euroamerican Group Inc, is requesting Design Review Approval for the construction of a new five-story multifamily building which will replace four (4) existing three-story buildings.

Recommendation:

Denial

LEGAL DESCRIPTION:

Tract "A", of LARKMI, according to the Plat thereof as recorded in Plat Book 41, Page 68 of the Public Records of Miami-Dade County, Florida.

HISTORY:

On July 6, 2010, after a series of continuances that lasted one year, an application was approved for a new multi-story residential project consisting of 181 units and 315 parking spaces, pursuant to DRB File No. 22347. As a condition of the Final Order, the height of the southeast portion of that project (east wing fronting the Venetian Causeway) was required to be reduced by a minimum of one (1) floor, from five stories to four stories. This condition was appealed by the applicant and upheld in Circuit Court. This project never came to fruition.

SITE DATA:

Zoning:	RM-1 (Residential multifamily, low intensity)
Future Land Use Designation:	RM-1 (Residential multifamily, low intensity)
Lot Size:	152,676 SF (3.5 acres)
Existing FAR:	107,492 SF / 0.7
Maximum FAR:	190,845 SF / 1.25
Proposed FAR:	188,129 SF / 1.23 as represented by the applicant
Existing Height:	Three-stories
Proposed Height:	Five-stories, 50'-0" (60'-0" to highest non-habitable projection)
Existing Use:	120 residential units and 112 parking spaces
Proposed Use:	171 residential units and 299 parking spaces

EXISTING STRUCTURE:

The four existing buildings were built in 1939 by Paist and Steward as a series of individual, low scale three-story structures on the pie-shaped waterfront site.

LAND USES:

East: Biscayne Bay
North: Biscayne Bay

South: Belle Isle Park | Twenty-five story 2002 residential building (the Grand Venetian)
West: Five-story 1969 residential building (the Island)

THE PROJECT:

The applicant has submitted plans and renderings entitled "Bella Isla Apartments—A New Residential Development" as prepared by **dfs Deforma Studio Inc.** signed, sealed and dated 09/21/15 and 8/17/15.

The applicant is proposing a new five-story multifamily building containing 171 residential units and 299 parking spaces that will replace four (4) existing three-story buildings on the 3.5 acre waterfront parcel located in the northeast quadrant of Belle Isle.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code:

1. **Section 142-114 Floor Area.** Further review of the plans are required to determine if portions of the partially recessed balconies are required to be counted in the Floor Area Ratio (FAR) calculations. Enclosed elevators and stairs, as well as the portions of the spiral stairs that covered by the treads above will need to be counted towards FAR on ALL levels.
2. **Section 142-156 Setback Requirements.** At this time side setbacks cannot be verified since the applicant did not measure lot width correctly. **The lot width shall be the width of the lot at the 20'-0" front setback line, which may be slightly less than 609'-0" (the front property line length). This would result in a side setback requirement of approximately 48'-9" where the applicant has proposed 28'-3".**

Additionally, the applicant has not calculated the rear setback correctly, overlooking one of the property lengths. **This would result in a rear setback requirement of 30'-0" where the applicant has provided 26'-6".**

3. **Section 142-156 Setback Requirements.** The proposed driveway and at-grade parking area (located in the northwest portion of the site) must be redesigned to comply with the minimum side setback of 5'-0".
4. **Section 142-1132(n) Porte-cochere.** A porte-cochere shall be permitted to extend from an entrance door to the street line of any building except that porte-cocheres shall not be permitted in a single-family or townhome district. Where a sidewalk or curb exist, the porte-cochere may extend to within 18" of the sidewalk. The porte-cochere shall not exceed 30% of building core frontage in width or 16'-0" in height or be screened or enclosed in any manner. It shall provide an unobstructed, clear space of not less than 9'-0" between the grade and the underside of the roof of the porte-cochere.
5. **Section 142-1133 Swimming Pools.** A 6'-0" setback from the rear property line to swimming pool deck or platform is required in all districts unless connected to a dock. Since there is no dock proposed. The pool deck must comply with the required setback.
6. **Section 142-1132(o) Projections.** The spiral stairwells (shown on several projecting balconies) are not an allowable encroachment.

