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BEFORE THE HISTORIC PRESERVATION  
BOARD OF THE CITY OF MIAMI BEACH,  
FLORIDA

LOWER FILE NO. HPB 21-0481

In Re: 1901 Collins Avenue  
Miami Beach, Florida.

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**PETITION FOR REHEARING**

Petitioners, Setai 1808, LLC (“Setai 1808”), Setai 2204, LLC (“Setai 2204”), Setai Unit 2304, LLC (“Setai 2304”) and Dr. Stephen Soloway (“Dr. Soloway”) (collectively “Petitioners”) by and through the undersigned attorney, pursuant to §118-9(a)(1)(A) of the City of Miami Beach Code (“MBC”), Land Development Regulations, respectfully petition the City of Miami Beach Historic Preservation Board (“HPB” or “Board”) for a rehearing of its May 10, 2022 decision<sup>1</sup> to grant a Certificate of Appropriateness (“COA”) for the partial demolition and renovation of two buildings on the site, the total demolition of two buildings, the construction of two new additions and landscape and hardscape modifications (HPB File No. 21-0481) for

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<sup>1</sup> Although the HPB made its decision at the May 10, 2022 hearing, the Board’s order was not “rendered” and executed by the clerk until May 16, 2022. The HPB’s rendered order is attached as **Exhibit A** to the Appendix to the Petition (“Appendix”), contemporaneously submitted herewith. This Petition is timely filed because the Petitioners have “submitted [it] to the planning director on or before the 15th day after the rendition of the board order.” §118-9(a)(2)(A), MBC.

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Shore Club Property Owner, LLC's, ("Shore Club" or "Applicant") development project and, in support thereof, states as follows:

### **SUMMARY OF PETITION**

The HPB overlooked errors in the approved plans and submissions that impact traffic on 20<sup>th</sup> Street, an area of expressed concern for members of the HPB.

### **LOADING SPACES DEFICIENCY**

1. The plans approved by the HPB purport to contain two (2) off-street (on-site) loading spaces<sup>2</sup> in violation of the zoning code required three (3) off-street loading spaces for the new Residential Tower.
2. The City failed to inform the HPB that it is not authorized to approve the deficient off-street loading spaces unless a detailed Parking Department report is submitted into the record showing that the loading could be handled on 20<sup>th</sup> Street without the required loading spaces on-site.
3. No such Parking Department report was submitted into the record.
4. The order and record shows that the HPB did not affirmatively waive the zoning-code-required three (3) off-site loading spaces.

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<sup>2</sup> There is no competent, substantial evidence that a "tandem" loading space in the plans meets loading space design requirements for two (2) loading spaces.

5. The loading spaces do not meet the requirements of the zoning code and certificate of appropriateness criteria.

### **TRIP GENERATION ANALYSIS IN TRAFFIC REPORT FLAWED**

1. The code required traffic assessment engineering report identified only 304 seats under the category “Quality Restaurants” on the site when the zoning data provided by the Applicant shows 444 dining seats for the new Residential Tower and the Cromwell.
2. The data used by the traffic engineer for determining the impact of projected traffic on 20<sup>th</sup> Street is erroneous and renders the trip generation calculations for 20<sup>th</sup> Street erroneous.
3. The required traffic assessment engineering report failed to meet the requirements of the code and rendered the information upon which the HPB relied unreliable for determining compliance with the certificate of appropriateness criteria.

### **JURISDICTION AND PARTIES**

Petitioners, Setai 1808, Setai 2204, Setai 2304 and Dr. Stephen Soloway attended and/or participated, through the undersigned attorney, in the hearings on HPB File No. 21-0481. Petitioners own residential units, 1808, 2204, 2304 and 3701 respectively, at the Setai, which is located at 101 20<sup>th</sup> St, Miami Beach, Florida, which property is within 375 feet of the property

subject to the application sought to be reheard and are adversely affected. All Petitioners are “affected person(s),” pursuant to §118-9(a)(2)(B)(iii), MBC.

The Historic Preservation Board has authority to rehear any “order relating to the issuance of a certificate of appropriateness.” §118-9(a)(1)(A), Code. To grant a rehearing, the Applicant must satisfy either of the following two requirements: (1) the Board “has overlooked or failed to consider something which render[s] the decision issued erroneous”; or (2) “[n]ewly discovered evidence [exists] which is likely to be relevant to the decision of the [B]oard.” §118-9(a)(2)(C)(i)–(ii), Code.

### **STANDARD OF REVIEW**

To grant a rehearing, the Petitioners must satisfy either of the following two requirements: (1) the Board “has overlooked or failed to consider something which render[s] the decision issued erroneous”; or (2) “[n]ewly discovered evidence [exists] which is likely to be relevant to the decision of the [B]oard.” § 118-9(a)(2)(C)(i)–(ii), MBC. This standard is phrased in the disjunctive. Satisfying one of these requirements is sufficient to grant a rehearing.

