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September 6, 2023

VIA EMAIL

Honorable Rick Lopez, Chairperson
and Members of the Miami Beach
Historic Preservation Board
c/o Deborah Tackett
Historic Preservation
& Architecture Officer
Planning & Zoning Department
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

**Re: HPB 23-0574 -- Ritz/Sagamore Certificate of
Appropriateness Application for Properties
at 1 Lincoln Road and 1671 Collins Avenue.**

Dear Chairperson Lopez and Board Members:

I represent New National, LLC, the owner of the National Hotel ("National") property at 1677 Collins Avenue, Miami Beach, regarding the referenced application. As it did on December 13, 2021 and April 12, 2022, my client opposes the application because the proposed 15-story, 117,665-square-foot residential condominium, with a total height of 202' 10" ("proposed tower"), would be too tall, too big and out of scale with surrounding contributing historic structures ("contributing structures"). These adjacent and nearby contributing structures are part of the the Ocean Drive/Collins Avenue Historic District ("historic district" or "district").

Allowing the intrusion of a high-rise condominium into the heart of the historic district, which includes some of the most well-known and appreciated Art Deco hotels in the world, would diminish the city's historic preservation ordinance. City preservation regulations not only incorporate the U.S. Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings ("Secretary of Interior Standards"), but they also include additional rigorous compatibility requirements. Approval of this application by the

September 6, 2023

Page 2

Miami Beach Historic Preservation Board ("HPB") would set a harmful precedent for lowering, if not practically eliminating, any serious application of Miami Beach's historic preservation criteria.

As presented, the proposed project fails to satisfy both the Secretary of Interior Standards and Miami Beach certificate of appropriateness compatibility requirements.

As the property owner abutting the Sagamore Hotel, New National has a recognized, legitimate and protectable property interest in protecting and preserving the character of its neighborhood against unlawful zoning actions taken by a local government. *Friedland v. City of Hollywood*. 130 So. 2d 306, 310 (Fla. 2d DCA. 1961). New National received mailed written notice from the city about the HPB public hearing on the application at issue here.

For the reasons stated above, and because of its recognizable property interest set out in *Friedland*, my client would be negatively impacted by the approval and implementation of the requested certificate of appropriateness to a greater extent than the community at large.

The introduction of the proposed non-contributing, oversized residential tower would negatively impact the historic character of the site, neighbors and the historic district, including, but not limited to, the National and the Delano hotels. This harm warrants a strict application of the HPB's certificate of appropriateness review criteria.

The certificate of appropriateness application should be denied because it fails to satisfy the:

1. Secretary of Interior Standards, as required by section 2.13.7.d.ii.1.a. of the City of Miami Beach Land Development Regulations ("LDR").
2. Compatibility requirements in LDR section 2.13.7.d.ii.2.
3. Review criteria in LDR section 2.13.7.d.ii.3. regarding aesthetics, appearance, safety and function of new structures, and physical attributes of the project, among other matters, "in relation to the site, adjacent structures and properties, and surrounding community."

**SECRETARY OF INTERIOR STANDARDS
NOT SATISFIED**

In the HPB's compatibility review, pursuant to LDR section 2.13.7.d.ii.1.a., the board applies each of the Secretary of the Interior Standards in its evaluation of the compatibility between the application and surrounding properties.

The application fails to meet the following Secretary of Interior Standards:

**Secretary of Interior
Standard (b) (1)**

A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

Placing a high-rise residential condominium immediately east of the Sagamore Hotel and north of the Ritz Hotel would constitute a major change in the use of the combined Sagamore and Ritz properties. Under Standard (b) (1), a new use must make minimal changes to "spaces and spatial relationships." Here, the existing spatial relationship and space between the hotel and the beach and ocean would be seriously disrupted by the massive tower. With construction of the proposed tower, the defining spatial relationship would be the relatively small distance between a 202' 10" tall contemporary residential condominium and the 76' 8" tall Sagamore Hotel. The change in this important space and spatial relationship is far from "minimal." See also the findings in Heritage Architectural Associates Report ("Heritage Report") pages 38-40.

**Secretary of Interior
Standard (b) (2)**

The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

Adding an out-of-scale, contemporary-designed, residential tower on the Sagamore Hotel property immediately east of the existing hotel would not "retain and preserve" the historic character of that site. The outsized tower would effectively replace the hotel as the defining structure on the Sagamore

site. This would further diminish the historic context of the Sagamore Hotel within its own property. Additionally, the proposed tower would replace an open space between the hotel and ocean that has characterized this historic hotel site. It also would disrupt both horizontal and vertical spatial relationships with its abutting and nearby contributing and non-contributing neighbors in the historic district. Heritage Report, pages 38-40.

