

Dickman Law Firm

Miami

T: (305) 758-3621

F: (305) 758-0508

Naples

T: (239) 434-0840

F: (239) 434-0940

St. Petersburg

T: (727) 527-7150

F: (727) 527-7180

May 6, 2022

SENT VIA EMAIL

Hon. Rick Lopez, Chair (rick.hpb@gmail.com)

Hon. Kirk Paskal, Vice Chair (kpaskal@gmail.com)

Hon. Nancy Liebman (nanlieb@aol.com)

Hon. Barry Klein (barrykleinboa@gmail.com)

Hon. Stuart Reed (StuartReedHPB@aol.com)

Hon. Ray Breslin (Bresaro@aol.com)

Hon. Laura Weinstein (lwb.mbhp@gmail.com)

RE: Shore Club Hotel; 1901 Collins Avenue; Certificate of Appropriateness; HPB21-0481.

Dear Chair Lopez and Historic Preservation Board Members:

This law firm represents the Setai Resort & Residences Condominium Association, Inc. ("Setai"). The Setai OPPOSES the above referenced application ("Shore Club Hotel" or "Project") in its current form because of its detrimental impact on the Setai members, its common areas, and 20th Street. For the following reasons, we request that you not approve the Shore Club Hotel in its current form until all detrimental impacts are fully resolved.

Standing.

As you know, the Setai is a mere stone's throw north of the Shore Club Hotel property at 1901 Collins Avenue, separated by 20th Street. The Setai is located at 101 20th Street and received direct mail notice of this quasi-judicial public hearing. **Exhibit A.**

The Setai is an "affected person" eligible under the City of Miami Beach ("City") code to request a rehearing or to appeal your decision. "An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel) and whose appearance is confirmed in the record of the board's public hearing(s) for such project." (Emphasis added). City of Miami Beach Land Development Regulation ("LDR") Sec. 118-9(a)(2)(B)(iii) and Sec. 118-9(c)(3)(B)(iii).

This gives the Setai a greater party status at the quasi-judicial hearing because if the Project is approved in its current form, the Setai will suffer special damages "... differing in kind as distinguished from damages differing in degree suffered by the community as a whole." *Renard v. Dade County*, 261 So. 2d 832, 835 (Fla. 1972).

The Setai is a registered "Florida Not For Profit Corporation" with a duly elected board of directors responsible to the 254-unit association members and maintaining association common areas. **Exhibit B.** Mr. Martin Scasserra has been the Setai, Community Association Manager for 18 years. He will provide fact-based lay testimony to the Historic Preservation Board (HPB) at the quasi-judicial hearing regarding the physical and operational relationship between the Shore Club and the Setai. It is well settled that the

HPB may consider Mr. Scasserra's fact-based lay testimony if it is not generalized statements of opposition and is supported by documentation, maps, reports, or other information." *Miami-Dade County v. Walberg*, 739 So. 2d 115, 117 (Fla. 3rd DCA 1999); *Metropolitan Dade County v. Sportacres Dev. Group, Inc.*, 698 So. 2d 281 (Fla. 3rd DCA 1997).

Because City code and case law recognize the Setai's party status as more than a mere "participant," I am respectfully requesting that the HPB allow me and Mr. Scasserra a combined 10 minutes at the quasi-judicial hearing rather than the standard 3 minutes.

20th Street.

The Setai property (west to east) consists of the former Dempsey Hotel fronting Collins Avenue, with the main tower and the pool areas going out to the beach. All Setai onsite parking is in the main tower, which fronts 20th Street. Because the rear of the Holliday Inn (which fronts 21st Street) abuts the Setai property, the only access for Setai onsite parking, deliveries and waste pickup is on 20th Street. **Exhibit C & D.** The 20th Street segment fronting the Setai is a public right-of-way with on-street public parking demarcated by parking bump-outs. There are public sidewalks on both sides of 20th Street lined with street trees terminating at a small roundabout with public beach access. The roundabout is the Setai's primary valet access for owners and guests. The south side of 20th Street is partially Shore Club property and partially Townhouse Hotel property. **Exhibit E.**

Adding access to the Shore Club onsite parking, deliveries and waste pickup as currently designed is not in the best interest of the public and exasperates an already complicated ingress and egress for the Setai, the Shore Club and the Townhouse. Fire, police, and other first responders certainly will encounter situations that lower their response time. The public will encounter greater noise, congestion, and exhaust fumes while accessing the public beach. The Board should not approve the Project in its current form until these core issues are fully resolved.