7. **Section 142-1132(o) Projections.** Porches, platforms and terraces [up to 30" above the CMB Grade]. The steps leading to the apartment units facing Island Avenue appear to be encroaching into the required front yard. Provide a section drawing showing the height of the terrace measured from grade and adjusted grade and showing how much the steps are encroaching into the setback.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

CONSISTENCY WITH COMPREHENSIVE PLAN:

A preliminary review of the project indicates that the proposed **residential use** appears to be **consistent** with the Future Land Use Map of the 2025 Comprehensive Plan but the lack of a Public Baywalk is **inconsistent** with several Objectives and Policies within the 'RECREATION AND OPEN SPACE ELEMENT' and 'TRANSPORTATION ELEMENT' of the City's Comprehensive Plan.

ACCESSIBILITY COMPLIANCE

Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, Section 11 (Florida Accessibility Code for Building Construction). These and all accessibility matters shall require final review and verification by the Building Department prior to the issuance of a Building Permit.

CONCURRENCY DETERMINATION:

In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does not meet the City's concurrency requirements and level-of-service standards. However, the City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria is found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Satisfied; the amount of hardscape should be reduced throughout the site, particularly to those areas fronting the bay and additional canopy shade trees should be planted throughout the site along the public R-O-W.

2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied; the massing of the subject building effectively broadsides Biscayne Bay and unnecessarily impedes important view corridors. Additionally, the amount of hardscape should be reduced throughout the site, particularly to those areas fronting the bay and additional canopy shade trees should be planted throughout the site along the public R-O-W.
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied; see COMPLIANCE WITH ZONING CODE.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; the massing of the subject building effectively broadsides Biscayne Bay and unnecessarily impedes important view corridors. The proposed design and continuous five-story elevation are inconsistent with much of the low-scale quality of the properties also within the RM-1 zoning district, north of Venetian Way. Additionally, the amount of hardscape should be reduced throughout the site, particularly to those areas fronting the bay and additional canopy shade trees should be planted throughout the site along the public R-O-W. Further, the exterior materials and finishes have not been identified.
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the orientation and massing of the subject building effectively broadsides the street and blocks vistas to the Bay.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Not Satisfied; the orientation and massing of the subject building effectively broadsides Venetian Way and the Bay.
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Not Satisfied; The orientation and massing of the subject building effectively broadsides Venetian Way and the Bay, and fails to establish, maintain and promote adequate view corridors through the Bayfront site.

8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Not Satisfied; the loading area and back-up drive does not comply with the required setbacks for at-grade parking.
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not satisfied; a lighting plan has not been provided.
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Not Satisfied; the amount of hardscape should be reduced throughout the site, particularly to those areas fronting the bay and additional canopy shade trees should be planted throughout the site along the public R-O-W.
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Not Satisfied; a well decorated wall or other screening method should be introduced along the west side to ensure minimal light spillage onto the neighboring multifamily buildings.
12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Not Satisfied; see Staff Analysis
13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
Satisfied
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Not satisfied; a roof plan showing the location of mechanical equipment and details of the associated screening have not been provided.
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

Not Applicable

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

Satisfied

17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Not Satisfied; the proposed size and design of the loading area, including the driveway ramps and location and depth of the access route, adjacent to the trash holding room require further development in order to reduce any possible negative impact on the adjacent property.

STAFF ANALYSIS:

DESIGN REVIEW

The applicant is proposing a new five-story multifamily building containing 171 residential units and 299 parking spaces that will replace four existing three-story buildings on a 3.5 acre waterfront parcel. This highly visible site is located in the northeast quadrant of Belle Isle and serves as one of the gateways to Miami Beach. The property has the distinction of containing one of the longest Bayfront coastlines within the City, nearly 750'-0" of water frontage. The four existing buildings were built in 1939 by Paist and Steward as a series of individual, low scale three-story structures, the siting and layout of which allow for a very 'open' site. The existing building layout also provides for an open, human scale in terms of the actual residential experience. When viewed from the water, the density (120 units) and massing of the buildings is obscured by the landscaping and orientation of the structures. The existing buildings zig-zag on-site, and are sited to approach and recede from the Bayside so that a view of a continuous unbroken line of buildings is never perceived.

