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VIA ELECTRONIC SUBMISSION

November 3, 2023

Michael Belush, Planning & Design Officer
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **Letter of Intent** – DRB23-0972 –Design Review Approval for
Philippe Chow Miami Beach Located at 1 Collins Avenue, CU-1 and
CU-2

Dear Mr. Belush:

This law firm represents Philippe Miami LLC (the "Applicant") with regard to the above-referenced property within the South of Fifth Neighborhood in the City of Miami Beach (the "City"). This letter serves as the required letter of intent in support of an application for design review for the Applicant's new restaurant, Philippe Chow Miami Beach. Notably, the Applicant holds a Conditional Use Permit for a Neighborhood Impact Establishment from the Planning Board under File No. PB23-0598, which is included with this submittal.

Description of the Property. The subject property consists of two commercial units within the One Ocean Condominium located at 1 Collins Avenue: 1) Commercial unit 1 identified by Miami-Dade County Folio No. 02-4203-371-0500 ("CU1"); and 2) Commercial Unit 2 identified by Miami-Dade County Folio No. 02-4203-371-0500 ("CU2") (collectively the "Property"). The Property is approximately 6,660 square feet in size, with an exterior covered terrace that is approximately 2,500 square feet in size, and an exterior seating area along South Pointe Drive and Ocean Drive that is approximately 3,500 square feet in size.¹ The Property is within

¹ The exterior areas of the Property are limited common elements associated with CU1 and CU2.

the Limited Mixed-Use Commercial Performance Standard 1 (CPS-1) zoning district.

Property History. The Property was developed as part of the One Ocean Condominium ("One Ocean") in 2013 under Building Permit No. B1304440. The development allocated 89 parking spaces to CU1 and CU2 for restaurant and retail use. In 2017, Building Permit No. BC1704337 permitted development of a restaurant within CU1 and CU2. However, while a building permit was issued, it does not appear that this restaurant ever operated at the Property. As part of the development of One Ocean, the City required certain improvements within the public right of way, including the sidewalk pavers, tree grates, irrigation, tree up-lights, and street lights, as memorialized in the Declaration of Restrictive Covenants Regarding Improvements in the Public Right-of-Way recorded in Official Record Book 29052, Page 0371 of the Public Records of Miami-Dade County (the "ROW Covenant"). See Exhibit A, ROW Covenant. Accordingly, the sidewalk pavers and street landscaping surrounding the Property are unique to this block.

Notably, the plans associated with Building Permit No. B1304440 indicate a surplus floor area of approximately 2,007 square feet. Pursuant to Ordinance 2023-4564, the Block 1 Properties, as identified in Section 7.2.15.3.f.i.4. of the Resiliency Code, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area calculation. See Exhibit B, Ordinance 2023-4564. Thus, the approximately 2,007 square feet of surplus floor area indicated on the original permit plans is proposed to be utilized by the Applicant to enclose the existing exterior covered terrace on the northwestern portion of the Property.

Proposed Restaurant. The Applicant is a well-known upscale Chinese Restaurant pioneered by its namesake, Executive Chef Philippe Chow ("Philippe Chow"). Philippe Chow has existing and planned locations in New York City, Washington D.C., and now Miami Beach. The Applicant seeks to establish its popular brand in Miami Beach with a beautifully designed restaurant specializing in serving Haute Beijing-style cuisine ("Philippe Chow Miami Beach"). The outdoor dining proposed by Philippe Chow Miami Beach will activate the prominent intersection of South Pointe Drive and Ocean Drive that has been vacant and underutilized since Once Ocean was developed in 2013. Overall, the Applicant intends to operate Philippe Chow Miami Beach in a manner that is consistent with the residential character of the South of Fifth Neighborhood, while providing a new and unique restaurant offering upscale Chinese cuisine.

Proposed Design Improvements. The Applicant seeks to make improvements to the existing storefront to create a signature entrance to Philippe Chow Miami Beach, as well as add a canopy over portions of the outdoor seating area. The entrance

improvements consist of paneling on each side of the primary entrance from South Pointe Drive. Consistent with the conditions of approval of the Approved CUP, the Applicant also proposes a retractable fabric canopy on the north side of the Property to shields patrons from the elements and activate the corner of South Pointe Drive and Ocean Drive. In general, the proposed improvements are minor in scope and intended to activate the Property in a manner that respects the Property's location at a prominent location in the City.

