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February 8, 2021

Deborah Tackett, Chief Historic Preservation Officer
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **HPB20-0443** – Final Submittal Letter of Intent for Certificate of Appropriateness for Demolition and Design and Variances for Renovation of the Shelborne Hotel located at 1801 Collins Avenue, Miami Beach, Florida

Dear Ms. Tackett:

This law firm represents Shelborne Hotel Partners WC LP. (the "Applicant") with regard to the above-referenced property (the "Property") within the City of Miami Beach (the "City"). This letter shall serve as the required letter of intent for a Certificate of Appropriateness for demolition and design ("COA") and variance requests associated with proposed renovations to the Property.

Property Description. The Property is an oceanfront lot on the northeast corner of the intersection of Collins Avenue and 18th Street, and is approximately 64,500 square feet (1.48 acres) in size. The Property is located within the federally-designated Miami Beach Architectural District, as well as the locally-designated Ocean Drive-Collins Avenue Local Historic District and contains a well-known contributing structure known as the Shelborne Hotel. The Shelborne Hotel was constructed on the Property in 1940 as a 14-story 150-room hotel designed by Igor Plevitzky and Thomas Triplett Russel. Morris Lapidus designed an 8-story addition to the west end of the hotel that contained a ballroom, new lobby, and 103 additional guest rooms. The Shelborne Hotel is an early and unique example of the Miami Modern (MiMo) adaptation of the International style of architecture. More recently, in 1993, post-war modern townhouses were added alongside the pool deck and the southern portion of the Morris Lapidus-design lobby. Today, the Property consists of approximately 340 units, for which the Miami-Dade County Property Appraiser has assigned reference Tax Folio Identification No. 02-3234-083-0001.



Figure 1: Excerpt of Historic Property Viewer.

Proposed Renovation. The Applicant proposes renovations to the southern façade, interior public spaces, exterior public spaces, and east elevation to more closely reproduce the original design, as well as update hotel amenities and finishes, including a new east garden and swimming pool area at the east end of the Property. With respect to the southern façade, the Applicant proposes to demolish the non-original townhouse additions to the Morris Lapidus-designed lobby and replace with an undulating accordion wall that integrates two major elements of the original design – the original undulating accordion wall and glazed window panels. The result of the proposed renovation to the southern façade in the interior is an open and activated lobby venue in place of the non-original post-war townhouse units that diminished the size of the original Lapidus addition. Further, the Applicant proposes modest updates to the existing arcade, mezzanine terrace, restaurant terrace, and penthouse windows, as well as the addition of a new shaded walkway along the southern edge of the existing pool deck that leads to a new east garden and swimming pool area at the eastern end of the Property.

South Façade Renovation. The original Lapidus design featured five (5) vertical glazed panels alongside a solid folding accordion wall with six (6) panels. The proposed façade renovation masterfully merges these two elements of the original design by adding glazing to the V-shaped accordion wall panels to form a glazed accordion wall. The proposed design is consistent with original Lapidus design, while adding the opportunity for additional light to illuminate the proposed lobby bar and entertainment area.

Lobby Renovation. In the interior, the Applicant proposes to reinterpret the original lobby design by replacing the five (5) post-war townhouses and adjacent storage area with an expanded lobby lounge and entertainment area. The renovations further propose updates to lobby features such as the concierge desks, lighting, columns, library, and lobby café. Notably, the existing terrazzo flooring at the entrance and western portion of the lobby will be preserved. The terrazzo flooring adjacent to the existing townhomes proposed to be replaced with similar terrazzo flooring that is consistent with the original design.¹ In addition, the Applicant proposes to replace the existing library area in the northeast portion of the lobby with an intimate sushi restaurant that will further activate the lobby. Further, four (4) new rectangular columns will be located between the new lounge area in the southern portion of the lobby and the new sushi restaurant space. It should be noted that the proposed reprogramming of the Shelborne Hotel will be accomplished through a companion Planning Board application to modify the approved Conditional Use Permit for the Property. See Exhibit A, Shelborne 2013 CUP, File No. 1734.

Arcade. The existing design of the Shelborne Hotel features an exterior arcade that connects the lobby to the rear pool deck along the southern portion of the building. The Applicant intends to replace portions of the existing masonry wall, host desk, and seating alcove at the east end of the arcade with storefront glazing, new doors and, and an updated host desk and seating alcove. These renovations preserve the original design while improving the finishes and connectivity between the interior and exterior portions of the hotel.

Event Terrace and Restaurant. At the east end of the building, the Applicant proposes a new retractable awning system on the existing mezzanine event terrace, replacement of the existing restaurant awning with a new retractable awning, and renovation of the non-structural restaurant façade finishes with updated finishes and glazing, including new windows and doors. The new retractable awning proposed on the event terrace will be anchored to the existing non-original townhouse units on the north side of the pool deck, and will allow for year-round activation of the mezzanine event terrace. Notably, the retractable awning system will not physically connect to the original Polevitzky structure. The updates to the existing restaurant area are primarily non-structural aesthetic improvements to update the doors and windows that improve connectivity between the existing restaurant area and swimming pool deck.

