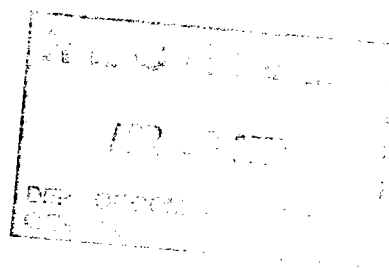


Greenberg Traurig

Robert S. Fine
Tel. 305.579.0826
Fax 305.579.0717
finer@gtlaw.com



April 6, 2007

VIA FED EX

Paula Ford, Agency Clerk
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Re: TRG Block One - Case No. DCA 07-DEC-017

Dear Paula:

Enclosed please find an original and one copy of Petitioner's Amended Petition for Declaratory Statement. Please return the file-stamped copy in the prepaid FED EX envelope provided.

Please call me if you have any questions at (305) 579-0826.

Very truly yours,

Robert S. Fine

RSF
Encls.

Amendment - DCA 07 - DEC - 017
FILING AND ACKNOWLEDGEMENT

FILED, on this date, with the designated Agency Clerk, receipt of which is hereby acknowledged.

Paula P. Ford 4/9/07
Date

Paula P. Ford
Agency Clerk

STATE OF FLORIDA
BUILDING COMMISSION

Amendment
DCA07-DEC-017
FILING AND ACKNOWLEDGEMENT
FILED on this day in the designated
Clerk's office of which is hereby
acknowledged.

Paula P. Ford 4/9/07
Paula P. Ford Date
Commission Clerk

IN RE:

TRG-BLOCK ONE, LTD., a Florida
limited partnership

CASE NO. DCA 07-DEC-017

**AMENDED PETITION FOR
DECLARATORY STATEMENT**

Petitioner, TRG-BLOCK ONE, LTD., a Florida limited partnership (TRG),
files this amended petition for declaratory statement and states as follows:

Jurisdiction

1. The Florida Building Commission (the Commission) has jurisdiction
to issue declaratory statements pursuant to section 120.565, Florida Statutes,
relating to an agency's interpretation and enforcement of the specific provisions of
the Florida Building Code (FBC), which the agency is authorized to enforce. *See*
§ 553.775(3)(e), Fla. Stat.¹

¹ All references to Florida Statutes shall be to the 2006 edition unless
otherwise indicated.

2. Section 553.775, Florida Statutes, provides two mechanisms by which a substantially affected person may obtain an interpretation of a provision of the FBC. One of these mechanisms is to invoke the Commission’s jurisdiction over “decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 days.” § 553.775(c), Fla. Stat. The other mechanism is to request that the Commission “issue a declaratory statement pursuant to s. 120.565 relating to an agency’s interpretation and enforcement of the specific provisions of the Florida Building Code which the agency is authorized to enforce.” § 553.775(e), Fla. Stat. While the Miami-Dade County Code (County Code) provides for a Board of Rules and Appeals (BORA) to interpret or clarify provisions of the FBC, the County Code does not provide a right for substantially affected persons to seek an interpretation of a provision of the FBC from the BORA – it provides solely that the “Secretary of the Board” or “any Building Official” may seek such an interpretation of the FBC. *See* § 8-4(d)(2), County Code.²

² “The Board shall pass on all matters pertaining to the Building Code and referred to the Board by the Secretary to the Board or any Building Official for interpretation or clarification.” § 8-4(d)(2), County Code.

The Petitioner

2. TRG's address is 315 South Biscayne Boulevard, 3rd Floor, Miami, Florida 33131. Its telephone number is (305) 460-9900.

3. TRG is a developer of multi-family housing in Miami-Dade County, located in the high-velocity hurricane zone (the Zone) as defined in the FBC and its authorizing statutes. TRG constructs, and then sells (or rents) to the public, dwelling units, typically in high-rise structures. The buildings that TRG constructs typically have numerous balconies that are not the buildings' top surfaces.³ In addition, these buildings typically include multi-level parking garages.

4. TRG owns land in Miami-Dade County on which it plans to build a high-rise residential building. TRG has retained and paid an architect to design the building and plans to apply for building permits during the time period that the 2006 amendments to the 2004 edition of the FBC (2006 Amendments) will be in effect. TRG intends this building to have numerous balconies and also parking garage deck levels that are not a part of the top surface of the building.

³ Generally, a building's "top surface" would be the uppermost surface of the structure that is continuously exposed to the elements. *See* Footnote 10.

