

SEPTEMBER 16, 2020 CITY COMMISSION MEETING

AGENDA ITEM R9E

EX PARTE COMMUNICATIONS

The attached *ex parte* communications regarding the subject appeal are hereby disclosed and made part of the record pursuant to City Code Section 2-512. In addition to the attached communications, the following members of the City Commission received individual briefings by the Planning Department and City Attorney's Office:

- Mayor Dan Gelber (briefed by Nick Kallergis, First Assistant City Attorney)
- Commissioner Ricky Arriola (briefed by Nick Kallergis)
- Commissioner Steven Meiner (briefed by Nick Kallergis)
- Commissioner David Richardson (briefed by Nick Kallergis and Thomas R. Mooney, Planning Director)
- Commissioner Mark Samuelian (briefed by Nick Kallergis)

Saca, Paul

From: Kallergis, Nick
Sent: Monday, September 14, 2020 6:34 PM
To: Saca, Paul
Subject: FW: Item R9E Appeal File No.: 19-002
Attachments: Appeal File 2020-001 Aaron and Erica Nahmad Appeal Summary.pdf

From: "Chamberlin, Adrian" <AdrianChamberlin@miamibeachfl.gov>
Date: Monday, September 14, 2020 at 10:13 AM
To: Nick Kallergis <NickKallergis@miamibeachfl.gov>
Cc: "Saca, Paul" <PaulSaca@miamibeachfl.gov>, "Burger, Michele" <MicheleBurger@miamibeachfl.gov>
Subject: FW: Item R9E Appeal File No.: 19-002

Good morning, Nick, Paul,

I'm forwarding you this email since you'd asked to be informed of all ex parte communications on this matter. No reply to this email was sent by the Mayor or myself.

Best,

MIAMIBEACH

Adrian Chamberlin

Aide to Mayor Dan Gelber

OFFICE OF THE MAYOR AND COMMISSION

1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139

Tel: 305-673-7000 ext. 26292 / 786-914-5306 (cell) / www.miamibeachfl.gov / AdrianChamberlin@miamibeachfl.gov



Complete the Census today! [Click Here](#)

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Graham Penn <GPenn@brzoninglaw.com>
Sent: Monday, September 14, 2020 9:20 AM
To: Gelber, Dan <DanGelber@miamibeachfl.gov>
Subject: Item R9E Appeal File No.: 19-002

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Mr. Mayor,

Our firm represents Aaron and Erica Nahmad, whose unanimous DRB approval has been appealed. The appeal will be heard by the Commission on Wednesday. Attached is a brief summary of the development timeline and our responses to the arguments raised by the objectors to the application. Also attached are excerpts from the development plans, which are already in the record.

Graham Penn

Bercow Radell Fernandez Larkin & Tapanes

200 S. Biscayne Boulevard, Suite 850, Miami, FL 33131

gpenn@brzoninglaw.com | www.brzoninglaw.com

O: (305) 377 6229 | F: (305) 377 6222

[Download vCard](#)

[View Biography](#)



City Commission Appeal File No. 2020-001

Sunset Islands 3 and 4 Property Owners, Inc. and Terry Bienstock
v.

City of Miami Beach Design Review Board

Aaron and Erica Nahmad

The Palau at Sunset Harbor Condominium Association, Inc.

**Approval Timeline for Rooftop Improvements for Aaron and Erica Nahmad
(1201 20 St, PH4 Miami Beach)**

Date	Event
April 2019	Filing of DRB Application
July 2, 2019	DRB Unanimous Approval of Application
July 2019	Objectors File Petition for Rehearing
November 5, 2019	DRB Unanimous Denial of Objectors' Petition for Rehearing
December 2019	Objectors File Appeal
September 16, 2020	Commission to Review Appeal

Total Time Elapsed: 17 months (and counting).

Commission Standard of Review of DRB Decisions:

The City Commission appeal review of a DRB Order is a very limited process.

Based only on the record created by the DRB, the Commission must determine if the Board: (1) provided due process; (2) observed the essential requirements of the law; and (3) based its decision on competent substantial evidence. See City Code Section 118-9(c)(4).

The Appeal is not a public hearing at which new evidence is taken. The appeal process does not allow the Commission to revisit the merits of the application.