Design, scale, massing and arrangement.

As you know, "[a] decision on an application for a certificate of appropriateness shall be based upon [an] [e]valuation of the compatibility of the physical alteration or improvement with surrounding properties" (Emphasis added). Land Development Regulations, Sec. 118-564(a)(1). Also, "[i]n determining whether a particular application is compatible with surrounding properties the historic preservation board shall consider ... design, scale, massing and arrangement ... [and the] relationship of ... [design, scale, massing and arrangement] to other structures and features of the district." (Emphasis added). LDR, Sec. 118-564(a)(2).

Furthermore, "[t]he historic preservation board and planning department shall review plans based upon the ... location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, ... dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage ... [whether the] additions to an existing structure are appropriate to and compatible with the environment and adjacent structures, and enhance the appearance of the surrounding properties." (Emphasis added). LDR, Sec. 118-564(a)(3).

In making its decision, the HPB shall give "[p]articular attention ... to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors." (Emphasis added). LDR, Sec. 118-564(a)(3).

The HPB must ensure that “[p]edestrian 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site [and access] to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.” (Emphasis added). LDR, Sec. 118-564(a)(3).

The HPB shall ensure that “[a]ny proposed new structure shall have 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).” (Emphasis added). LDR, Sec. 118-564(a)(3).

Finally, the HPB must ensure that “[t]he 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.” (Emphasis added). LDR, Sec. 118-564(a)(3).

There is generally “no legal right to the free flow of light and air from the adjoining land...where a structure serves a useful and beneficial purpose.” *Fontainebleau Hotel Corp. v. Forty-Five Twenty-five, Inc.*, 114 So. 2d 357, 359 (1959). “If, as contended on behalf of plaintiff, public policy demands that a landowner in the Miami Beach area refrain from constructing buildings on his premises that will cast a shadow on the adjoining premises, an amendment of its comprehensive planning and zoning ordinance, applicable to the public as a whole, is the means by which such purpose should be achieved.” (Emphasis added). *Id.* at 360. To this point, the City adopted Section 118-564(a)(3) addressing view corridors and pedestrian sight lines. These are protected property rights the HPB should consider before making its decision. Furthermore, you’ll find no competent substantial evidence addressing these criteria.

The current Shore Club design, scale, massing and arrangement is not compatible with the Setai property (including its structures, pool and other common areas), as it creates safety and emergency response obstacles, erodes sight lines and important view corridors, unnecessarily causes pedestrian and vehicular traffic congestion and hazards, and the service bays, delivery bays, trash and refuse receptacles, as well as trash rooms will have maximum impact on the Setai and the public. **Exhibit F.** The HPB should not approve the Shore Club in its current form because it fails to meet the above requirements.

Competent substantial evidence.

The HPB must review the Shore Club application based on the specific criteria expressed in the City’s land development regulations. The Shore Club application cannot be approved without competent substantial evidence that each criterion is met. While I have great respect for the City’s planners, the staff report, with recommendations and a draft order does not rise to the level of competent substantial evidence. It is merely a conclusory document without sufficient analysis explaining the basis for the recommendation.

Regarding the City’s most important guiding document – the Comprehensive Plan – the staff report merely surmises “A preliminary review of the project indicates that the hotel use is consistent with the Future Land Use Map of the Comprehensive Plan.” The FLUM (future land use map) is one part of the comprehensive plan. What about the goals, objectives, and policies of the future land use element and all the other elements? The HPB deserves a thorough, not preliminary, review of the comprehensive plan to be afforded the ability to make a decision based on competent substantial evidence.

The staff report lists the twelve criteria that the HPB must evaluate regarding sea level rise and resiliency. Of those twelve criteria, two were not applicable to this project, one was not satisfied, seven were satisfied, and two items are satisfied but require additional information. When reviewing the criteria, there is no analysis included to explain to the HPB and the public how these criteria are satisfied, not satisfied, or not applicable. Because there is no analysis, staff has not provided competent substantial evidence to the HPB which will aid them in deciding on whether or not to approve the Shore Club application.