Penthouse Windows. The Applicant proposes to replace the existing fixed windows at the penthouse level on the east elevation with sliding windows and a glass railing. The general size and position of the windows will be preserved, and the proposed new operable windows will serve as a passive cooling mechanism that reduces energy demand and improves guest experiences within the penthouse units.

Walkway and New Pool Area. The proposed exterior renovations include the addition of a shaded walkway along the southern edge of the existing pool deck that leads to a new east garden and swimming pool area at the eastern end the property. The proposed walkway will feature a wood trellis structure with large openings on the north side to allow access to and from the existing pool deck. The proposed shaded walkway will attach to the existing wall located along the southern property line and encompass the existing Calusia hedges planted along the interior edge of the wall. The proposed shaded walkway will transport hotel guests along the southern edge of the existing pool deck to a new lushly landscaped east garden and pool. It should be noted that the

¹ It should be noted that neither the Applicant nor City staff has been able to locate photographs of the southern portion of the original Morris Lapidus lobby.

proposed shaded walkway follows the existing legal nonconforming zero-foot (0') side facing a street setback associated with the existing spiral stairs and swimming pool deck, and as a result does not increase the existing legal nonconforming sum of side yards setback.

The existing patio at the east end of the Property consists of a seating area developed with pavers, artificial turf, and portable beach furniture. The proposed new east garden and swimming pool area will transform this patio into a tropical oasis that provides a natural transition from the hotel to the Beach Walk. The new pool area will feature a rounded "lake" swimming pool, shaded day beds, and a modest bar nestled among lush native landscaping to screen it from view from the Beach Walk. To the north of the new pool, the Applicant proposes a water wall that will screen existing and new pool equipment, compliment the lush tropical design, and provide a privacy buffer from the neighboring hotel to the north. The new rear pool area results in a substantial increase in landscaped open space in the required rear yard, specifically the total hardscape coverage in the overall required rear yard² is reduced from ninety percent (90%) hardscape coverage to thirty-seven percent (37%) hardscape coverage. This significant increase improves the transition from the developed upland to the environmentally sensitive dune environment, improves the Property's drainage, and is generally consistent with the City's long-term resiliency goals.

Compliance with COA Criteria. The design and scale of the proposed renovations are sensitive and compatible with the original design. The proposed renovations do not alter the height, and actually reduce the Floor Area of the structure by 3,184 square feet. Further, the project substantially preserves one of the few examples of the MiMo style from this era and in this part of the City, including the renowned porte cochere symbolic of the early 1940's auto culture. The materials and colors proposed on the southern façade, as well as public interior and exterior spaces are consistent and compatible with the original MiMo design. The project ultimately improves and solidifies the Shelborne Hotel's status as a one of the City's historic architectural gems.

Variance Requests. The Project substantially complies with the City of Miami Beach Code of Ordinances (the "City Code"). The requested Variances are necessary to preserve the historic character and respond to unique conditions of the site. In order to fully realize its renovations, and due to the Property's confining characteristics, the Applicant requests the following:

1. Variance from City Code Section 142-247(a), to permit a reinterpretation of the southern façade and addition of a retractable canopy system on the existing mezzanine event terrace to follow the existing legal nonconforming side facing a street setback of five feet, one inch (5'1"), where a minimum pedestal side facing a street setback of eight feet, two inches (8'2") is required ("Variance 1");
2. Variance from City Code Section 1420-1132(j) to permit accessory structures, including decks, to occupy sixty percent (60%) of the required rear yard³ where a maximum coverage of thirty percent (30%) of the required rear yard is permitted ("Variance 2").

² The "overall required rear yard" includes all portions of the Property between the rear property line and the required rear setback, including the Oceanfront and Dune Preservation Overlay zones, which have their own specific open space requirements.

³ The "required rear yard" on this Property consists only of the portion of the rear yard located west of the Oceanfront Overlay, which is only 4,096 square feet in size and includes portions of the existing pool deck and pool bar structures.

Satisfaction of Hardship Criteria. The Variances requested satisfy the hardship criteria pursuant to Section 118-353(d) of the City Code, as follows:

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

For all requested variances, there are special conditions and circumstances that exist which are peculiar to the land and uses, including the historic preservation of a contributing historic structure with existing legally nonconforming setbacks, and the confining characteristics of the deep and narrow oceanfront lot. The existing contributing structure is legally nonconforming with respect to its pedestal side facing a street setback of five feet, one inch (5'1"), pedestal side interior setback of four feet, ten inches (4'10"), and sum of side yards of four feet, ten inches (4'10"). Further, the elongated rectangular lot with over 600 feet of depth coupled with the existing historic structures creates confining characteristics on the eastern portion of the Property. These confining conditions caused by the lot dimensions and existing contributing structures are peculiar to this historic Property.