Cost Estimate. The Applicant estimates the total cost of improvements to establish Philippe Chow Miami Beach will be approximately \$3,600,000.00.

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

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

To the extent required, a recycling or salvage plan shall be provided.

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

To the extent new windows are proposed, new windows will be hurricane proof impact windows.

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

The Applicant will provide, where feasible, passive cooling systems.

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

All landscaping 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 were considered and informed design decisions to increase permeable open space and improve stormwater drainage.

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.

Any new ground floor driveways or ramping shall be adaptable to the raising of public rights of way and adjacent land.

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

To the extent possible, all mechanical and electrical systems will be located above base flood elevation.

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

The building is existing and was developed in 2013 in accordance with applicable floodplain regulations.

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.

Habitable spaces below base flood elevation plus freeboard will use flood proofing system in accordance with the Code.

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 or porous pavement materials will be utilized where possible.

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

Not Applicable.

Conclusion. The proposed design improvements facilitate development of a high-quality restaurant within the Property, which has been vacant since One Ocean was developed. The design improvements are minor in scope and allow the Applicant to establish its well-known brand in the City in a manner that is consistent with the City's Resiliency Code and Design Review Criteria. In light of the foregoing, we respectfully request your favorable review of this application. Should you have any questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Larkin", with a long horizontal line extending to the right.

Michael Larkin

cc: Abraham Merchant
Richard Cohn
Nicholas Rodriguez, Esq.



CFN 2014R0157256
OR Bk 29052 Pgs 0371 - 3737 (3pgs)
RECORDED 03/03/2014 15:21:09
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by:
Name: Gary Held, Esq.
Address: City Attorney's Office
1700 Convention Center Drive
Miami Beach, FL 33139

Exhibit A

_____/_____
(This space reserved for clerk)

**DECLARATION OF RESTRICTIVE COVENANTS
REGARDING IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY**

This Declaration of Restrict Covenants Regarding Improvements in the Public Right-of-Way ("Declaration") is entered into this 24 day of January 2014, by TRG Block One, Ltd. (the "Owner") in favor of the City of Miami Beach, Florida, a municipality of the State of Florida (the "City").

WHEREAS, Owner is the fee simple owner of the following described property ("Property"), located at 1 Collins Avenue, City of Miami Beach, Florida, legally described as follows:

Lots 1-3, 5-13 & 17, less rights-of-way, Block 1, Ocean Beach, Florida, subdivision, according to the plat thereof, recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.

WHEREAS, the City has required the Owner to install the following described improvements in the public right-of-way adjacent to the property: sidewalk pavers, tree grates, irrigation, tree uplights and street lights (the "Improvements") according to a plan reviewed and approved by the City's regulatory staff, entitled One Ocean, prepared by Sieger Suarez Architectural Partnership, and dated April 30, 2013 (the "Plan"); and

WHEREAS, the Owner has applied to the Public Works Department for permission to install the Improvements within the public right-of-way, according to the Plan; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged including consideration of the approval of the right-of-way permit and/or plans approved by the Public Works Department, the Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Owners of the Property, their successors in interest and assigns, as follows:

1. The recitals and findings set forth in the preamble of this Declaration are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

2. The Owner covenants and agrees as follows:

JA

- a. To install and maintain the Improvements for as long as the Owner, and his, her, or its successors and assigns own the Property; and
 - b. To replace, restore and/or repair the Improvements at Owner's expense, in the event the Public Works Department must issue an underground utility or right-of-way permit for work in that area; and
 - c. To hereby grant to the City the right to remove, add, maintain or have the Owner remove any of the improvements within the right-of-way, at Owner's expense, in the event the City determines in its reasonable discretion that such action is required; and
 - d. To add the City of Miami Beach as additional named insured on the Certificates of Insurance for Liability and Workmen's Compensation for a coverage in the minimum limits as approved by the City's Risk Manager.
3. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owners of the Property, their successors in interest and assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.
4. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then owners of the fee-simple title to the land to be affected by such modification, amendment or release providing that same has been approved by the Public Works Director of the City of Miami Beach, or his designee, or the successor administrative officer with jurisdiction over the matter. Should this instrument be so modified, amended or released the Public Works Director, or his successor, or other administrative officer with jurisdiction over the matter, shall execute a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.
5. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.
6. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner.
7. It is understood and agreed that any official inspector of the City of Miami Beach may have the right, upon reasonable prior written notice to Owner, at any time during normal working hours of entering and investigating the use of the Property, to determine whether the conditions of this Declaration are being complied with.
8. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be by action at law or in equity against any party or person violating or attempting to violate any provision of this Declaration either to restrain violations or to recover damages. The prevailing party in the action or suit shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.
9. The Owners, and their successors and assigns, hereby agree to indemnify and hold harmless the City of Miami Beach, its officers and employees, from any and all liability

that may arise by virtue of the City permitting the installation of these items.