The proposed project consists of the demolition of all the existing building on the site, and a new four-story parking structure positioned in the western portion of the site that is lined with a five-story residential building along the water (north) and street (south) sides. The western side of the parking structure is proposed to be clad in some form of brown alternating vertical and horizontal material system, although no details or finishes have been identified. A landscaped 'roof garden' is also proposed for the top of the parking structure, although the depth, dimensions, and planting and irrigation plan have also not been provided.

The building's street elevation runs nearly the entirety of the developable length of the site. The cladding system is featured throughout the residential component, the brown material contrasts against the predominantly glass façade and glass railing system. However, the five-story structure, with an active roof deck and numerous roof-top elements, as proposed by the applicant, is a much more monolithic approach that is a strong departure from the established scale, context and character of the north side of Belle Island. Staff has a concern with the dramatic change in scale and character proposed for the site, especially as viewed on Belle Isle but also across the water from Maurice Gibbs Memorial Park and Sunset Harbour. Indeed, with an overall building length of approximately 450'-0", the proposed structure will dramatically change the scale and character of Belle Isle and permanently block all Bay views. Additionally, as the structure is nearly 200,000 SF in size, not including the parking garage, staff believes a concerted effort must be made to reduce the visual mass and scale of the proposed project.

Much like the concerns expressed by staff in 2009/2010 while reviewing a prior application, staff has serious design concerns, which have been expressed with the applicant and the design team, pertaining to the general orientation and massing of the subject proposal on the site. By siting the architecture parallel to the Bay and spanning the length of the site with an uninterrupted elevation, the building effectively sections off the site and blocks the vistas to the Bay. As presently designed, the overall project fails to satisfy the Design Review Criteria pertaining to scale, massing, building siting, view corridors and the relationship to the built context of the immediate area. Additionally, the required rear and side setbacks proposed by the applicant have been erroneously calculated.

In order to create a true view corridor, which is the intent of the design guidelines, staff would recommend that the applicant bisect the building and separate the southeastern wing of the building. Further, the elimination of the lobby central portion and the units covering the potential view corridor opening at the top level is recommended. The area of these units could easily be incorporated into the remainder of the building by increasing the size of some of the other units, such as along the west side of the site. Staff strongly believes that, especially on a wide site such as this, that it is imperative to have a complete and total break between buildings. Alternatively, a building with much greater movement in architectural form and a more limited building footprint, sited perpendicular to the water and the Venetian Causeway could be explored.

LANDSCAPE REVIEW

The applicant is proposing to retain 12 of the existing 301 trees on-site in order to create a new landscape and hardscape plan. Staff conducted a site visit in order to review the existing trees on-site and found that most of the trees to be in poor condition with the exception of trees identified as # 297, #245, and #276. Staff also found trees identified as #5, #11, #104, and #126 to be in fair condition and will be requesting a tree report on all of these trees to explore their retention as well. The proposed plans feature multi-tiered, landscaped terraces bisecting the site. The design is based on a concept of nature transitioning from the Everglades to the Ocean—this transition is seen commencing from the western corner of the parcel and moves towards the eastern corner.

The different levels are connected by a series of ponds, alternating paving patterns and pools intersected with transitioning planting materials typically found in the Everglades to plants found in coastal climate areas. The 'Everglades' level is located on the upper terrace above the parking structure consisting of plant materials typically found in swamp lands, such as Red Maples, Silver Buttonwoods, Sweet Bay Magnolias, and Bald Cypress trees. The proposed landscape plan shows a diverse and complex ground story planting with a variety of palms, shrubs and trees throughout the terrace and around a large pond in the middle of the terrace identified as "Everglades River". Staff's main concern with the proposed planting scheme and pond for this level is that there isn't enough planting depth for the proposed species. Staff would recommend a minimum planting depth of 48" for the Bald Cypress trees. Staff also has concern with the proposed planting of five Red Maple trees in regards to the species salt-water resiliency so close to the Bay. Staff would recommend the replacement of the Red Maple Trees (*Acer rubrum*) with a tree species that is more salt tolerant and suitable for our Hardiness Zone.