On page 3 of the staff report in subsections 10 and 11 of the criteria, staff instructs that “additional information shall be provided at the time of building permit review.” LDR Sec. 133-50 states that “the city’s land use boards shall consider the following when making decisions within their jurisdiction...” With the staff report stating that additional information “shall” be provided at the time of building permit review, that means that the HPB does not have all the information to determine if those two criteria are satisfied. If the applicant fails to provide the required information, then the HPB does not have the necessary competent substantial evidence needed to decide if the criteria is met or not. Staff is asking for an improper delegation of power reserved to the HPB to conduct the review at a duly noticed public meeting. A local government is obligated to follow the procedural requirements as stated in its code, LDR, etc. *Fla. Tallow Corp v. Bryan* 237 So. 2d 308; *City of Miami Beach v. State ex. rel. Consolo*, 279 So. 2d 76 (Fla 3d DCA 1973).

Here is the extent of the analysis in the staff report: “The applicant is proposing a comprehensive renovation of the subject property which contains two Contributing hotel structures and multiple later additions. Additionally, the applicant is proposing to construct a new residential tower addition at the center of the site to replace the existing 20-story addition and a 2-story cabana structure at the eastern portion of the site. Further, landscape and hardscape improvements are proposed throughout the site.” These are nothing more than statements of fact.

For the reasons stated above, the HPB cannot rely on the City’s staff report for competent substantial evidence.

The proposed order.

In the Findings of Fact Section, Part I. Certificate of Appropriateness, subsection B3 states that criteria (a) and (h) in Sec. 118-564 (a)(2) are not consistent with the project as submitted. However, on page 4 of the staff report, staff has clearly indicated that those two criteria are in fact “satisfied.”

In the Findings of Fact Section, Part I Certificate of Appropriateness, subsection B4 states that criteria (a) and (f) in Sec. 118-564 (a)(3) are not consistent with the project as submitted. However, on page 5 of the staff report, staff has once again clearly indicated that those two criteria are in fact “satisfied.”

Reviewing an application for a Certificate of Appropriateness in an area that is so rich with character, great architecture, and opportunities for improvement is no easy task. However, it is essential that these applications are complete and reviewed in their entirety with special attention given to the various applicable City code sections. The application is incomplete as there are several specific criteria that “shall” be met before a COA is approved and the project may move forward.

The HPB should not rely on the staff report for competent substantial evidence and it certainly should not adopt and approve the order as presented. The inconsistency between the staff report and the proposed order is a fatal flaw.

Conclusion.

The Setai opposes the Shore Club project in its current form. The Shore Club received an approval by the HPB in 2016 which is far more consistent with the criteria in the City's land development regulations of concern to the Setai, i.e., treatment of 20th Street and the design, scale, and massing elements. We respectfully request that you DENY this application in favor of a design substantially like the 2016 submittal.

We specifically reserve the right to supplement this information.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'A. J. Dickman', with a long horizontal flourish extending to the right.

Andrew W. J. Dickman, Esq., AICP

cc: Thomas Mooney, Planning Director
Nick Kallergis, Deputy City Attorney
Deborah Tackett, Chief of Historic Preservation
Jessica Gonzalez, Clerk of Boards
Lizbeth Bueno, Office Associate V
Michael Larkin, Esq.
Neisen Kasdin, Esq.
Kent Harrison Robbins, Esq.