The proposed renovations to the southern façade and the proposed canopy structure on the mezzanine event terrace follow the existing five foot, once inch (5'1") legal nonconforming pedestal side street setback in order to remain consistent with the existing historic structure. Further, the existing pool deck, pool deck town homes, pool bar, and east patio extend into the required rear yard and are comprised primarily of hardscape materials such as concrete, tile, and pavers, which results in a legally nonconforming required rear yard hardscape coverage of ninety-two percent (92% coverage a.k.a. 8% open space). The historic structure and built context of the existing pool deck, pool deck townhomes, and east patio creates confining characteristics throughout the eastern portion of the Property, which is a unique condition peculiar to the Property.

2. The special conditions and circumstances do not result from the action of the applicant;

The special conditions and circumstances do not result from any actions of the Applicant. The existing buildings are contributing structures in a local and national historic district with existing legal nonconforming setbacks and rear yard hardscape coverage. The Applicant proposes keep the existing structures and its legal nonconforming setbacks to permit restorative improvements and necessary updates that keep the hotel viable as well as improve the resilience of the Property.

3. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

The City Code allows other similarly situated property owners that renovate historic properties to seek similar variances to accommodate development that is consistent with the historic character of the Property:

- **Variance 1:** Variance 1 does not confer on the Applicant any special privilege that is denied to other oceanfront properties containing contributing historic structures, as historic structures are often nonconforming with respect to side street setback backs due to increases in the width of adjacent rights of way over time. Variance 1 ensures

that the Applicant's proposed renovations are consistent with the existing legal nonconforming setbacks, and the existing built environment on the southern side of the pool deck.

- **Variance 2:** Variance 2 does not confer on the Applicant any special privilege that is denied to other oceanfront properties containing contributing historic structures that confine the required rear yard. The Applicant's proposed design substantially increases the rear yard open space by decreasing the hardscape coverage from ninety-two percent (92% coverage a.k.a. 8% open space) to sixty percent (60% coverage a.k.a. 40% open space). See Exhibit B, Rear Yard Open Space Comparison. In most instances where redevelopment is proposed in the required rear yard of a contributing oceanfront structure, the required rear yard open space calculation does not apply because the entirety of the required rear yard is within the Oceanfront and Dune Preservation Overlay Zones, which require fifty-percent (50%) and eighty percent (80%) open space respectively. In this instance however, there is a sliver of the required rear yard that is located west of the Oceanfront Overlay (the "Remaining Rear Yard"). Thus, the required rear yard hardscape coverage/open space requirement applies in the Remaining Rear Yard area only. With respect to the Property, the Remaining Rear Yard contains portions of the existing pool deck and pool bar, which reduce the available open space. Since most other lands, structures, or buildings in the same zoning district do not have a Remaining Rear Yard, the requested variance that facilitates a significant increase in Remaining Rear Yard open space is not a special privilege denied to other similarly situated properties containing contributing historic structures.

Accordingly, granting the requested variances does not confer any special privilege on the Applicant that is denied to other similarly situated property owners in the same zoning district.

4. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

A literal interpretation of the provisions of the land development regulations would deprive the Applicant, rights enjoyed by other properties in the same zoning district.

- **Variance 1:** Literal interpretation of the land development regulations would require the proposed reimagination of the original southern façade to completely alter the historic structure and reduce the size of the Morris Lapidus-designed lobby. Further, literal interpretation of the land development regulations would require the proposed canopy system to be developed in a manner that is inconsistent with the existing built context of the historic structure, and would foreclose the possibility of a shaded walkway leading to the rear yard due to the confining characteristics on the existing pool deck. Thus, denial of Variance 1 would work an unnecessary and undue hardship on the Applicant.
- **Variance 2:** Literal interpretation of the land development regulations would deprive the Applicant of its proposed design that substantially increases the amount of rear yard open space from its existing legal nonconforming condition. As mentioned, most historic oceanfront properties in the RM-3 District do not have a Remaining Rear Yard and are therefore not required to comply with maximum thirty percent (30%)

hardscape requirement in the required rear yard. The Property, however, has a small portion of Remaining Rear Yard that is only 4,096 square feet in size and contains portions of the contributing structure. Literal interpretation of the land development regulations would require the Applicant to demolish significant portions of the existing pool deck and pool bar in order to comply with the required open space in this miniscule portion of the required rear yard. Notably, the Applicant's proposed design complies with the Oceanfront and Dune preservation Overlay zone open space requirements by providing sixty-four percent (64%) open space in the Oceanfront Overlay area where fifty percent (50%) is required; and providing eighty-five percent (85%) open space in the Dune Preservation Overlay where eighty percent (80%) is required. Requiring the Applicant to demolish portions of the existing structures to comply with the open space requirement in the Remaining Rear Yard that does not apply to most other properties in the same zoning district works an unnecessary and undue hardship on the Applicant. The proposed open space of forty (40%) in the Remaining Rear Yard is five-times more open space than exists currently, and is consistent with the intent and purpose of the Code.