## **ARGUMENT I**

- 1. The Historic Preservation Board overlooked or failed to consider that the approved Architectural Plans do not meet the off-street loading space numerical requirements of the Zoning Code. The Code requires 3 loading spaces but only a total of 2 (in tandem) loading spaces were provided. HPB approved plans without all of the required loading spaces on-site.**
- 2. HPB overlooked or failed to consider that the Parking Department did not provide any plan delineating on-street loading. Unless the parking department provides a detailed plan delineating on-street loading, the deficiency in the off-street loading space requirements cannot be waived by the HPB.**
- 3. The HPB did not waive the deficiency in the off-street loading space requirement.**

The new Residential Tower will be erected with 75 residential units, and a 2,969 square foot restaurant. Under the zoning code, these uses require three (3) off-street loading spaces.

The Miami Beach Code provides the Space Requirements for loading under Section 130-101:

Sec. 130-101. - Space Requirements.

**A. When any new building or structure is erected or an existing building is modified resulting in an increase in FAR, accessory off-street loading spaces shall be provided for the new building, new structure, or increased floor area in accordance with the following schedule:**

- (1) For each** retail store, department store, restaurant, wholesale house, warehouse, repair, general service, manufacturing or

industrial establishment, or similar use, which has an aggregate floor area in square feet of:

**a. Over 2,000 but not over 10,000: 1 space.**

\* \* \*

**(3) For any residential building or hotel building:**

\* \* \*

**b. Over 50 units but not more than 100 units: 2 spaces.**

\* \* \*

B. For the new construction of multi-family, hotel, and commercial buildings utilizing enclosed structures for the storage and/or parking of vehicles, all required loading spaces shall be located internally.

C. For a change of use in an existing building, required loading shall either be provided in accordance with the off-street loading schedule above, or a detailed plan delineating on-street loading, as approved by the parking department.

**D. For properties located within a locally designated historic district, or historic site, the historic preservation board may waive the requirements for off-street loading spaces for properties containing a contributing structure provided that a detailed plan delineating on-street loading is approved by the parking department.**

Section 130-101, MBC. - Space Requirements. (*emphasis added*).

## **CALCULATION OF REQUIRED OFF-STREET LOADING SPACES FOR THE NEW TOWER**

The number of required off-street loading spaces for the new “Residential Tower” building pursuant to the Code are:

Two (2) loading spaces are required for 75 residential units. §130-101, (1)a, MBC.

One (1) space is required for 2,959 square feet of restaurant. §130-101, (3)b, MBC.

**A total of three (3) loadings spaces are required.<sup>3</sup> §130-101, MBC.**

The Code requires three (3) off-street loading spaces. The only loading spaces in the plans are the “tandem” loading facility which purports to meet a two (2) space requirement.<sup>4</sup> See e.g. Sheet A2.31 from the plans Applicant submitted to the HPB and attached at page 10 to the April 14, 2022 Kimley Horn Traffic Assessment Report, which report is attached hereto as **Exhibit B**. The Applicant, the Applicants’ Engineers and Architects, the City Planning Staff Report, the City Attorney, and the Objectors as well as the HPB overlooked and did not properly calculate the total number of required

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<sup>3</sup> The balance of the 110 hotel units, 5 residential units, 6,438 square feet (482 seats) for food and beverages do not require loading spaces under the historic uses of the buildings or pursuant to the minimum space requirements for each particular use.

<sup>4</sup> There is no competent, substantial evidence that a “tandem” loading space in the plans meets loading space design requirements for two (2) loading spaces.



off-street loading spaces that were required under the Zoning Code. As a result, the HPB overlooked the deficiency of the plans which lacked the required three (3) off-street loading spaces.

The Historic Preservation Board is mandated under §118-564(a)(3), MBC, with the responsibility of examining architectural drawings for consistency with the criteria. A particular criterion mandated to be considered is:

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.

Section 118-564(a)(3)(b), MBC. (emphasis added).

The Historic Preservation Board overlooked and did not consider that the proposed project failed to meet the numerical requirements for off-street loading spaces. The plans approved do not provide for an adequate number of loading spaces required pursuant to the Code. Further, the Applicant and the City did not provide detailed plans from the Parking Department showing where on-street loading would be provided should the required spaces not be provided as off-street spaces on-site.

In addition to non-compliance with the Zoning Code, the overlooking of the deficiency of off-street loading spaces for the residential tower impacts the HBP's evaluation of review criteria related to ingress and egress of traffic and its flow along the 20<sup>th</sup> Street corridor, including criteria §118-564(a)(3), MBC:

- a. 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.

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- f. 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. 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.

\*\*\*

- o. 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.

Section 118-564(a)(3), MBC.