Secretary of Interior
Standard (b)(9)

New additions, exterior alterations, or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion and massing to protect the integrity of the property and its environment.

By no means would the proposed tower be "compatible with the "...size, scale and proportion and massing" of the considerably smaller Sagamore Hotel or its environment. The tower would become the center and focal point of this part of the historic district because of its out-of-place massing, size and scale in relation to its neighbors. Furthermore, there is no evidence in the record to show how this building would protect the integrity of the Sagamore property or its environment. Heritage Report, pages 38-40.

**GENERAL CONSIDERATIONS ON
COMPATIBILITY**

Factors to be Considered
When Applying Compatibility Criteria

LDR section 2.13.7.d.ii.2. provides specific items to consider when addressing the compatibility of an application for certificate of appropriateness:

"In determining whether a particular application is compatible with surrounding properties the historic preservation board shall consider the following, among other items:

September 6, 2023

Page 5

b. General design, scale, massing and arrangement.

d. The relationship of subsections a., b., c., above, to other structures and features of the district...

e. The purpose for which the district was created.

f. The relationship of the size, design and siting of any new... structure to the landscape of the district."

(Emphasis added).

The Heritage Report finds that the proposed tower would be out of scale with its surroundings and would dwarf the historic Sagamore hotel. Not only would the tower obscure the view of the Sagamore from the beach, it would also negatively impact the recognized "picture postcard" skyline formed by the National, Delano and SLS (Ritz Plaza) hotels. The report concludes that the proposed tower would not meet the criteria for compatibility in LDR section 2.13.7.d.ii 1-3. (Heritage Report, pages 16-26, 40).

**Approval of the Proposed Tower
is Not an Entitlement**

The applicant is not entitled to build this massive, too-tall and out-of-scale proposed residential tower in the historic district. While a "maximum" 220-foot height (200 feet plus 20 feet for mechanical equipment and structure) is allowed in the district, the applicable certificate of appropriateness criteria permits the board to reject the proposal to ensure compliance with those criteria in LDR section 2.13.7.d.ii.3.

In Euroamerican Group, Inc. v. City of Miami Beach, the circuit court appellate division panel addressed a Miami Beach Design Review Board ("DRB") approval that was conditioned on a reduction in height. That court determined that the DRB's compatibility criteria is not trumped by zoning-code height limits and that the zoning-code height limit "is not an entitlement." This court decision is based on the board's ability under the city's land development regulations to approve, approve with conditions or deny a given application based on the board's review criteria. *Euroamerican Group, Inc. v. City of Miami Beach* at p. 10 (11th Cir. Appellate Case No. 10-561 AP 2012).

September 6, 2023

Page 6

The 202' 10" height, massing and scale of the proposed tower would not be compatible with the surrounding contributing properties. Pursuant to the certificate of appropriateness criteria, the HPB is not required to issue a certificate of appropriateness for such a 15-story, 117,665-square-foot, massive and out-of-scale structure that would tower over adjacent and nearby contributing buildings in the historic district. The tower the applicant seeks to build should be rejected because its height, massing and scale would be incompatible with the surrounding properties in the district under LDR section 2.13.7.d.ii 1-3.

**CERTIFICATE OF APPROPRIATENESS CRITERIA
NOT SATISFIED**

LDR section 2.13.7.d.ii 3 states that the HPB in its certificate of appropriateness review examines the plans for consistency with 17 criteria. Those criteria are applied "with regard to the aesthetics, appearances, safety, function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community."

In this context the application fails to meet the following certificate of appropriate criteria:

**Certificate of Appropriateness
Criterion 3.d**

The proposed structure, 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. (Emphasis added).

The applicant proposes an out-of-scale residential condominium on the ocean, immediately east of the much smaller contributing Sagamore Hotel. This physical arrangement would overpower any visual and spatial relationship between the hotel and the ocean, its immediate contributing neighbors and the rest of the historic district. The oversized tower in the heart of the historic district would be incompatible with surrounding properties and adjacent structures and would offer nothing to enhance the historic context of the surrounding properties or

September 6, 2023

Page 7

the purposes for which the district was created, as required by this criterion. Heritage Report, Pages 16, 22, 40-41.

Certificate of Appropriateness

Criterion 3.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.