5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

The Variances are the minimum variations of the City Code that will make possible the reasonable use of the Property and preservation of the contributing Shelborne Hotel.

- **Variance 1:** The proposed variance from the minimum required pedestal side street setback seeks to follow the existing legal nonconforming pedestal side street setback of the historic structure. Any additional setback would require more significant modifications to the historic structure than intended. Accordingly, Variance 1 is the minimum variance that makes possible the reasonable use of the Property.
- **Variance 2:** The proposed design of the pool area increases the existing open space from a mere eight percent (8%), to forty percent (40%) landscaped open space, with no synthetic grass. The Applicant's design complies with the open space requirements in the Oceanfront and Dune Preservation Overlay zones. The Remaining Rear Yard is a confined area that includes portions of the existing pool deck. Providing additional open space would require further demolition of the existing pool deck than intended. Consequently, Variance 2 decreases an existing nonconformity and is the minimum variance that allows for the reasonable use of the rear yard.

The goal of the renovation is to preserve and improve the existing hotel by renovating in a manner that is consistent with the original design and responding appropriately to the unique conditions of the Property. The requested variances are entirely based on the existing legal nonconformities associated with the historic Shelborne Hotel and are therefore the minimum necessary to achieve this objective.

6. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

Granting of the Variances will be in harmony with the general intent and purpose of these land development regulations, as they permit the preservation and improvement of an existing contributing structure and result in a substantial increase in open space in the Remaining Rear Yard, as well as the overall rear yard. Specifically, the hardscape

coverage in the Remaining Rear Yard is reduced from ninety-two (92%) to sixty (60%), and the hardscape coverage in the overall rear yard is reduced from ninety percent (90%) to thirty-seven (37%). Further, the Applicant's proposed design complies with the Oceanfront and Dune preservation Overlay zone open space requirements by providing sixty-four percent (64%) open space in the Oceanfront Overlay area where fifty percent (50%) is required; and providing eighty-five percent (85%) open space in the Dune Preservation Overlay where eighty percent (80%) is required. The proposed renovations retain the characteristics of the existing structures, improve guest experiences, and improve the resilience of the Property. Thus, granting the requested variances is within the public interest.

7. The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request;

Renovation and restoration of the iconic Shelborne Hotel is consistent with the Comprehensive Plan and the RM-3 Zoning District Regulations. The Comprehensive Plan encourages preservation and restoration of historic structures, as well as improved resiliency of these often vulnerable properties. Granting the requested variances would further each of these objectives.

8. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

Granting the requested variances improves the resiliency of the Property, as the increased open space, operable windows at the penthouse level, and increased open space at the east end of the Property provides improved flood mitigation.

Practical Difficulty. The thoughtful design does the most possible to provide a renovation that restores and enhances many of the design's original characteristics. The narrow deep lot and existing legal nonconforming structures are practical difficulties that must be addressed in order to make reasonable use of the Property.

In order to preserve the existing buildings and remain consistent with original design, the Applicant is left with a Property with confining characteristics. Strict compliance with the land development regulations would contradict the historic preservation and resilience goals of the City, and prevent restoration and improvement of the site.

Sea Level Rise and Resiliency Criteria. The Project advances the sea level rise and resiliency criteria in Section 133-50(a) of the City Code, as follows:

1. A recycling or salvage plan for partial or total demolition shall be provided.

A recycling and salvage plan for any proposed demolition will be provided at permitting.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

Hurricane proof impact windows will be provided.

3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

The Applicant will provide, where feasible, passive cooling systems. The Applicant proposes operable windows at the penthouse level, which improves passive cooling.

4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

New landscaping provided will be Florida-friendly and resilient.

5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Sea level rise projections are being considered and the improved permeability in the rear yard mitigates future sea level rise induced flooding.

6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

This is a renovation of a historic site and no significant new construction is proposed adjacent to public rights of way. To the extent feasible the Applicant will design the southern façade to be adaptable to future harmonization with public roadway raising projects.

7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.

All mechanical and electrical systems will be located above base flood elevation to the extent feasible and appropriate in light of the historic context of the building.

8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

This is a renovation of a historic site. The existing ground floor areas will be elevated where feasible and appropriate,

9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Wet or dry flood proofing systems will be provided where habitable space is located below BFE.

10. Where feasible and appropriate, water retention systems shall be provided.

Where feasible, water retention systems will be provided.

11. Cool pavement materials or porous pavement materials shall be utilized.

Cool pavement materials and/or porous pavement materials will be utilized.

12. The design of each project shall minimize the potential for heat island effects on-site.

The Applicant proposes additional landscaping around the perimeter of the site. There are no changes proposed to the rooftop of the historic structures.

