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May 24, 2024

Via Email

Nick Kallergis
Office of the City Attorney
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

Re: Response to Second Cure Letter Regarding Mondrian Hotel
Planning Board File No. PB0616-0034 a/k/a PB File No. 1898
1100 West Avenue, Miami Beach, Florida 33139

Dear Nick:

Our Law Firm represents 1100 West Investments, LLC d/b/a Mondrian (the "Hotel"), the hotel owner/operator at 1100 West Avenue under the Conditional Use Permit ("CUP") issued under Planning Board File No. PB0616-0034 a/k/a Planning Board File No. 1898. We received a courtesy copy the attached Cure Letter (the "Second Cure Letter") issued by the Planning Department (the "Staff") on May 21, 2024, requesting the Hotel appear at the May 28, 2024 Planning Board ("Board") meeting for a Progress Report (the "Second Progress Report").[1] Sec. 2.5.2.5(c)(1) of the City Code requires the Second Cure Letter to be served on the Hotel by certified mail, which our client has not yet confirmed was received, but even presuming the Second Cure Letter is properly served prior to the Second Progress Report, less than 3 business days' notice is insufficient for any proceeding involving a potential deprivation of property rights. Further, the Second Cure Letter is required to provide

[1] Our Firm is not authorized to accept or waive service by certified mail for the Hotel, and therefore any appearance at the May 28, 2024 Progress Report will be a limited appearance without waiving the Hotel's notice and due process rights.

the Hotel with a 15-day cure period under 5.2.5.2(c)(2), but fails to provide the same as does the First Cure Letter, which will not have run as of the May 28, 2024 Board meeting. As a result, the Second Progress Report would not be *properly before the Board*, and therefore we are requesting you direct the Staff and/or Board to remove the Second Progress Report from the May 28, 2024 meeting agenda as proceeding with the same would violate the Hotel's due process rights. The earliest the Report could be heard by the Board would be the June 25, 2024 meeting, after the Letter is properly served on the Hotel.

Assuming *arguendo* the Board could hear the Report on May 28th, or is heard at a future meeting, the Second Cure Letter violates the Hotel's due process rights. The Second Cure Letter, which cites to the Modification/Revocation hearing (the "Hearing") noticed for the June 25, 2024 Board meeting, attempts to retroactively amend the March 28, 2024 Cure Letter (the "First Cure Letter") that purportedly served as a basis to set the Hearing,[2] but notice cannot be provided or amended retroactively since the Board voted at the First Progress Report to set the Hearing prior to the issuance of the Second Cure Letter. Since the Second Cure Letter is required to provide the Hotel notice and an opportunity to cure the violations serving as a basis for the Hearing, and presumably for the Board to take action at the Hearing, the procedural due process required to put the Hotel on notice (and provide the opportunity to cure) needs to start over (including setting a modification/revocation hearing if the Board so chooses). In addition, the two April code violations recited in the Second Cure Letter are under appeal before the City's Special Magistrate, who has sole jurisdiction over the violations, and the Written Warning also recited therein is not a violation under the CUP order. Since the violations are incorporated into the notice provided under the Second Cure Letter, the Board cannot take action on the same until a hearing on the merits in the appeal cases. Lastly, under the Florida Statutes Sec. 162.06, for the City to initiate enforcement proceedings for a violation, the complainant "must provide his or her name and address to the respective local government before an enforcement proceeding may occur," which is not complete based on the records provided, i.e. name and address are not complete, so the

[2] As the Hotel maintained at the Progress Report heard on April 25, 2024 (the "First Progress Report"), the First Cure Letter lacked any basis in law or fact upon which to set the Hearing, violating the Hotel's due process rights, i.e. none of the complaints alleged resulted in a Noise Violation being issued, and therefore Condition No. 22 (i.e. the Noise Violation condition) does not apply to the instant complaints. *See* Our Response Letter to the Planning Director dated April 17, 2004 made a part of the First Progress Report record.

violations cannot serve as a basis for the Board's enforcement action. In light of the foregoing, now that the Second Cure Letter has been issued, the Hotel is entitled to notice and an opportunity to cure prior to the Board voting on setting a modification/revocation hearing, and therefore we are requesting you direct the Staff and/or Board to remove the Report from the May 28, 2024 meeting agenda and cancel the Hearing until the Hotel is afforded the notice and due process required under the City Code.

A copy of this letter is being sent to the Clerk of the Planning Board to incorporate into the CUP file and for the Second Progress Report. Finally, nothing in this correspondence should be construed as a waiver of any of the Hotel's defenses or legal rights, including notice and due process rights provided in the City Code, all of which are expressly reserved.

In the event you should require additional information, or would like to discuss, please contact the undersigned.

Very Respectfully Submitted,

/s/ James E. Rauh
James E. Rauh, Esq.
For the Firm

cc: Clerk of the Planning Board