5. At the request of the Commission's Structural Technical Assistance Committee at its March 26, 2007 meeting, a *representative* set of preliminary drawings have been appended as Composite Exhibit "A" to this amended petition. These drawings relate to just one of TRG's projects, and other projects that TRG may choose to construct under the 2006 Amendments to the 2004 FBC may have balconies and parking garage decks with different configurations but which are similarly not a part of the top surface of their respective buildings.

The Code Provision and its effect on TRG

5. TRG seeks a declaratory statement regarding the applicability of section 1519.16 of the 2006 Amendments (Section 1519.16).

6. Section 1519.16 involves the application of waterproofing over sloped or horizontal decks specifically designed for pedestrian and/or vehicular traffic. TRG, through its architect and counsel, has been informed that the Miami-Dade County Building Code Compliance Office (Code Compliance), a regulatory agency having jurisdiction, interprets the provision of Section 1519.16 to apply to all balconies and parking garages in the types of buildings that TRG constructs.⁴

⁴ TRG's architect and counsel were informed of this position of Code Compliance in a meeting with Code Compliance staff at Code Compliance's offices on December 21, 2006.

Applying the requirements of Section 1519.16 would add considerable expense to the construction of the building(s) TRG plans to build.

Nature of Declaratory Statement Sought

7. TRG seeks a declaratory statement that the requirements set forth in Section 1519.16 do *not* apply to balconies or parking garage decks when such balconies and decks (i) are not part of the top surface of the building, and (ii) are not the weather-exposed surface immediately above habitable space.⁵

MEMORANDUM OF LAW IN SUPPORT OF TRG'S REQUESTED DECLARATORY STATEMENT

Introduction

In December 2006, undersigned counsel, along with an architect for TRG, met with the staff of the Miami-Dade County Building Code Compliance Office (Code Compliance) to discuss a set of guidelines locally adopted in 2002 relating to the waterproofing of plazas, terraces, balconies, etc. (the Local Amendments).

⁵ Although the Commission might, if asked, determine that Section 1519.16 is inapplicable to balconies or parking garage decks that are not part of the top surface of the building, even when they constitute the weather-exposed surface directly above habitable space, TRG's is not seeking such a determination here. TRG's concern at this time is a declaration that Section 1519.16 is inapplicable to balconies and decks that are *both* not part of the top surface of the building *and* not the weather-exposed surface directly above habitable space.

Because TRG took the position that the Local Amendments were, in effect, local technical amendments to the FBC that were not properly adopted in accordance with section 553.73(4)(b), Florida Statutes, TRG informed Code Compliance staff that it would, in all likelihood, file a petition with the Countywide Compliance Review Board challenging the locally adopted guidelines. At that meeting, Code Compliance staff said that even if such a challenge were successful, the success would be short-lived because a provision in the 2006 Amendments (Section 1519.16), as interpreted by Code Compliance, would require such waterproofing to be provided on *all* balconies and garage decks, including those that are not the top surface of the building.⁶

Subsequent to the meeting, TRG filed a petition with the Countywide Compliance Review Board (Review Board) challenging the 2002 Local Amendments. On January 18, 2006, the Review Board ruled that it did not have jurisdiction because the Local Amendments had never completed the process to become a local technical amendment to the FBC, that the Local Amendments

⁶ Inasmuch as Miami-Dade County is a home rule county, Code Compliance has oversight authority over all of the separate municipal building departments in Miami-Dade County. In fact, all of the municipal building officials in Miami-Dade County are licensed by Code Compliance and BORA, for which Code Compliance serves as staff. As a result, building officials in Miami-Dade County typically consider notices and interpretations from Code Compliance to be binding on them.

were, and are, not mandatory, are not technical amendments to the FBC, and cannot be imposed by a building official on a project subject to the 2001 or 2004 FBC. The Review Board instructed its staff to issue a memorandum to that effect to be sent to building officials in Miami-Dade County.⁷ TRG now independently invokes its right under section 120.565, Florida Statutes, and files this petition for declaratory statement.⁸

Argument

The plain language of Chapter 15 of the 2004 edition of the FBC (FBC 2004), the title of Section 1519, and Section 1519.16, itself, refute Code Compliance's contention that Section 1519.16 imposes waterproofing requirements on balconies and parking garage decks that are not part of the top surface of the building. The Florida Supreme Court has observed: "Our courts have long recognized that the rules of construction applicable to statutes also apply

⁷ The memorandum is appended hereto as Exhibit 'B'