Conclusion. The Applicant's proposed renovations substantially preserve the Shelborne Hotel while bringing needed upgrades to this unique MiMo structure. The reinterpretation of the Morris Lapidus-designed lobby integrates two hallmark features of the original design, while the massing, scale and design of the Shelborne Hotel will remain largely unchanged. The proposed upgrade of the east patio into a new lush garden and swimming pool area adds amenities necessary for the future viability of this historic hotel and increases the resilience of the Property. Accordingly, granting of this COA, with associated Variances, is in harmony with the intent and purpose of the City's Comprehensive Plan and Land Development Regulations and will enhance the local historic district.

In light of the above, the Applicant respectfully request your favorable review and recommendation of this application. If you have any questions or comments with regard to the application, please contact me at (305) 377-6222.

Sincerely,



Michael W. Larkin

CC:

Ben Leahy
Maurice Petignat
Frederick Andersson
Grace Dillon
Nicholas Rodriguez



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**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1801 Collins Avenue
Shelborne Hotel

FILE NO. 1734

IN RE: The Application by Shelborne Property Associates, LLC, requesting a modification to a Conditional Use Permit, pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to change the name of the ownership and management.

**LEGAL
DESCRIPTION:** See Exhibit "A"

MEETING DATE: August 27, 2013

MODIFIED CONDITIONAL USE PERMIT

The applicant Shelborne Property Associates, LLC, filed an application with the Planning Director for a modification to a Conditional Use Permit, pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to change the name of the ownership and management.

The Planning Board of the City of Miami Beach 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:

That the property in question is located in the RM-3, Residential multifamily high intensity zoning district.

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

IT IS THEREFORE 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 is adopted herein, including the staff recommendation, that a

Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The applicant shall come back to the Board within 90 days of the date of approval of the Modified Certificate of Use/Business Tax Receipt, and provide a progress report. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Modified Conditional Use Permit is issued to ~~Shelborne Associates, Costello Investments, Inc., Shelborne Ocean Beach Hotel corp. and Beach Group III, LLC, Shelborne Property Associates, LLC, Wyndham Hotel Management, Inc., and 1801 Collins Club #1, LLC~~ collectively, as operator of this Neighborhood Impact Establishment. ~~This MCUP approves 1801 Collins Club, #1, LLC to operate the basement venue beginning with the expiration of the current lease in 2013, after the old lessee vacates the premises.~~ Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Modified Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, in advance, to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property's owners, and all successors in interest and assigns.
4. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Modified Conditional Use Permit.
5. The Final Order for File No. 7074 issued by the Historic Preservation Board on May 11, 2010 is hereby adopted and incorporated into this order by reference.
6. The Final Order for File No. 3470 issued by the Board of Adjustment on August 6, 2010 is hereby adopted and incorporated into this order by reference.
7. The applicant shall provide staff documents verifying the service of a valet operator holding the contract and the locations where vehicles will be stored. These documents shall be submitted to staff prior to the approval of a Building Permit or Modified Certificate of Use/Business Tax Receipt, whichever occurs first.
8. The hours of operation shall be as proposed by the applicant:
 - a. The Brasserie restaurant, aka Vespers, from 5:00 PM until 5:00 AM
 - b. The Lounge from 5:00 PM until 5:00 AM
 - c. The Lobby Bar/Restaurant from 6:00 AM until 5:00 AM
 - d. The Event Space (Alternative Nightclub Space) from 10:00 PM until 5:00 AM, when

#1734 – 1801 Collins Ave. – Shelborne Hotel
August 27, 2013

Page 2 of 7



operating as a nightclub

- e. The Café, aka Vespers, from 6:00 AM until 2:00 AM
 - f. The Outdoor Café from 6:00 AM until 11:00 PM. The hours may be extended until 5:00 AM for breakfast
 - g. The Taqueria from 11:00 AM until 11:00 PM
 - h. The Basement Nightclub from 8:00 PM to 5:00 AM
 - i. The pool deck area and mezzanine terrace from 6:00 AM until 11:00 PM, except during City-approved Special Events or private functions when the hours may be determined by the event/function, but no later than 2:00 AM
9. The pool deck and mezzanine areas, shall be generally limited to the use of hotel guests and/or the guests of private functions, with the following exceptions:
- a. Patrons of the Brasserie, Café, and Outdoor Café shall be allowed access to the pool deck and mezzanine from 11:00 AM to 7:00 PM, with music played at ambient background level only, except for weekends and holidays.
 - b. The pool deck shall be open for public events on Fridays, weekends, holidays, and during City's special event periods. It shall be open to the public during these days from 10:30 AM to 7:00 PM from December 1 to April 30 and from 10:30 AM to 8:00 PM the remainder of the year.
 - c. During these events entertainment shall be permitted.
 - d. All music shall be played through the hotel's audio system and no portable speakers or third party speakers shall be allowed.
 - e. Only the hotel manager or his/her designee shall have sole control over sound levels.
 - f. Food for the weekend/holiday events shall be served by the wait staff of the Taqueria and the public shall have access to the bar within the Outdoor Café, as well as a temporary bar located on the southern end of the pool deck area.
 - g. Queuing for the events shall occur within the hotel lobby. No queuing shall be permitted on the public right of way.
 - h. The hotel shall be the sole operator of the events.
 - i. The maximum occupant content of the pool deck area during these events shall be limited to 371 persons, or as determined by the Fire Marshall, whichever is lower.
 - j. Security personnel shall use counters to ensure maximum allowed occupant content is not exceeded.