## ARGUMENT II

The traffic engineering assessment for the Shore Club dated April 14, 2022, considered the wrong data for determination of trip generation because report analysis specified the number of seats for the category “Quality Restaurants” as 304 seats when the zoning data sheet for the project show that a total of 444 seats for “Quality Restaurants” for the Cromwell Hotel and New Residential Tower.

Under §118-562(b)(9)a., MBC, the Applicant for a Certificate of Appropriateness must submit a traffic transportation analysis and mitigation plan, prepared by a professional traffic engineer. “The analysis and plan shall at a minimum provide the following: Details on the impact of projected traffic on the adjacent corridors, intersections, and areas to be determined by the city.” §118-562(b)(9)a., MBC.

The Kimley Horn traffic report shows that its impact analysis specified that the project would have 304 seats for the category “Quality Restaurants”. See Attachment D-1 at pages 30, 31 and 34 of the April 14, 2022 Kimley Horn Traffic Assessment Report, which report is attached hereto as **Exhibit B**. In fact, the zoning data sheet supplied by the Applicant shows that the Cromwell will have a total of 247 seats for dining and the new Residential Tower will have 197 seats for dining. This totals 444 seats for “Quality Restaurants”. (These 444 seats are separate from the seating at the bars, lounges, lobby and restaurants in other locations on the Shore Club project site.) See excerpt of Applicants’ zoning data sheet A0.03 in the HPB plans

and attached hereto as **Exhibit C**. The trip generation analysis was generated from incorrect data. As a result, the City Staff Report and the HPB overlooked and did not consider the actual impact the approved project would have when it evaluated the traffic impact concerns on the adjacent corridor, that is, 20<sup>th</sup> Street.

The failure to provide accurate data and analysis impacted the HBP's evaluation of review criteria related to traffic along the 20<sup>th</sup> Street corridor, including criteria §118-564(a)(3), MBC.

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces 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 preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
- f. 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. 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.

Section 118-564(a)(3), MBC.

### **ARGUMENT III**

**The HPB overlooked the Petitioner's May 9, 2022 letter to the Board moving to strike the late filed "Supplemental Plans 05-10-22" and did not rule on that motion.**

Finally, the Petitioners moved to strike the Shore Club's supplemental package identified in the online hearing files as the "Supplemental Plans 05-10-22" pursuant to the Petitioners' May 9, 2022 letter to the Board. See Letter requesting the Board to strike supplemental submission attached hereto as **Exhibit D**, and pages 51-52 of the Transcript of the May 10, 2022 hearing on HPB File No. 21-0481, which Transcript is attached hereto as **Exhibit E**. Those "Supplemental Plans" were purportedly view corridor renderings. This Board overlooked the Petitioners' motion and failed to either grant or deny said motion.

The Applicant's view corridor analysis should have been submitted at the time of their revised plans submission to the HPB on April 18, 2022. As a result of the late filing, the Petitioners could not review these late filed view corridor renderings before filing the Petitioners prepared and filed their objection letter and their hearing presentation which included the Petitioners' view corridors analysis and argument. See Petitioners' May 6, 2022

Objection Letter (marked as Exhibit D at the May 10, 2022 HPB hearing) attached hereto as **Exhibit F**. The Petitioners were denied due process by the untimely filing of the “Supplemental Plans 05-10-22”. The HPB overlooked the Petitioners’ motion to strike consideration of the “Supplemental Plans 05-10-22”.

The overlooking of the motion to strike the late-filed view corridor renderings and the considering of those late-filed renderings impacted the HBP’s evaluation of review criteria including criteria §118-564(a)(3), MBC.

- d. The proposed structure, and/or additions to an existing structure are appropriate to and compatible with the environment and adjacent structures, and enhance the appearance of the surrounding properties, or the purposes for which the district was created.
  - e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces 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 preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
- \*\*\*
- j. Any 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).

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- m. Any 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).

Section 118-564(a)(3), MBC.

**In further support of the Petition for Rehearing, the following documents are provided:**

- Applicant Shore Club's April 18, 2022 Final Submission Plans attached hereto as **Exhibit G**.
- Applicant Shore Club's February 14, 2022 Architectural Supplement (Cromwell Loading) attached hereto as **Exhibit H**.
- Petitioners' Presentation at the May 10, 2022 HPB Hearing (marked as Exhibit F at the May 10, 2022 HPB hearing) attached hereto as **Exhibit I**.
- Email with photos and dropbox link of videos of 20<sup>th</sup> Street traffic, congestion and other issues (marked as Exhibit K at the May 10, 2022 HPB hearing) attached hereto as **Exhibit J**.

**WHEREFORE**, the Petitioners request that the Historic Preservation Board grant the Petition for Rehearing and issue a new decision reversing or modifying its previous decision regarding its approval of the certificate of appropriateness.

Respectfully submitted,

**THE LAW OFFICES OF KENT HARRISON  
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## **CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing was forwarded by Email on this 31<sup>st</sup> day of May 2022, to counsel as follows:

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