⁸ Because several building officials in Miami-Dade County have taken the position that they are bound by the Local Amendments with respect to buildings and structures permitted under both the 2001 and 2004 editions of the FBC, TRG filed a second petition with the Review Board challenging the application of the Local Amendments to the 2004 edition of the FBC. This second petition was resolved with the same result as the petition challenging the Local Amendments to the 2001 edition of the FBC.

to rules.” *Brown v. State of Florida*, 715 So. 2d 241, 243 (Fla. 1998).⁹ “Thus, when the language to be construed is unambiguous, it must be accorded its plain and ordinary meaning.” *Id.*

Section 1519.16 of amends Chapter 15 of FBC 2004, which is entitled “Roof Assemblies and Rooftop Structures.” Section 1519 is titled: “HIGH-VELOCITY HURRICANE ZONES—ROOF COVERINGS WITH SLOPES LESS THAN 2:12.” Section 1501.1 of FBC 2004 provides as follows:

The provisions of this chapter shall govern the design, materials, construction and quality of *roof assemblies and rooftop structures*.

Exception: Buildings and structures located within the high-velocity hurricane zone shall comply with the provisions of Section 1503.6 and Sections 1512 through 1525.

(emphasis added). Therefore, with the exception of section 1503.6, which is titled “Protection against decay and termites,” the provisions of Chapter 15 that govern buildings and structures in the Zone¹⁰ are found in sections 1512 through 1525.

⁹ The FBC is an administrative rule. See § 553.73(1)(a), Fla. Stat. (“The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code....”).

¹⁰ Miami-Dade and Broward Counties comprise the Zone.

Section 1512: High-Velocity Hurricane Zones – General states as follows:

1512.1 Scope.

Sections 1512 through 1525 set forth minimum requirements for the installation of *roofing components, roofing systems, roofing assemblies and the waterproofing thereof*.

1512.2 Application.

These high-velocity hurricane zone *roofing* requirements with associated *roofing* application standards (RAS) and testing application standards are solely to be implemented in areas of high basic wind speeds, and where the jurisdiction having authority has adopted their use.

1512.2.1

All roofing components, roofing systems and roofing assemblies for construction regulated by this code shall comply with this chapter. All *roofing components, roofing systems and roofing assemblies* shall have a valid and current Product Approval. In the event that the manufacturers published literature or instructions are in conflict with those of the Product Approval, the Product Approval shall prevail. Where items specifically and expressly addressed in this chapter are in conflict with the Product Approval, the provisions of this chapter shall prevail.

(emphasis added). Based on these provisions, it is clear that sections 1512 through 1525 govern roofing components, roofing systems, roofing assemblies (as opposed to other parts of buildings) and the waterproofing thereof for structures located in the Zone.

Furthermore, Section 1513 (High-Velocity Hurricane Zones – Definitions) provides the following definition:

ROOF COVERING. An assembly of multiple field-applied components or a single component *designed to weatherproof a building's top surface*. A roof covering may be a roofing assembly or form a portion thereof.

§ 1513.1, FBC 2004 (emphasis added). Thus, sections 1512 through 1525 of the 2004 FBC (within which Section 1519.16 is found) relate to weatherproofing a building's *top surface*.¹¹

The plain and unambiguous language of Chapter 15 and sections 1512 through 1525 (for the Zone), as well as the title of Section 1519, plainly indicate that these sections establish requirements applicable solely to roofs and roofing components, and the definition of "roof covering" makes clear that these requirements are intended to relate to a building's *top surface*. Section 1519.16 cannot be interpreted to impose waterproofing requirements on lower, intermediate surfaces such as balconies and parking garage decks that do not form part of a building's uppermost surface.¹²

¹¹ The designation of a surface as a "top" surface also plainly indicates that it is the highest surface of the structure, and not an intermediate surface below the uppermost surface, such as a balcony or garage deck. *See* Merriam-Webster's Online Dictionary, <http://www.m-w.com/dictionary/top>, last accessed January 24, 2007 (defining "top" as "the highest point, level, or part of something.").

¹² Or which, for purposes of this petition, also are not found immediately above habitable space.

Conclusion

TRG respectfully requests that the Commission issue a declaratory statement holding that the requirements of Section 1519.16 of the 2006 Amendments to the 2004 edition of the Florida Building Code are inapplicable to balconies and parking garage decks that (i) are not part of a building's top or uppermost surface, and (ii) are not the weather-exposed surface immediately above habitable space.