#1734 – 1801 Collins Ave. – Shelborne Hotel
August 27, 2013

Page 3 of 7



- k. The general public shall be permitted on the pool deck during City-approved special events.
 - l. The occupant content for City-approved special events on the pool deck shall be as determined by the Fire Marshall.
10. The lobby bar/restaurant shall be restricted to an occupant content of no more than 79 persons as proposed by the applicant, and the music shall be played as background only, at a level that does not interfere with normal conversation. The occupant load for the Event Space/Nightclub Space and all other venues serving alcohol, including the pool deck and mezzanine terrace shall be as determined by the Fire Marshall, except that the occupant content for the public events on the pool deck shall be limited as provided in this Order. The Fire Department staff shall make a final inspection of the pool deck venue premises to validate the patron occupant load, prior to the approval of a Certificate of Occupancy or Modified Certificate of Use/Business Tax Receipt for the pool deck venue.
 11. The occupant content of the Basement Nightclub shall be limited to a maximum of 150 persons.
 12. Security measures shall be taken to ensure that members of the public do not access the mezzanine terrace and pool deck areas, except as allowed under the terms of this Modified Conditional Use Permit. A detailed security plan for that purpose shall be submitted to staff for review and approval before a Modified Certificate of Use/Business Tax Receipt is issued.
 13. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all the alcoholic beverage venues.
 14. As per The Audio Bug's report recommendations, the sound system shall be carefully monitored and controlled by its integrated digital processor and shall only be allowed to be changed when the DJ connects his signal sources to the existing sound system. No additional speakers shall be permitted in order to maintain the balance of sound distribution. Any higher music levels shall be adjusted under the supervision of a qualified acoustical consultant. The time periods during which these events take place shall be programmed into the digital processor so that system levels are automatic. No later than 3 months after implementation, these recommendations shall be verified by a qualified acoustical consultant and a written report shall be submitted to staff for review and approval.
 15. The installation plan for the sound system, including the location of all the speakers and sound system controls, shall be submitted to staff for review and approval prior to obtaining a building permit.
 16. When the sound system is completely installed, but before the Modified Business Tax Receipt has been issued, it shall be tested under the supervision of a staff approved acoustic professional to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. A final report issued by the acoustic professional shall be submitted to staff.



17. During the proposed events at the pool deck or more active periods, the hotel shall add additional security staff, as well as additional hotel managers, to meet the needs of that particular event. Security staff shall be placed at access points - the main lobby entrance, the entrance to the Café and Brasserie along 18th Street, and the beach access.
18. The applicant may apply for City approved special events pursuant to Section 12-5 of the City Code, including having live music, and entertainment as defined in the City Code, and adhere to the conditions stated herein with regard to these special event permits. In these cases, the applicant shall notify the neighboring homeowners, condominiums or neighborhood associations in writing in accordance with applicable City special events approval requirements. The following shall apply to City approved special events:
 - a. Occupant load to be determined by the Fire Marshal/Building Official for Special Events
 - b. Entertainment, including live music, concerts and the like may be permitted according to the restrictions imposed by the Special Event Permit approval
19. The applicant may hold hotel events and functions incidental and customarily associated with a hotel such as, but not limited to, weddings, receptions, and private cocktail parties for hotel guests or clients, not open to the public. The following shall apply to those events and functions in the outdoor areas.
 - a. Only the hotel sound system shall be used.
 - b. Hours of operation to be determined by the event/function, but not later than 2:00 a.m.
 - c. Access to the pool deck shall be closed to the general public. Guests of the event/function shall access the venue only through the hotel lobby, and access shall be monitored by hotel security.
20. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, that may be issued during either **City-approved special events or private events/functions** or at any other time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
21. In the event there is an admission charge, queuing shall only be inside in the hotel lobby and a plan shall be presented to staff for review and approval. Any queuing in the public right-of-way shall be strictly prohibited.
22. There shall be at least 10 additional security personnel on duty on weekends and during Special Events, private events/functions and pool events open to the public.
23. All "wet T-shirt," "thong" or "bikini" events shall be prohibited.
24. All performances shall be limited to the interior of the establishments except for entertainment associated with public pool deck events or City-approved Special Events; only speakers playing ambient music, subject to the Audio Bug recommendations in the sound study submitted with

#1734 – 1801 Collins Ave. – Shelborne Hotel
August 27, 2013

this application, shall be permitted outdoors; except as permitted during a public pool deck event or City-approved Special Event, all outdoor music shall be ambient background music.

25. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
26. A final certificate of completion or certificate of occupancy, whichever may apply including an occupant load certificate for the entire combined space, shall be obtained before an application is made for a Modified Certificate of Use/Business Tax Receipt.
27. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
28. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), as determined by the Transportation Concurrency section.
29. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalks, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.
30. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Modified Certificate of Use/Business Tax Receipt to operate this entertainment establishment.
31. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
32. ~~Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit, certificate of use, certificate of occupancy, certificate of completion or business tax receipt shall be issued until this requirement has been satisfied. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant, and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.~~
33. The establishment and operation of this Modified Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any

#1734 – 1801 Collins Ave. – Shelborne Hotel
August 27, 2013

failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

34. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this 12th day of March, 2014.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Thomas R Mooney, AICP, Acting Planning Director,
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 12th day of March, 2014, by Thomas R. Mooney, AICP, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]

TERESA MARIA
MY COMMISSION # FF 042188
EXPIRES: December 2, 2017
Bonded Thru Budget Notary Services

Notary: [Signature]
Print Name: Teresa Maria
Notary Public, State of Florida
My Commission Expires: 12-2-17
Commission Number: FF 042188

Approved As To Form:
City Attorney's Office (9/12/14)

Filed with the Clerk of the Planning Board on (3/12/14) [Signature]

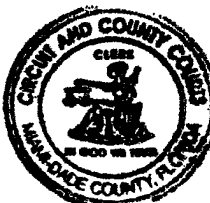
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#1734 - 1801 Collins Ave. - Shelborne Hotel
August 27, 2013

EXHIBIT "A"
LEGAL DESCRIPTION

THAT CERTAIN PARCEL OF LAND BOUNDED ON THE WEST BY THE WEST LINE OF LOTS 13 AND 14, AND ON THE NORTH BY THE NORTH LINE OF LOTS 13 AND 2 AND ITS EASTERLY EXTENSION, AND ON THE SOUTH BY THE SOUTH LINE OF LOTS 14 AND 1 AND ITS EASTERLY EXTENSION, OF BLOCK 1, "FISHER'S FIRST SUBDIVISION OF ALTON BEACH" ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 77 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ON THE EAST BY THE EROSION CONTROL LINE AS DEPICTED IN PLAT BOOK 134, PAGE 47 OF SAID PUBLIC RECORDS.

STATE OF FLORIDA, COUNTY OF DADE
HEREBY CERTIFY that this is a true copy of the
original filed in this office on APR 27 2012 day of APR, A.D. 2012
WITNESS my hand and Official Seal.
HARVEY RUVIN, CLERK, of Circuit and County Courts
By TANASHIA ARNOLD D.C.
1144



CERTIFICATION

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT
IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON
FILE IN THE OFFICE OF THE PLANNING DEPARTMENT.
CITY OF MIAMI BEACH

[Signature] 5-22-2012
(Signature of Planning Director or Designee) (Date)

[Signature]
Notary Public, State of Florida at Large

Printed Name: TERESA MARIA
My Commission Expires: (Seal)

This document contains 7 pages.



TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

LANDSCAPE | EXISTING REAR YARD CALCULATIONS

Exhibit B



LEGEND

REAR YARD TOTAL AREA 13,200 SQ.FT.		
	SQ.FT.	%
PLANTING	1,302	10%
LAWN	0	0%
TOTAL LANDSCAPE	1,302	10%
ARTIFICIAL TURF	3,667	28%
HARDSCAPE	8,219	62%
TOTAL HARDSCAPE	11,886	90%