Signed, sealed, executed and acknowledged on 24 day of JANUARY, 2014

WITNESSES

E. Alexandra Iglesias
Print Name: E. Alexandra Iglesias

Arturo F. Peña
Print Name: ARTURO F. PEÑA

OWNER

Patrick Campbell
Print Name: PATRICK CAMPBELL

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day personally appeared before me
Patrick Campbell who is personally known to me, or has produced
as identification, and he/she acknowledge that he/she
executed the foregoing, freely and voluntarily, for purposes therein expressed.

SWORN TO AND SUBSCRIBED before me this 24th day of
January, 2014.



Susie Perez
NOTARY PUBLIC STATE OF FLORIDA
Print Name: SUSIE PEREZ

My Commission Expires: MAY 9, 2016

Approved:

Bruce Mowry 2-5-2014
Public Works Director or Dated
City Engineer

Approved as to form and language
And for execution

James H. Kelly 2-5-2014
City Attorney Dated

Exhibit B

CPS Below Grade Floor Area Requirements

ORDINANCE NO. 2023-4564

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE RESILIENCY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 1, "GENERAL PROVISIONS," ARTICLE II, "DEFINITIONS," BY AMENDING SECTION 1.2.1, ENTITLED "GENERAL DEFINITIONS," BY AMENDING THE DEFINITION OF FLOOR AREA WITH RESPECT TO BELOW-GRADE AREAS OF A BUILDING; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the term "floor area" is defined in Chapter 1 of the Land Development Regulations of the City Code; and

WHEREAS, as of November 7, 2001, the exceptions to the definition of "floor area" in the City's land development regulations included the following:

(9) Floor area located below grade; *however, if the ceiling is above grade, one half of the floor area that is below grade shall be included in the floor area calculation (emphasis added);* and

WHEREAS, this exception from "floor area" is known as the "Basement Exception"; and

WHEREAS, on June 11, 2014, the City Commission adopted Ordinance No. 2014-3876, which eliminated the Basement Exception, thereby requiring the entirety of a basement to be counted as "floor area" if "any portion of the top of the slab of the ceiling is above grade"; and

WHEREAS, on September 14, 2016, the City Commission adopted Ordinance No. 2016-4029, which partially reinstated the Basement Exception for existing contributing structures within a local historic district, national register historic district, or local historic site, and

WHEREAS, Ordinance No. 2016-4029 did not trigger the referendum requirement in Charter Section 1.03(c) because the partial reinstatement of the Basement Exception was equal to or more restrictive than the FAR regulations in effect on November 7, 2001; and

WHEREAS, the Mayor and City Commission now desire to clarify how below-grade floor area should be calculated with respect to certain properties located south of Fifth Street.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA

SECTION 1. Chapter 1, "General Provisions," Article II, "Definitions," Section 1.2.1 is hereby amended as follows:

**CHAPTER 1
GENERAL PROVISIONS**

* * *

ARTICLE II. DEFINITIONS

Sec 1.2.1 General Definitions

* * *

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. For the purpose of clarity, floor area includes, but is not limited to, stairwells, stairways, covered steps, elevator shafts at every floor (including mezzanine level elevator shafts), and mechanical chutes and chases at every floor (including mezzanine level).

For the avoidance of doubt, unless otherwise provided for in these land development regulations, floor area excludes only the spaces expressly identified below:

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, ~~for~~, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation in the following instances:
 - a. Existing contributing structures that are located within a local historic district, national register historic district, or local historic site.
 - b. Structures located within Block 1 Properties as more specifically defined in section 7.2.15.3.f.i.4.
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.
- (11) Stairwells and elevators located above the main roof deck.
- (12) Electrical transformer vault rooms.
- (13) Fire control rooms and related equipment for life-safety purposes.
- (14) Secured bicycle parking.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

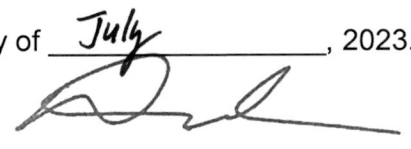
PASSED AND ADOPTED this 26 day of July, 2023.