The proposed tower would be shoehorned into the southeast corner of the Sagamore property and cantilevered over the northeast corner of the Ritz property. No other property on this block has such a tall, massive structure so close to the beach. The placement of the 15-story, 202' 10" tower to the easternmost portion of the Sagamore property would create a problematic spatial relationship with its abutting and nearby contributing properties and other neighbors. this placement also would do nothing to preserve the historic character of the abutting and nearby contributing properties and district, pedestrian sight lines to and from the ocean and the view corridor along the beach. (Heritage Report, pages 16, 22, 40-41).

Certificate of Appropriateness

Criterion 3.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).

According to the Heritage Report examination of the project plans, the proposed tower would be too tall, too massive and out-of-scale in relation to its abutting and nearby neighbors. (Heritage Report, page 22). Furthermore, in the fall and winter, the tall, bulky residential tower would cast a shadow that extends as far north as the Delano Hotel along the western portion of the beach. The National and Delano pools would be particularly impacted. (Heritage Report, pages 30-34, Figures 45-48, 52-54, 57-68, 63-66, 69-72). This shows a lack of

September 6, 2023

Page 8

sensitivity to the building site and to the surrounding area, including the public beach. The tower would loom over the Sagamore, the National and the Delano. (Heritage Report, pages 38-41).

**THERE IS NO COMPETENT SUBSTANTIAL EVIDENCE
IN THE RECORD TO SUPPORT THIS APPLICATION**

The decision of the HPB must be based on competent substantial evidence. That means that the evidence must be fact-based and relevant to the matter being decided. To be relevant, there must be a showing of a relationship or nexus between the alleged evidence and the applicable certificate of appropriateness criteria.

**The Staff Report Does Not Present
Competent Substantial Evidence
to Support its Recommendation**

The staff report is not competent substantial evidence because it presents no facts to show that the applicant has met the requirements set forth in applicable historic preservation provisions for the requested certificate of appropriateness.

Staff's evaluation of the 10 Secretary of Interior Standards is limited to one word: "Satisfied." The staff report offers no facts to confirm that the city's historic preservation staff has evaluated any facts that show that any of the 10 Secretary of Interior Standards have been met by the applicant.

The staff report evaluation of the certificate of appropriateness criteria is replete with the same baseless responses to each criterion: "Satisfied." In addition to the 10 Secretary of Interior Standards, 25 certificate of appropriateness criteria are to be met by an applicant. (LDR section 2.13.7.d.ii.2.a-h and section 2.13.7.d.ii.3.a-q). Here, staff attempts to provide a factual basis for its determination that each criterion is met or "Satisfied" in only three out of the 25 listed criteria.

The staff report provides a statement regarding the proposed tower's compliance with each of the certificate of appropriateness criteria in LDR section 2.13.7.d.ii.3.d, e, and

September 6, 2023

Page 9

j. However, the staff report's limited elaboration of its determination of "Satisfied" presents opinion without reference to any relevant facts. (Staff Report, pages 6-7.

Criterion 3.d.

The staff report opines without a single supporting fact that the project, including the proposed condominium tower next to the 76' 8" tall Sagamore Hotel, is "*highly* compatible with the environment and adjacent structures." (Emphasis added). That report also presents no evidentiary basis for its assertion that the 202' 10" tall, 117,665-square-foot tower (referenced as the "eastern ground level addition") is sited in a way that "will mitigate any adverse visual impacts on adjacent or abutting properties, as well as from the public rights-of-way and along the Beachwalk." The staff report ignores the fact that this massively tall, contemporary tower has nothing in common with the historic district and the abutting and nearby contributing buildings that define it. Nor does the report present facts that show how this out-of-scale tower enhances surrounding properties and the "purposes for which the district was created." (Staff Report, page 6 of 11).

Criterion 3.e.

The staff report opines that this criterion is met because the site plan preserves the historic character of the neighborhood and does not impede important view corridors. These comments are not competent substantial evidence because they are not supported by any facts. Furthermore, the comments fail to present any facts that address contiguous and adjacent buildings and lands and sight lines. (Staff Report, page 6 of 11).

Criterion 3.j.

The staff report states that the "proposed additions have been oriented and massed in a manner that maintains public views important to the historic district." That opinion fails to present any facts or even address the criterion's requirement that the tower as a new structure have an orientation and massing "that is sensitive and compatible with the building site [including the Sagamore Hotel] and the surrounding area..." (Staff Report, page 7 of 11).