The next two levels of terraces are relatively small and proposed with some palm trees and an understory planting. The hardscape is proposed with "mirror particle embedded concrete" bands which follow the contours of the "Everglades River" to the pool deck at the ground floor. While the green roof atop the parking structure is proposed with a diverse plant palette by contrast, the

ground floor area in the rear of the property is taken up mostly by non-natural elements (hardscape, ponds, pools). The landscaping around the pools is comprised of palm trees and several Seagrape trees positioned closest to the Bay. Staff would recommend an overall increase of native canopy shade trees along this rear outdoor area and, at minimum, the elimination of the pond in order to provide another large landscape island.

Additionally, staff would recommend an overall increase of the landscaping by a minimum of 50%. Further, the pool deck extends to the seawall, which is not permissible by Code, as such the required elimination of 6'-0" of hardscape along the water's edge will increase the overall amount of natural groundcover, and increase the overall permeability of the site.

In an effort to mitigate providing a public baywalk (in addition to paying into the County's Biscayne Bay enhancement trust fund) the applicant is proposing a portion of the south east corner of the site for semi-public usage, in order to create a natural connection to nearby Maurice Gibb Memorial Park and neighboring Belle Isle Park. Within this area, the applicant is proposing to plant four Gumbo Limbo trees, two Seagrapes, several palms and understory planting. The majority of this corner is paved in order to create the appearance of a public plaza.

Overall, staff is supportive of the design feature for this public area and believes it is the beginning step in properly designing the site. Staff would note that there is an existing Strangler Fig (# 276 on the Tree Disposition Plan) that falls within the building edge conditions, which should be maintained. The tree is 34'-0" in height with a total canopy of 3,927 SF; the loss of this tree would be significant and the building can easily be shifted to accommodate the retention of this tree.

In an effort to alleviate current parking and access conditions, the applicant is proposing to renovate the sidewalk and street conditions along the front of their parcel. This parcel makes up almost a quarter of Belle Isle and has a frontage which is a little over 609 linear feet. Currently a portion of the property perpendicular to the entrance of the Venetian Causeway from Belle Isle contains twelve parking spaces—creating a dangerous back-out maneuvering onto the Causeway. The proposed plan eliminates all the on-site surface parking fronting the Venetian Causeway and the on-site diagonal parking off of the northern portion of Island Avenue and replaces it with a meandering walkway that connects to a new sidewalk path. In this regard, the applicant has provided an attractive street edge with decorative pavers and landscape. The proposed hardscape is made up of two differentiating paving materials—a white concrete and keystone pavers in varying widths. This pattern is continued throughout the site on the upper public terraces and on the pool deck tying together the street with the bay. While the applicant is proposing planting only three canopy trees along the front of the property which staff believes should be increased significantly—approximately thirty-one additional native canopy shade trees along the front of the property.

Since the property has frontage along Biscayne Bay, the application will require review and approval from the Miami-Dade County Shoreline Review Board. The applicant has met with County staff, to discuss the option of paying into the Biscayne Bay enhancement trust fund in lieu of providing a public baywalk. Notwithstanding the Shoreline Review Board does not have the authority to supersede the Design Review criteria in the City Code. In this regard, staff will make it clear to the Shoreline Review Board that the applicant's proposal is not the only acceptable massing and orientation for the subject site. Further, it is staff's strong recommendation that the public baywalk be required along the entire waterfront.

Additionally, it would be consistent with the City's Public Baywalk Master Plan which is designed to increase pedestrian and alternative vehicle mobility, reduce impact on neighborhood

roadways and accomplish goals and objectives in the 'RECREATION AND OPEN SPACE ELEMENT' and 'TRANSPORTATION ELEMENT' of the City's Comprehensive Plan.

2025 COMPREHENSIVE PLAN

RECREATION AND OPEN SPACE ELEMENT

OBJECTIVE 3: COORDINATION OF PUBLIC AND PRIVATE RESOURCES

The City of Miami Beach shall continue to work with public agencies, such as Miami-Dade County Department of Environmental Resources Management, the Army Corps of Engineers, the Florida Department of Environmental Protection and private sector organizations and corporations, through the zoning process, to enhance and improve existing recreation/open space facilities in Miami Beach.

OBJECTIVE 5: PUBLIC ACCESS CORRIDORS

To develop a network of greenways, scenic open space vistas, beachfront promenades, bicycle and pedestrian trails, and multi-purpose public access corridors to waterways, the beach and outdoor recreational opportunities in order to preserve natural ecosystems and to enhance the quality of urban life.

