BEFORE THE HISTORIC PRESERVATION BOARD OF THE CITY OF MIAMI BEACH, FLORIDA
FILE NO. HPB 21-0481

In Re: 1901 Collins Avenue
Miami Beach, Florida.
_____/

PETITION FOR REHEARING

Petitioner, Setai Resort & Residence Condominium Association, Inc., by and through the undersigned attorney, pursuant to §118-9(a)(1)(A) of the City of Miami Beach Code Land Development Regulations ("LDR"), respectfully petition the City of Miami Beach Historic Preservation Board ("HPB" or "Board") for a rehearing of its May 10, 2022, decision 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 Shore Club Property Owner, LLC's, ("Shore Club" or "Applicant") development project and, in support thereof, states as follows:

SUMMARY OF PETITION

The Setai alleges that it has newly discovered evidence which is likely to be relevant to the decision of the Board and the Board has failed to consider the essential requirements of law which renders the decision issued

erroneous. In the final hour of the May 10, 2022, public hearing, a majority of the Board expressed concern that the (east-west) size of the proposed Shore Club tower is too wide, astutely observing that this size and massing issue violates numerous COA criteria in LDR Sec. 118-564. See Exhibit "A". (Transcript of May 10, 2022, Historic Preservation Board Hearing, 138:16 – 149:25). See Exhibit "B". As a result, Shore Club attorney, Neisen Kasdin, made the following comment which turned the quasi-judicial public hearing into a substantial redesign of the proposed tower by "straw vote."

> In response to the comments, I'm authorized to make a proposed modification, which I would like to present to the Board, because we would like to try to bring this to closure and a final vote, because everyone does agree this is a great project. And although it has been said, the view of the building from the north is impaired by the Setai, and our neighbor to the south, the Nautilus, is in favor of what we've proposed; nevertheless, we hear the concerns of the Board members, and so we -- what we would be willing to do is to eliminate the 900-foot or so vari- --waiver over the 15,000 feet.· So each floor area would be within the 15,000 feet of floor area allowed, and at the same time, move back from the east the -- each level 20 feet.· So we will be narrowing the building or making it less wide, stepping it back and eliminating the extra – on the lower floors the extra footage, and we would hope that that would be sufficient to address the concerns of this Board so this beautiful project can go forward.

(Transcript of May 10, 2022, Historic Preservation Board Hearing, 137:5 – 138:1; Exhibit B).

The public, including the undersigned, objected to the obvious fact that redesigning the Shore Club's application in this manner not only denies the

Board the ability to understand how it implicates the criteria in LDR Sec. 118-564, but it also denies the public an ability to know what the Board is considering and ultimately voting upon. Not requiring submission of objective plans and analysis of the substantial "proposed modification" means the Board did not have any competent substantial evidence to review the COA criteria. The staff report and all prior testimony and evidence is based upon the Shore Club application prior to the last-minute substantial "straw vote" redesign.

Rather than follow rules of order in a quasi-judicial public hearing and ensure that all members of the Board had a full understanding of the Shore Club redesign and its impacts, City representatives unilaterally decided to classify the changes as "conditions" to the Board's decision, illegally removing the public participation and changing a meeting in the sunshine to an administrative process. Only City staff would be evaluating the new redesigned plans and evaluating the impacts, including the impacts on 20th Street. In short, the Board improperly delegated its authority/responsibility to City staff, denying the public the opportunity to know the ultimate decision and participate in the public hearing process.

JURISDICTION AND PARTIES

Petitioner, Setai Resort & Residence Condominium Association, Inc. attended and/or participated, through the undersigned attorney, in the hearings on HPB File No. 21-0481. Petitioner is the Setai Resort & Residence Condominium Association, Inc., which is located at 101 20th 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. Petitioner is an "affected person(s)," pursuant to §118-9(a)(2)(B)(iii), LDR. See Exhibit "C".

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

STANDARD OF REVIEW

To grant a rehearing, the Petitioner must satisfy either of the following two requirements: (1) "[n]ewly discovered evidence which is likely to be relevant to the decision of the board"; or (2) "[t]he board has overlooked or

failed to consider something which renders the decision issued erroneous." § 118-9(a)(2)(C)(i)–(ii), LDR. See Exhibit "C". This standard is phrased in the disjunctive. Satisfying one of these requirements is sufficient to grant a rehearing.

ARGUMENT I

If a city adopts legislation expressly defining how to file a COA application and how that COA application shall be reviewed, the city cannot ignore its own laws.

> (b) All applications involving demolition, new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district shall be on a form provided by the planning department and shall include such information and attached exhibits as the board and the planning department determine are needed to allow for complete evaluation of the proposed demolition, construction and other physical improvements, alterations or modifications including, but not limited to, the following:
>
> 3) Complete site plan.
>
> 4) Materials containing detailed data as to architectural elevations and plans showing proposed changes and existing conditions to be preserved.

LDR Sec. 118-562(b). See Exhibit "C".

The Board's substantial redesign of the Shore Club project changed the site plan and architectural elevations extensively. The Board should not have voted to approve these modifications until the application was revised. No matter how clear it may seem in the minds of City staff, the city

code requires the application to reflect what the Board is voting upon. It cannot be delegated to the administration in the form of a condition. This procedural defect renders the current decision erroneous.

ARGUMENT II

All testimony and evidence given to the Board at the quasi-judicial hearing was based upon the Shore Club application prior to the last-minute substantial redesign.

The Board must review the criteria in LDR Sec. 118-564 based upon a complete application while considering the staff report and other competent substantial evidence. Since the application was not updated reflecting the new tower design and site plan, the Board had no competent substantial evidence to review the applicable criteria below.

Any applicant requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in section 118-7. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.

(a) A decision on an application for a certificate of appropriateness shall be based upon the following: A decision on an application for a certificate of appropriateness shall be based upon the following:

(1) Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the following:

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> (2) In determining whether a particular application is compatible with surrounding properties the historic preservation board shall consider the following:

LDR Sec. 118-564. See Exhibit "A".

The inappropriate use of the "conditions and safeguards" provision in the code to allow a major and substantial modification to the site plan and plans for the new tower illegally circumvents the necessity for a "complete application" and proper evaluation of compatibility. Because of the last-minute substantial modification, no evaluation could be made nor was given of the site plan and tower. Thus, the Board overlooked its legal requirement under the City's legislation to properly evaluate a complete application in the sunshine at a public quasi-judicial hearing.

ARGUMENT III

The Board improperly delegated to the administration its responsibility to ensure "compatibility" and other review criteria, particularly given the overwhelming evidence that 20th Street cannot function as depicted in the Shore Club application. The Setai adopts the arguments on file by Kent Robbins, Assigned Plan Number HPB 22-0524.

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,

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