September 6, 2023

Page 10

Staff Analysis

The analysis on pages 10-11 of the staff report presents three bases for supporting the 202' 10" tall, 117,665-square-foot, contemporary residential condominium tower in the historic district:

1. The staff report analysis incorrectly addresses the tower's "contemporary design language" only in the context of compatibility with its immediate neighbors. (Staff Report, page 10). The report opines that the design of the tall and out-of-scale proposed tower would be compatible with three on-site Post-War-Modern buildings. But this assessment ignores the requirement that the massive tower also be compatible with "surrounding properties" and that the "general design, scale, massing and arrangement" of the tower be evaluated in terms of its "relationship... to other structures and features of the district" (Compatibility criteria 3.b. and d.).

The staff report analysis does not examine tower's compatibility with the contributing buildings within the district, such as the adjacent National Hotel and the nearby Delano Hotel. The Ritz/Sagamore property is not an island that stands alone. The code requires the proposed tower to relate to and be compatible with its abutting neighbors as well as surrounding properties within the historic district. (Compatibility criterion 3.j. and Secretary of Interior Standard (b)(9)). The staff report's analysis ignores this fundamental requirement and fails to include facts that would support its opinions.

2. The staff report analysis also claims that the 202' 10" tall tower's 300-foot front setback "minimizes its visibility from Collins Avenue," greatly limiting its impact on "existing Contributing buildings on the site and the surrounding historic district." (Staff Report, page 10). This analysis fails to consider the negative impact of the eastward placement of the proposed tower on pedestrian sight-lines from the beach and the beach view corridor. (Certificate of Appropriateness criterion 3.e.) The proposed tower would completely obscure the Sagamore and disrupt the famous Art Deco skyline in this part of the district. (Heritage Report, pages 21-26).

September 6, 2023

Page 11

This analysis also is contrary to Secretary of the Interior Standard 9 because the massive tower would destroy the historic pedestrian sight lines from the ocean and beach to the Sagamore Hotel. That standard requires new structures not to destroy spatial relationships that characterize the property and that the new construction "will be compatible with the ...size, scale and proportion and massing to protect the integrity of the property and its environment." The proposed tower would destroy the historic pedestrian sight lines from the ocean to the Sagamore Hotel.

3. The staff report analysis further claims that the perpendicular-to-the-ocean placement of the massive tower would not "obscure any of the original features of the Sagamore hotel." (Staff Report, page 10). This statement ignores the tower's impacts on adjacent contributing properties, such as the National Hotel and nearby contributing properties like the Delano Hotel. Additionally, this analysis fails to consider the negative impact of the perpendicular-to-the-ocean placement of the proposed tower on pedestrian sight lines from the beach and the beach view corridor. The staff report's problematic analysis ignores Secretary of Interior Standard 9 and its requirement that "new work... will be compatible with... size, scale and proportion, and massing to protect the integrity of the property and its environment." (Heritage Report, pages 21-26).

The three reasons presented in the staff report for supporting the issuance of the certificate of appropriateness fail to apply the applicable criteria, and they offer no facts that would support the staff recommendation. Therefore, they are not competent substantial evidence that supports the certificate.

Because the staff report includes no facts to show that the applicant has "satisfied" the applicable criteria, the report is not competent substantial evidence that would support the approval of the application.

Any claim that the applicant's updated letter of intent is competent substantial evidence fails because that document also presents no facts showing that the applicant has met the requirements for the certificate of appropriateness.

September 6, 2023

Page 12

The applicant's fact-filled Historic Resources reports confirm the historic value of the two contributing buildings on the Ritz/Sagamore properties. But those reports present no relevant facts showing that the applicant has met the certificate of appropriateness criteria for the proposed tower. Therefore, the reports are not competent substantial evidence that show the application's compliance with the certificate of appropriateness criteria.

CONCLUSION

This application continues a relentless effort to chip away at historic preservation in the City of Miami Beach. Approving this tall, out-of-scale tower would marginalize and diminish contributing buildings on the Sagamore and Ritz properties as well as the adjacent National and nearby Delano properties by introducing a large, out-of-scale, contemporary high-rise building with little or no physical or design relationship with its historic neighbors.

Denying this application would affirm that a non-contributing, out-of-scale, outsized high-rise building on one lot or several aggregated lots is not acceptable in the heart of the historic district.

On behalf of the National Hotel and for the reasons stated herein, I respectfully urge you to vote to deny the Ritz/Sagamore certificate of appropriateness application.

Thank you for your consideration.

Sincerely,



W. Tucker Gibbs

cc: New National LLC