TRANSPORTATION ELEMENT

OBJECTIVE 5: PEDESTRIAN AND BICYCLE CIRCULATION

Policy 5.8: Beachwalk and Baywalk Projects

The City shall continue the implementation of the Beachwalk and Baywalk Projects in order to further the City's vision of having a continuous on-grade recreational path running north/south along the coast linking the City's South, Middle and North Beach Neighborhoods. Such Projects would combine to form one interconnected recreational path that is ADA accessible and environmentally compatible with the dune and marine environment.

Policy 9.5: Multimodal Transportation

Within each Transportation Concurrency Management Area, infill and redevelopment shall be encouraged which is supportive of mobility alternatives including walking, bicycling and use of transit, particularly those associated with the completion of the Beachwalk and Baywalk projects.

Staff has met with the applicant and the design team, and while the discussions have been courteous, much like what occurred in 2009-2010, no design consensus was reached on the fundamental issue of the building height and breaking up the mass of the building with a view corridor. Staff believes that the proposed approach is so fundamentally flawed that an entire re-thinking of the overall design concept, massing, orientation, circulation and programming is in order and that a new application will be required.

RECOMMENDATION:

In view of the foregoing analysis and the inconsistencies with the aforementioned Design Review criteria, staff recommends the application be **DENIED** without prejudice. Any new application should address the following concerns:

1. The massing and orientation of the proposed new structure shall be completely restudied and revised in order to provide air, light and view corridors from the waterway to the street and sidewalk; at a minimum, any new structure shall be re-oriented so as to some portions of the structure perpendicular to the street and sidewalk.

2. In conjunction with the reorientation of the building, staff would also recommend creating a true view corridor, which is the intent of the design guidelines; perhaps breaking the massing up by eliminating the central portion (lobby area).
3. The architectural design, scale, massing and height of the southeast portion of the project (east wing fronting the Venetian Causeway) shall be further studied and substantially refined. Specifically, the massing shall be reduced by stepping downward in height from the north to the south in order to create a transition from the ground level to the main five-story building massing.
4. The height of the southeast portion of the project (east wing fronting the Venetian Causeway) shall be reduced by a minimum of one (1) floor.
5. The rear and side setbacks need to be calculated correctly, unless variances are requested.
6. The applicant shall provide a tree report by a certified Arborist for the following trees: #5, #11, #104, #126, #245, #276, and #297.
7. The proposed landscape plan should be further to include more canopy trees throughout the site particularly to the rear ground floor deck area and along the front of the property.
8. The proposed Red Maple Trees (*Acer rubrum*) with a tree species that is more salt tolerant and suitable for our Hardiness Zone.
9. The proposed pond on the ground floor should be re-designed as a landscape island instead of a water feature.
10. The total amount hardscape area should be significantly reduced throughout the site.
11. If required, the applicant shall obtain a revocable permit from the Public Works Department for the proposed street improvements and paving within the public right-of-way, subject to approval of the City Commission, prior to the issuance of a building permit. Prior to the issuance of a building permit for any work approved by the Design Review Board, as it relates to the subject development project, the applicant shall enter into and record a restrictive Maintenance Agreement and Covenant running with the land, form approved by the Miami Beach City Attorney and Planning Director and Public Works Director, which runs with the land, confirming the applicant's agreement to design, permit, construct and maintain the proposed sidewalk and paving, in perpetuity, and confirming public access to such sidewalk, in accordance with the conditions herein. The restrictive covenant shall be recorded in the public records, at the expense of the applicant.
12. The Public Baywalk shall be designed, permitted and built by the applicant. All costs associated with the design, permitting and construction of the Public Baywalk, as described herein, shall be borne by the applicant.
13. Prior to the issuance of a building permit for any work approved by the Design Review Board, as it relates to the subject development project, the applicant shall enter into and record a restrictive covenant, approved by the Miami Beach City Attorney, which runs

with the land, confirming the applicant's agreement to design, permit, construct and maintain a Public Baywalk, in perpetuity, and confirming public access to such Public Baywalk, in accordance with the conditions herein. The restrictive covenant shall be recorded in the public records, at the expense of the applicant.

TRM/JGM/LC

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