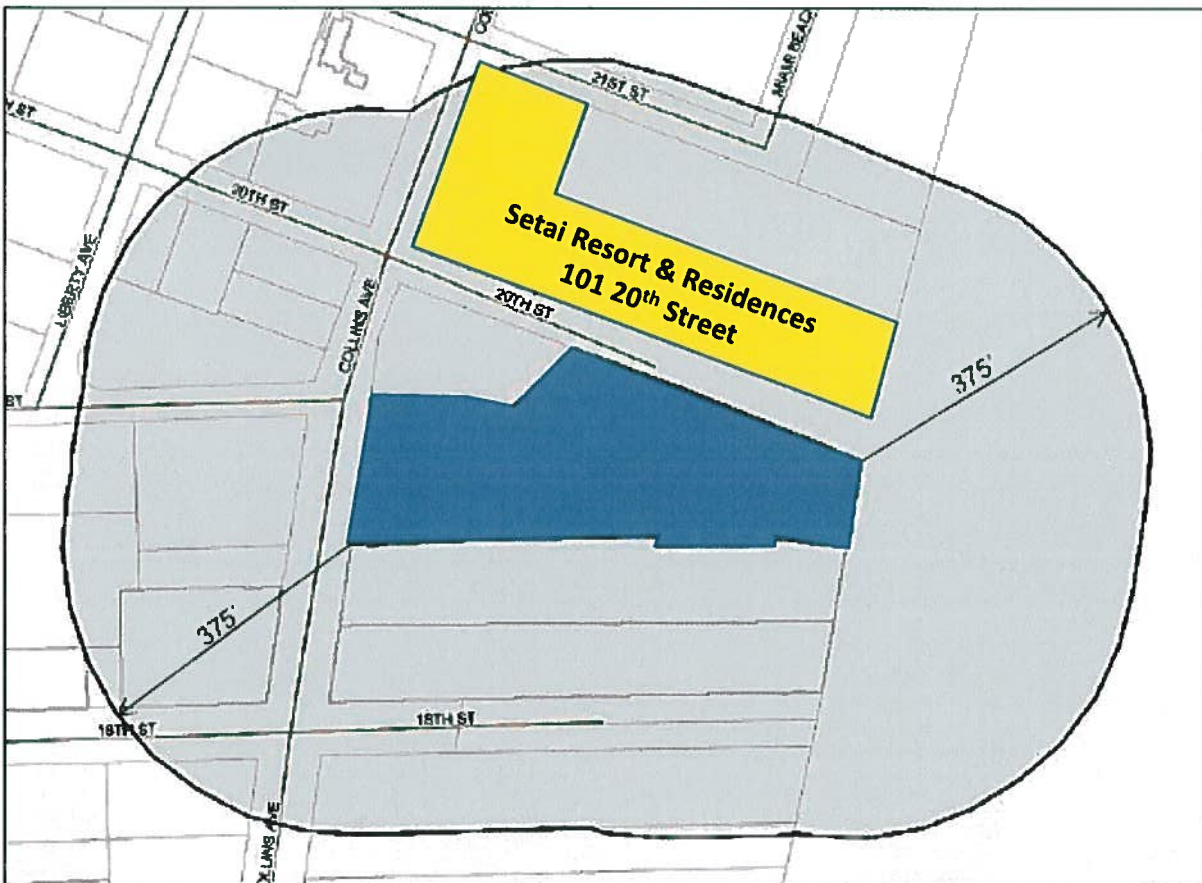
EXHIBIT A



rdr miami | public hearing notification services

certified lists of property owners within a specific radius + radius maps + mailing labels + mailouts + notice of public hearing site posting
rdmiami.com | diana@rdmiami.com | 305.498.1614

375' RADIUS MAP



SUBJECT: 1901 Collins Avenue, Miami Beach, FL 33139

FOLIO NUMBER: 02-3226-001-0020

ABBREV. LEGAL DESCRIPTION: MIAMI BEACH IMP PB 2-77 PB 5-7 - Please refer to a Boundary Survey for full Legal Description

EXHIBIT B

DIVISION OF CORPORATIONS

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /**Detail by Entity Name**

Florida Not For Profit Corporation

SETAI RESORT & RESIDENCES CONDOMINIUM ASSOCIATION, INC.

Filing Information**Document Number** N03000009033**FEI/EIN Number** 90-0132183**Date Filed** 10/16/2003**State** FL**Status** ACTIVE**Last Event** AMENDMENT**Event Date Filed** 10/10/2014**Event Effective Date** NONEPrincipal Address101 20TH STREET
MIAMI BEACH, FL 33139

Changed: 07/05/2007

Mailing Address2401 COLLINS AVENUE
SUITE 1223
MIAMI BEACH, FL 33139

Changed: 05/24/2021

Registered Agent Name & AddressRagan, Marnie, Esq.
141 NE 3rd Avenue
Fifth Floor
Miami, FL 33132

Name Changed: 01/17/2018

Address Changed: 01/21/2020

Officer/Director Detail**Name & Address**

Title President

Soloway, Stephen, Dr.
 ASSOCIATION MANAGEMENT OFFICE
 101 20TH STREET
 MIAMI BEACH, FL 33139

Title VP

Nakash, Ariel, Mr.
 ASSOCIATION MANAGEMENT OFFICE
 101 20TH STREET
 MIAMI BEACH, FL 33139

Title Secretary, Treasurer

Bloom, David C., Mr.
 ASSOCIATION MANAGEMENT OFFICE
 101 20TH STREET
 MIAMI BEACH, FL 33139

Annual Reports

Report Year	Filed Date
2020	01/21/2020
2021	02/02/2021
2022	02/11/2022

Document Images

02/11/2022 -- ANNUAL REPORT	View image in PDF format
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04/22/2015 -- ANNUAL REPORT	View image in PDF format
10/10/2014 -- Amendment	View image in PDF format
01/09/2014 -- ANNUAL REPORT	View image in PDF format
04/05/2013 -- ANNUAL REPORT	View image in PDF format
01/10/2012 -- ANNUAL REPORT	View image in PDF format
03/01/2011 -- ANNUAL REPORT	View image in PDF format
03/30/2010 -- ANNUAL REPORT	View image in PDF format
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07/27/2004 -- ANNUAL REPORT	View image in PDF format
10/16/2003 -- Domestic Non-Profit	View image in PDF format

