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**VIA HAND DELIVERY**

Ms. Deborah Tackett  
Historic Preservation & Architecture Officer  
City of Miami Beach  
1700 Convention Center Drive, 2nd Floor  
Miami Beach, Florida 33139

Re: Revised Letter of Intent: Certificate of Appropriateness and  
Variances for Fontainebleau Hotel – Rear Yard Improvements –  
4441 Collins Avenue, Miami Beach

Dear Ms. Tackett:

This law firm represents Fontainebleau Florida Hotel, LLC (the "Applicant"), the owner of the above-referenced parcel (the "Property"). Please consider this letter the Applicant's required letter of intent in support of the Certificate of Appropriateness and associated variances before the City's Historic Preservation Board ("HPB"), to allow for improvements to the rear yard of the Property.

Property Description. The Property is located on Collins Avenue just north of W 44<sup>th</sup> Street and is currently improved with the Fontainebleau Hotel.

Land Use and Zoning. The Property is designated RM-3 on the City's Future Land Use Map and Zoning Map. Portions of the Property are also located within the Oceanfront Overlay and Dune Preservation Overlay.

Proposed Improvements. The Applicant seeks to revitalize the rear yard amenities and encourage a more family-friendly environment through renovations to a portion of the rear yard pool area (the "Project"). Specifically, the Project

proposes removing a majority of the existing improvements in the rear yard pool area to make room for a reconfigured, highly amenitized space including a slide, kid's play pool, refurbished and new bathrooms, cabanas, and associated supporting spaces. The Project does not propose any modifications to any contributing structures.

Variance Requests. The Applicant requests the following variances to facilitate the development of the Project:

- 1) Variance from Section 7.3.1.1(c)(1) to permit a shade structure with 12.92 feet of clear space between the edge of the roof covering and finished floor where a maximum of eight feet (8') is permitted in the Dune Preservation Overlay;
- 2) Variance from Section 7.3.1.1(c)(2) to permit decks, patios, and furniture within the ten foot (10') minimum setback from the Erosion Control Line established by the Dune Preservation Overlay regulations;
- 3) Variance from Section 7.3.1.1(c)(6) to permit existing walkways and ramp with materials not made of wood and widths in excess of six feet (6') in the Dune Preservation Overlay;
- 4) Variance from Section 7.3.1.1(d)(1) to permit 47.7% open space where 80% is required within the Dune Preservation Overlay;
- 5) Variance from Section 7.3.1.2(b)(3) to permit a one foot and five-inch (1'5") setback where fifteen feet (15') are required from a side lot line within the Oceanfront Overlay for the proposed waterslide structure;
- 6) Variance from Section 7.3.1.2(b)(3) to permit a zero-foot (0') setback where ten feet (10') is required from the Bulkhead line is required in the Oceanfront Overlay for the proposed cabana and bathroom structures;
- 7) Variance from Section 7.3.1.2(b)(7) to permit 3.7% open space where 50% is required in the Oceanfront Overlay;
- 8) Variance from Section 7.3.1.2(b)(8) to permit a rear yard with less than 50% open and unencumbered space from the Erosion Control Line to the Rear Setback Line required in the Oceanfront Overlay;

- 9) Variance from Section 7.2.6.3(a) to permit an encroachment into the rear pedestal setback requirement of 20% of lot depth;
- 10) Variance from Section 7.2.6.3(a) to permit a one foot and five-inch (1'5") interior side setback where 8% lot width ( $1,074.74' \times 0.08 = 85.98'$ ) is required; and
- 11) Variance from Section 7.2.6.3(a) to permit a total sum of side yards of 8% of lot width where 16% is required.

*Satisfaction of Hardship Criteria.* The variances requested satisfy the hardship criteria pursuant to Section 2.8.3.a. of the Code, as follows:

**1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;**

There are special conditions and circumstances that exist which are peculiar to the nonconforming existing structure, site, and use. Most significantly, the Property is the largest contiguous oceanfront property in the City and is improved with a highly unique and historically significant structure that must be preserved. The variances will allow for the utilization of the rear yard of the Property. The variances related to special conditions and circumstances of the lot, climate, and design.

**2. The special conditions and circumstances do not result from the action of the applicant;**

The special circumstances, in this case, do not result from the actions of the Applicant. The Applicant is proposing renovations and improvements to its already-improved rear yard that are generally permitted in the City. This is a unique circumstance due to the peculiar characteristics of the Property, its location, and the existing historic structures.

**3. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;**

The Code allows other similarly situated property owners to seek similar variances to accommodate retention of contributing structures and utilization of their properties. The setback variances requested are the minimum required to utilize the rear yard area and maintain the existing uses. The open space variances will allow for the Applicant to utilize turf as a high-end, aesthetically pleasing element. The specific turf proposed has been designed to be permeable and more adaptable to the proposed improvements.

**4. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;**

A literal interpretation of the provisions of the land development regulations would deprive the Applicant of rights enjoyed by other properties in the same zoning and historic district. The requested variances all relate to the unique Property size and location and existing historic structure. The Project will produce an enhanced design that is consistent with the character of the neighborhood. Therefore, strict compliance with the land development regulations would be an unnecessary and undue hardship on the Applicant and contravene the intent to preserve a portion of the contributing structure.

**5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure**

The Variances relates to the same special conditions that prevents strict compliance with the Code. The Project proposes the same footprint as the existing rear yard pool area.

**6. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and**

Granting of the variances will be in harmony with the general intent and purpose of these land development regulations. The proposed improvements are contained within the rear yard of the Property and within the existing rear yard pool area footprint. The Project will not be injurious to the area nor detrimental to the public welfare.

**7. The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board of adjustment voting on the applicant's request.**

The improvements proposed through the Project will replace the existing outdated hotel amenities and will only be available to guests. There will be no impact on levels of service.

*Practical Difficulty.* The innovative design does the most possible to comply with the Codes requirements while renovating the rear yard area to be competitive with other, similarly situated high-end establishments that are not confined by duty to preserve a historically significant structure. As the largest oceanfront contiguous property within the City, the Property faces a significant practical difficulty in complying with the Code while utilizing their rear yard area in a manner that allows for the continued prominence of the Fontainebleau hotel.

Compliance with COA Criteria. The Applicant's request complies with the Certificate of Appropriateness criteria in that the proposed improvement is compatible with the surrounding properties and the proposed renovations will beautify the Property.

Sea Level Rise and Resiliency Criteria. The Project advances the sea level rise and resiliency criteria in Section 7.1.2.4 of the Resiliency Code as follows:

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

A recycling and salvage plan will be provided at permitting.

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

Any 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.**

The Applicant will proactively address sea level rise projections. Where feasible, the ground floor level of the Project will be constructed at nine feet (9') NGVD.

**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.**

The Project is exclusively confined to the rear yard of the Property. This criteria is not applicable.

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

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.**

Where reasonably feasible and appropriate, existing buildings will be elevated to nine feet (9') NGVD.

**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.**

No habitable space will be located below base flood elevation.

**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 or porous pavement materials will be utilized where any new pavement is proposed.

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

Redevelopment of the Property will strategically minimize the potential for heat island effects on site. The Project incorporates passive design strategies, such as shading and natural ventilation.

Conclusion. We believe that the approval of the proposed requests will allow for an incredible opportunity to improve the operation and viability of one of the most important properties in the City. We look forward to your favorable review and recommendation. Should you have any questions or concerns, please do not hesitate to contact me at 305-377-6238.

Sincerely,

A handwritten signature in blue ink, consisting of stylized, overlapping letters that appear to be 'MA' or similar initials.

Michael J. Marrero

CC: Benjamin Sherry