Aaron and Erica Nahmad
Response to Arguments by Objectors

Objectors Argument	Response
<p>Nahmads and the Palau Condo Association could <u>not</u> legally file an application that impacted the other penthouse owners.</p>	<p>Association has authority under condominium documents to file application for limited common elements.</p> <p>Planning Director has sole authority to determine whether an application is properly filed – <u>not</u> within DRB’s jurisdiction.</p>
<p>Board’s motion did not include modification to 2012 DRB Order.</p>	<p>DRB’s Motion included approval of Application, which clearly involved both approval of Nahmads’ roof deck improvements <u>and</u> modification to 2012 Order.</p> <p>Intent of DRB was made crystal clear when it denied the Objectors’ Petition for Rehearing, which included the same argument.</p>
<p>Applicants needed to modify 2012 Planning Board Order.</p>	<p>Planning Board condition did not, nor could it, require the DRB to take a specific action.</p> <p>DRB’s action was consistent with Planning Board order and included additional limits on roof design.</p>
<p>DRB lacked Substantial Competent Evidence on compatibility to approve Application.</p>	<p>Record before the DRB includes more than sufficient evidence on the question of compatibility: (1) staff report; (2) multiple photographs; (2) detailed site, elevation, and landscape plans; (3) three dimensional renderings of the proposed improvements; and (4) a line of sight drawing.</p>
<p>The DRB improperly delegated its authority to staff by requiring modifications to be “provided in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or directions from the Board.”</p>	<p>DRB has power to impose conditions on its approvals.</p> <p>Planning Director has power to review permit plans for consistency with DRB Orders.</p> <p>If delegation occurred, was not improper because it was subject to directions from DRB and codified criteria.</p>

EXTENT OF PROJECT SITE



THE PALAU NORTH - EAST ELEVATION



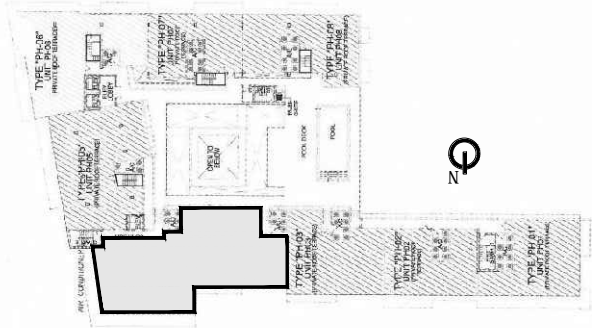
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969

Miami - CapeTown - New York - Dubai

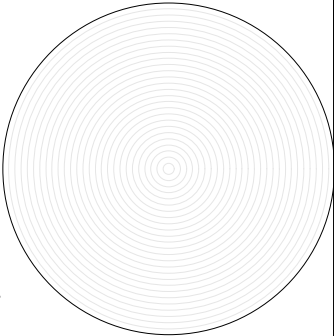
TEL (305) 531-8688
FAX (305) 531-4554
www.bluedesigncompany.com

THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR 1201 20TH STREET
PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019

KEY PLAN



SIGN & SEAL



PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763

EXISTING
SITE CONDITIONS

A - 0.6



1. ROOF LOOKING EAST



3. ROOF LOOKING NORTH-EAST



2. ROOF LOOKING WEST



4. ROOF LOOKING NORTH-EAST



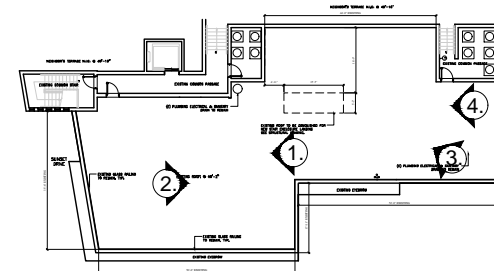
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969

Miami - CapeTown - New York - Dubai

TEL (305) 531-8688
FAX (305) 531-4554
www.bluedesigncompany.com

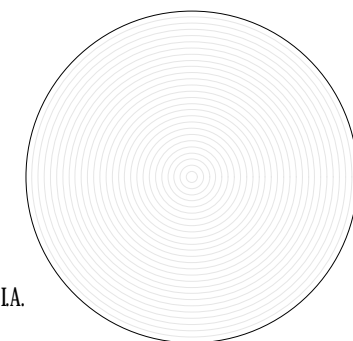
THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR
1201 20TH STREET PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019

PHOTO KEY PLAN



SIGN & SEAL

PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763



EXISTING
SITE PHOTOS

A - 0.7



NEW PROPOSED ELEMENTS	
1.	NEW STAIR ENCLOSURE
2.	NEW PERGOLAS
3.	NEW WET BAR
4.	NEW ISLAND
5.	NEW DUMB WAITER
6.	NEW FLOWER ART WATER FEATURE
7.	NEW WOODEN DECK
8.	NEW FIBERGLASS PLANTERS
9.	NEW NATIVE PLANTS & LANDSCAPE LIGHTING
10.	NEW SYNTHETIC GRASS
11.	NEW HURRICANE STORAGE NETS