EXHIBIT C



EXHIBIT D

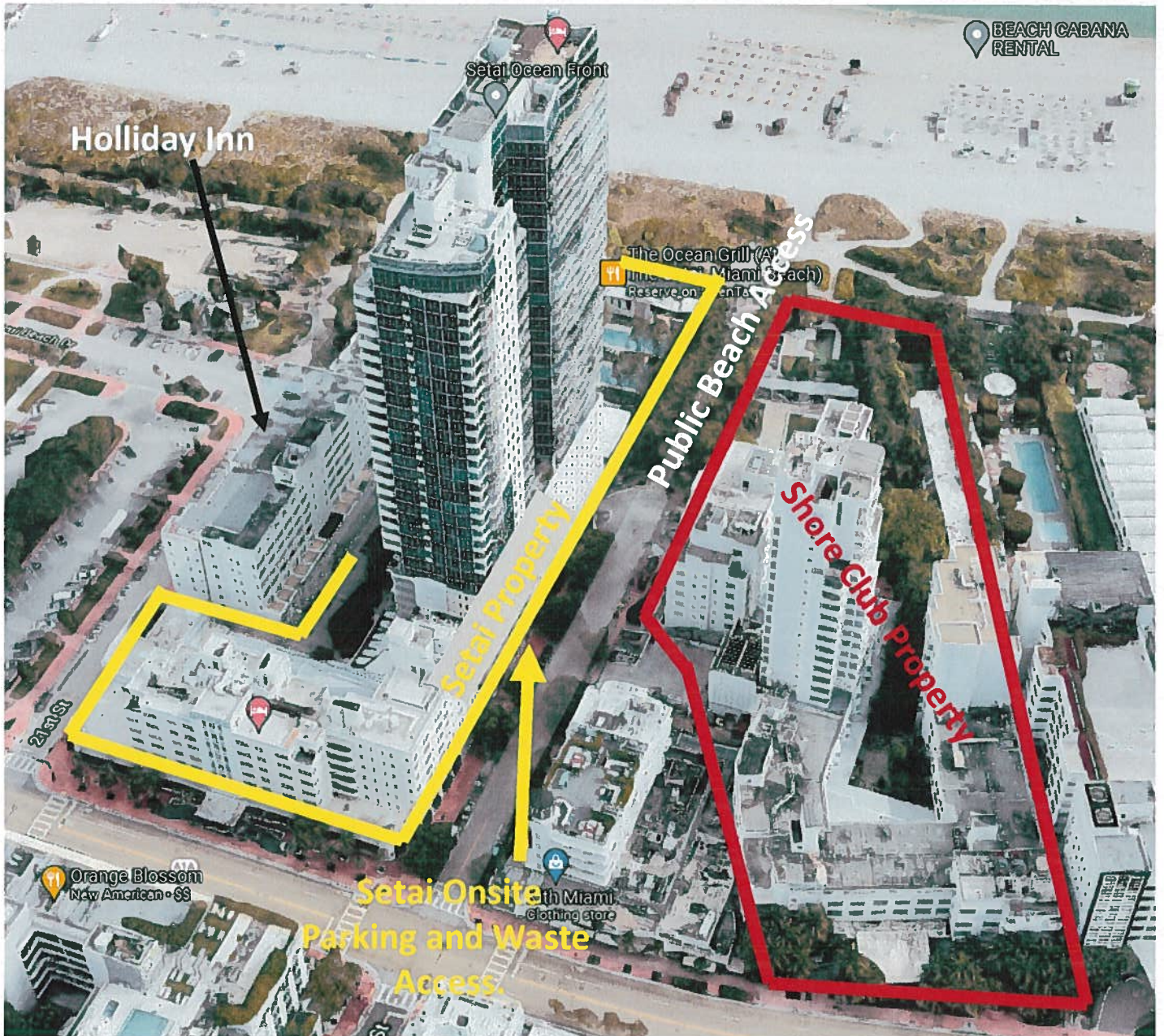


EXHIBIT E



EXHIBIT F