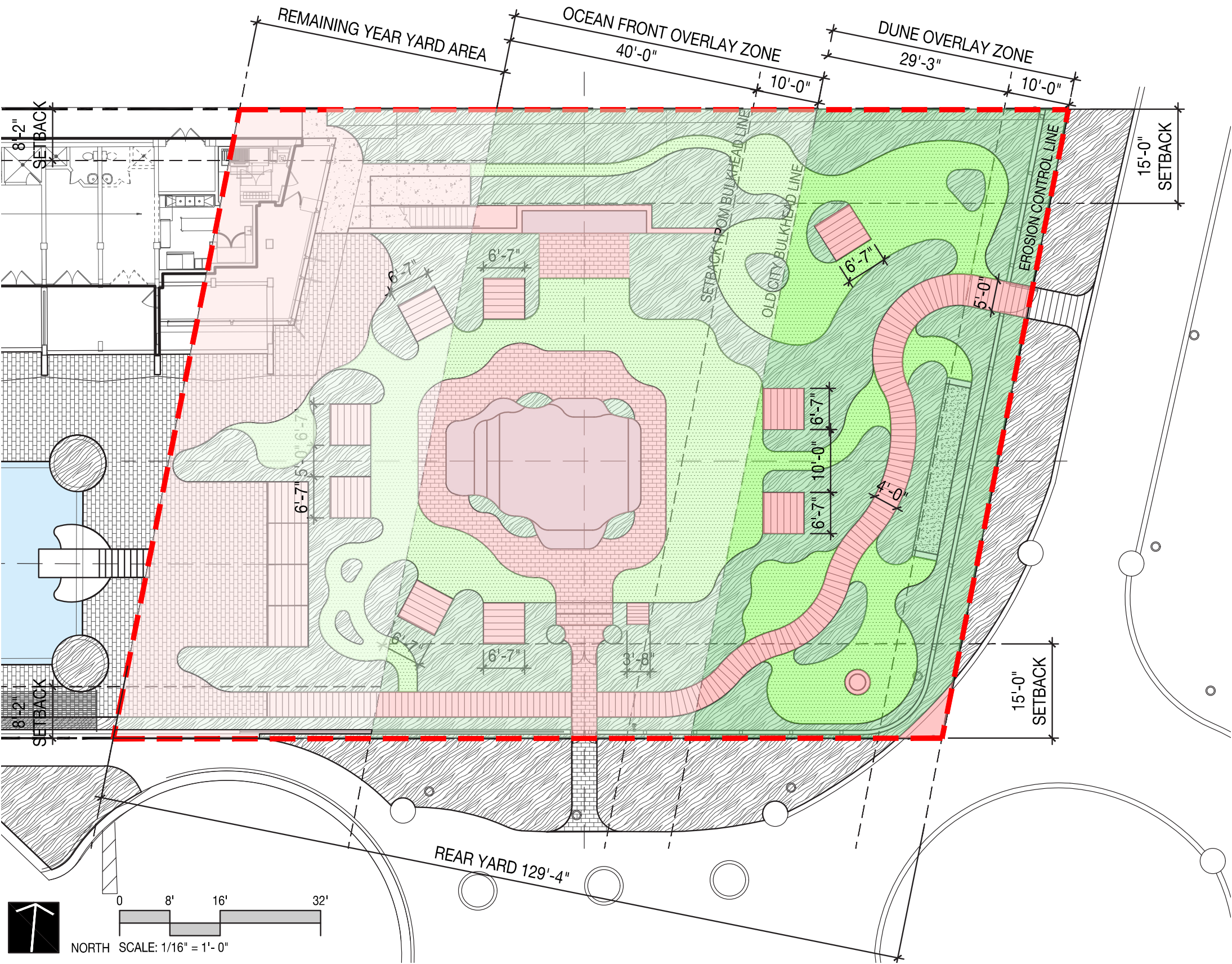
REMAINING REAR YARD AREA 4,096 SQ.FT.		
	SQ.FT.	%
PLANTING	316	8%
LAWN	0	0%
TOTAL LANDSCAPE	316	8%
HARDSCAPE	3,775	92%
ARTIFICIAL TURF	0	0%
TOTAL HARDSCAPE	3,775	92%

OCEAN FRONT OVERLAY AREA 5,104 SQ.FT.		
	SQ.FT.	%
PLANTING	911	18%
LAWN	0	0%
TOTAL LANDSCAPE	911	18%
HARDSCAPE	3,667	72%
ARTIFICIAL TURF	522	10%
TOTAL HARDSCAPE	4,189	82%

DUNE OVERLAY AREA 4,004 SQ.FT.		
	SQ.FT.	%
PLANTING	75	2%
LAWN	0	0%
TOTAL LANDSCAPE	75	2%
HARDSCAPE	777	19%
ARTIFICIAL TURF	3,145	79%
TOTAL HARDSCAPE	3,922	98%

L003

LANDSCAPE PLANS | REAR YARD CALCULATIONS



LEGEND

REAR YARD TOTAL AREA 13,200 SQ.FT.		
	SQ.FT.	%
PLANTING	4,989	37%
LAWN	3,289	26%
TOTAL LANDSCAPE	8,278	63%
TOTAL HARDSCAPE	4,927	37%

REMAINING REAR YARD AREA 4,096 SQ.FT.		
	SQ.FT.	%
PLANTING	1,098	26%
LAWN	513	14%
TOTAL LANDSCAPE	1,611	40%
TOTAL HARDSCAPE	2,485	60%

OCEAN FRONT OVERLAY AREA 5,104 SQ.FT. 50% LANDSCAPE AREA REQUIRED		
	SQ.FT.	%
PLANTING	1,855	37%
LAWN	1,398	27%
TOTAL LANDSCAPE	3,237	64%
TOTAL HARDSCAPE	1,851	36%

DUNE OVERLAY AREA 4,004 SQ.FT., 80% LANDSCAPE AREA REQUIRED		
	SQ.FT.	%
PLANTING	2,036	51%
LAWN	1,378	34%
TOTAL LANDSCAPE	3,414	85%
TOTAL HARDSCAPE	591	15%

L004