RENDERED PLAN



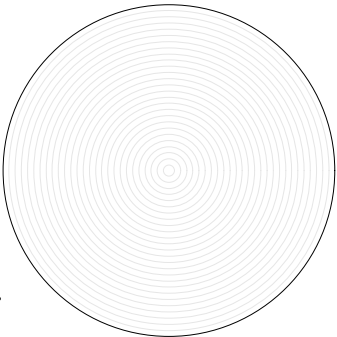
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969

Miami - CapeTown - New York - Dubai

TEL (305) 531-8088
FAX (305) 531-4554
www.bluedesigncompany.com

THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR 1201 20TH STREET PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019

SIGN & SEAL



PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763

RENDERED PLAN
+
KEY SCHEDULE

A - 4.0B



RENDERING LOOKING SOUTH



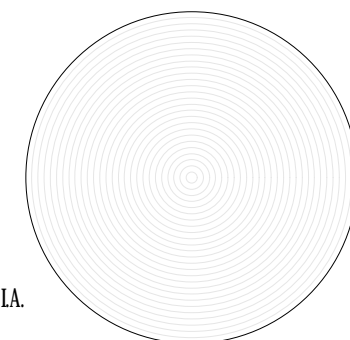
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969

Miami - CapeTown - New York - Dubai

TEL (305) 531-8088
FAX (305) 531-4554
www.bluedesigncompany.com

THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR 1201 20TH STREET PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019

SIGN & SEAL



PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763

RENDERING

A - 4.1



RENDERING LOOKING EAST



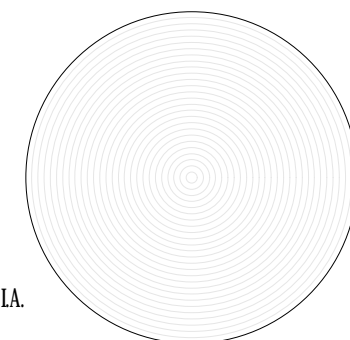
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969

Miami - CapeTown - New York - Dubai

TEL (305) 531-8088
FAX (305) 531-4554
www.bluedesigncompany.com

THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR 1201 20TH STREET PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019