ATTEST:



Rafael E. Granado, City Clerk

JUL 28 2023



Dan Gelber, Mayor



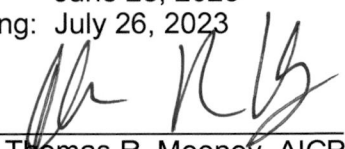
APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney

7-27-23
Date

First Reading: June 28, 2023
Second Reading: July 26, 2023

Verified by: 

Thomas R. Mooney, AICP
Planning Director

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: July 26, 2023

3:05 p.m. Second Reading Public Hearing

SUBJECT: CPS BELOW GRADE FLOOR AREA REQUIREMENTS
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 114 OF THE CITY CODE ENTITLED "GENERAL PROVISIONS," BY AMENDING SECTION 114-1, ENTITLED "DEFINITIONS," TO AMEND THE DEFINITION OF "FLOOR AREA" WITH RESPECT TO BELOW-GRADE AREAS OF A BUILDING; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the subject ordinance.

BACKGROUND/HISTORY

On February 22, 2023, at the request of Commissioner Laura Dominguez, the City Commission referred the subject proposal (Item C4 B) to the Land Use and Sustainability Committee (LUSC) and the Planning Board. On April 19, 2023 the LUSC endorsed the proposal and recommended that the Planning Board transmit the ordinance to the City Commission with a favorable recommendation.

A commercial tenant in the 1 Ocean building, located on the north side of South Pointe Drive, between Ocean Drive and Collins Avenue, is seeking to build out and enclose an open area located behind existing commercial storefronts. According to the original permit plans for the build out of the commercial spaces at the 1 Ocean site, below grade areas were calculated at ½ floor area ratio (FAR) and such FAR was not utilized.

At the time of the build out of the commercial spaces at the 1 Ocean site in 2012, the definition of floor area in the Land Development Regulations of the City Code (LDRs) contained an exception for areas of a building that were partially below grade. However, this exception for building areas partially below grade was amended in 2015 and limited to contributing structures in historic districts. As such, the commercial space at 1 Ocean is not currently eligible for the partially below grade floor area exception.

ANALYSIS

The attached draft ordinance proposes to amend the list of exceptions to the definition of floor area in Section 114-1 of the LDRs, specific to applicable parcels located within the Block 1 properties in the South of Fifth Street area. For reference, the Block 1 properties, as more specifically defined in Section 142-698 of the LDRs, are located within the block bounded by South Point Drive and First Street, between Collins Avenue and Ocean Drive, and include the 1 Ocean site.

Currently, the definition of 'floor area', in Section 114-1, has a full exception for floor area located below grade when the top of the slab of the ceiling is located at or below grade; generally, grade is defined as sidewalk elevation. However, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, only one-half of the floor area of the corresponding floor that is located below grade is included in the FAR calculation.

The proposal herein would allow structures located within Block 1 Properties, as more specifically defined in section 142-698(a) of the LDRs, to be eligible for this exception pertaining to only one-half of the floor area of the corresponding floor that is located below grade being included in the floor area ratio calculation. The Administration is supportive of this proposal as it is limited in scope and consistent with the development regulations in place when the Block 1 parcels were previously developed.

CITY CHARTER ANALYSIS

Section 1.03(c) of the City Charter states, in part, the following:

The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zone floor area ratio as it exists on the date of adoption of this Charter Amendment (November 7, 2001), including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless such increase in zone floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

The proposal reintroduces a FAR exemption that existed prior to the date of the adoption of the Charter Amendment (November 7, 2001) that was subsequently removed in 2015. As a result, this amendment does not contravene the requirements of the City Charter and the proposed ordinance can be considered for adoption by the City Commission.

PLANNING BOARD REVIEW

On May 23, 2023, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (7-0).

UPDATE

The subject ordinance was approved at First Reading on June 28, 2023, with no changes.

SUPPORTING SURVEY DATA

Update Development Regulations

FINANCIAL INFORMATION

No Fiscal Impact Expected

CONCLUSION

The Administration recommends that the City Commission adopt the subject ordinance.

Applicable Area

South Beach

**Is this a "Residents Right
to Know" item, pursuant to
City Code Section 2-14?**

Yes

**Does this item utilize G.O.
Bond Funds?**

No

Legislative Tracking

Planning

Sponsor

Commissioner Laura Dominguez

ATTACHMENTS:**Description**

☐ Ordinance