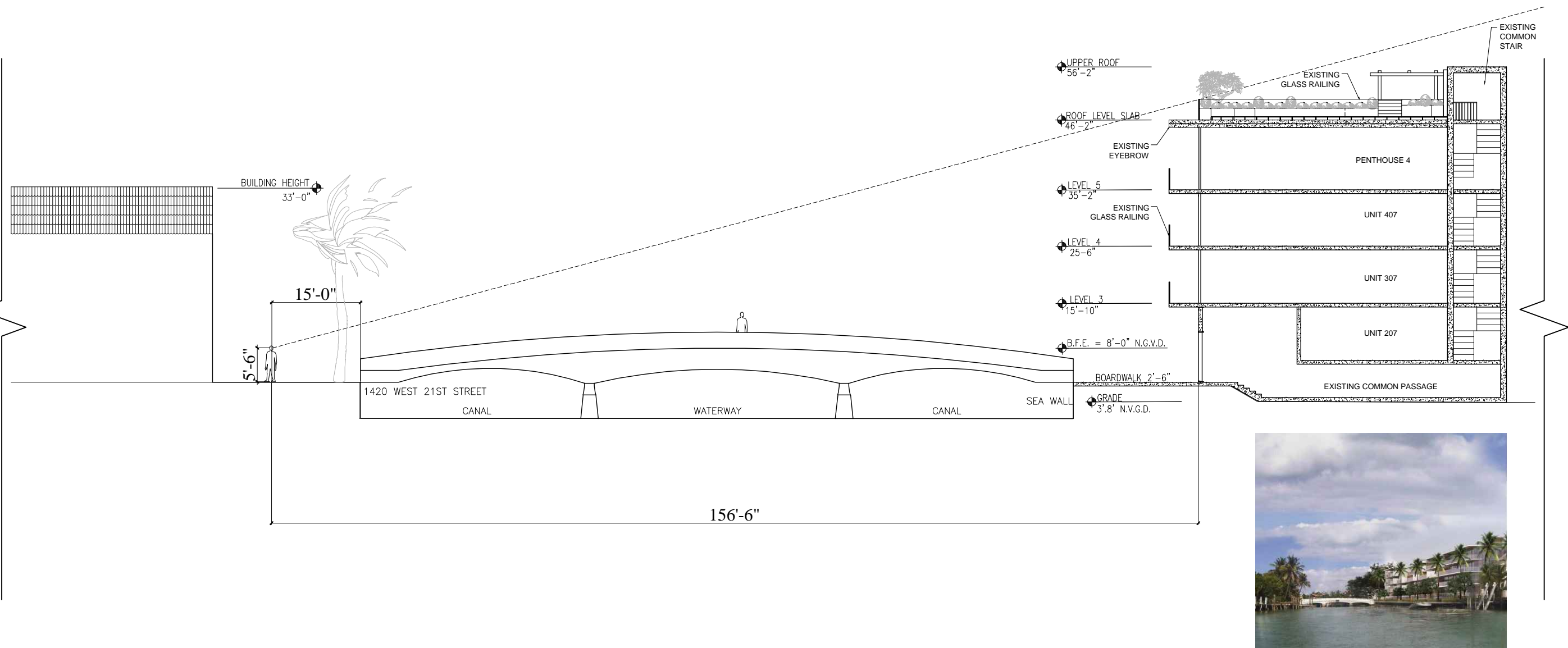
SIGN & SEAL



PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763

RENDERING

A - 4.2



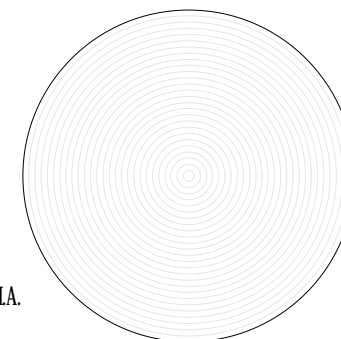
2750 NW 3rd Avenue, Suite 23
Miami, Florida 33127
AA 26001595 - IB 26000969
Miami - CapeTown - New York - Dubai
TEL (305) 531-8688
FAX (305) 531-4554
www.bluedesigncompany.com

THE NAHMAD RESIDENCE ROOF TERRACE
PALAU SUNSET HARBOR
1201 20TH STREET PH4, MIAMI BEACH FL 33139
Final DRB Submittal May 6th, 2019



SIGN & SEAL

PEDRO G. SUAREZ, A.I.A.
AR-13718 / ID-4763



BUILDING SECTION
AND LINE OF SIGHT
1/8" = 1'-0"

A - 0.8

From: [Kallergis, Nick](#)
To: [Saca, Paul](#)
Subject: FW: Comm. Meiner's Meeting Re: Palau
Date: Tuesday, September 15, 2020 10:38:13 AM

From: "Huff, Amadeus" <AmadeusHuff@miamibeachfl.gov>
Date: Tuesday, September 15, 2020 at 8:33 AM
To: Nick Kallergis <NickKallergis@miamibeachfl.gov>
Cc: "Meiner, Steven" <StevenMeiner@miamibeachfl.gov>
Subject: Comm. Meiner's Meeting Re: Palau

Hello Nick,

This email is to inform you that Commissioner Meiner met with Matthew Amster, Aaron J. Nahmad, Graham Penn, and Michael Larkin on the matter of the appeal re: the Palau condominium on January 9, 2020 at 5:30 pm.

Thank you.

MIAMIBEACH
Amadeus Huff
Aide to Commissioner Steven Meiner
Office of the Mayor and Commission
[1700 Convention Center Drive, Miami Beach, FL 33139](#)
Tel: [786-697-7763](tel:786-697-7763)
www.miamibeachfl.gov

From: [Samuelian, Mark](#)
To: [Saca, Paul](#)
Cc: [Boksner, Aleksandr](#)
Subject: Palau DRB Appeal
Date: Monday, September 14, 2020 3:27:05 PM

Several months ago, during an unrelated meeting with Mr. Bienstock, he broached the topic of the DRB Palau issue which we will be hearing on Wednesday.

I did not initiate the conversation and do not believe in any way it will impact my objectivity.

Thank you.

MIAMIBEACH

Mark Samuelian

Commissioner

Office of the Mayor and Commission

[1700 Convention Center Drive, Miami Beach, FL 33139](#)

Tel: [305-673-7000](tel:305-673-7000) / Ext. 7104 www.miamibeachfl.gov

MIAMIBEACH

Mark Samuelian

Commissioner

Office of the Mayor and Commission

[1700 Convention Center Drive, Miami Beach, FL 33139](#)

Tel: [305-673-7000](tel:305-673-7000) / Ext. 7104 www.miamibeachfl.gov

MIAMIBEACH

Mark Samuelian

Commissioner

Office of the Mayor and Commission

[1700 Convention Center Drive, Miami Beach, FL 33139](#)

Tel: [305-673-7000](tel:305-673-7000) / Ext. 7104 www.miamibeachfl.gov