Respectfully submitted,

Robert S. Fine, Esq.
Florida Bar No. 0155586
Edward G. Guedes, Esq.
Florida Bar No. 768103
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717

By: 

Counsel for Petitioner, TRG

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a courtesy copy of the foregoing by U.S. Mail upon:

Hugo Benitez, Esq.
Assistant County Attorney
Miami Dade County
111 N.W. First Street
Suite 2700
Miami, FL 33128

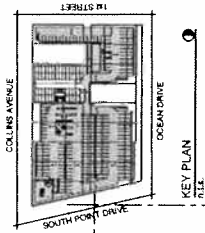
Jim Richmond, Esq.
Deputy General Counsel
Florida Building Commission
2555 Shumard Oaks Boulevard
Tallahassee, Florida 32399-2100

This 6 day of April, 2007.

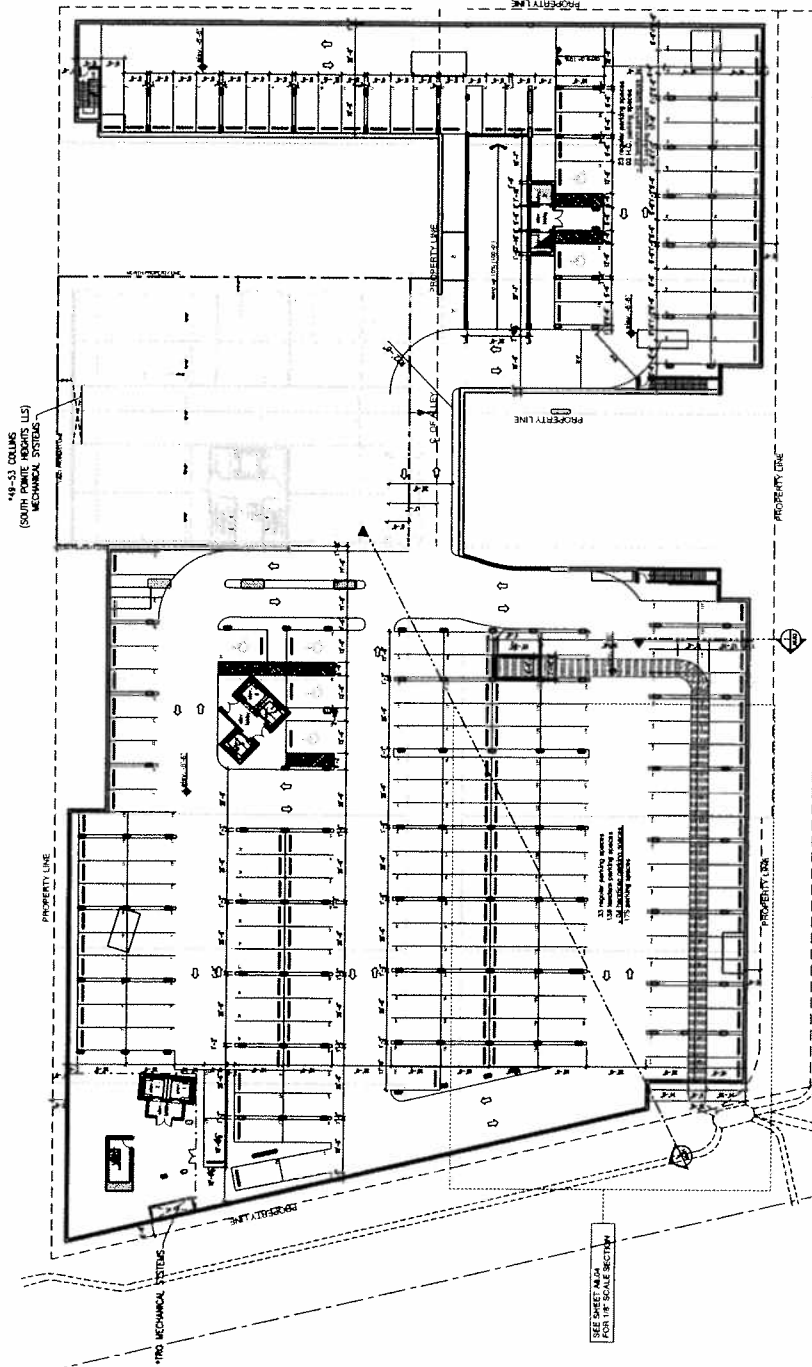
By: 
Robert S. Fine
Counsel for Petitioner, TRG

EXHIBIT A

Block 1
Miami Beach, Fl.



subterranean level
parking garage



SEE SHEET A1.01 FOR 1/8" SCALE SECTION

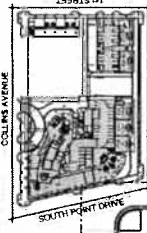
parking garage - subterranean level

1/16"

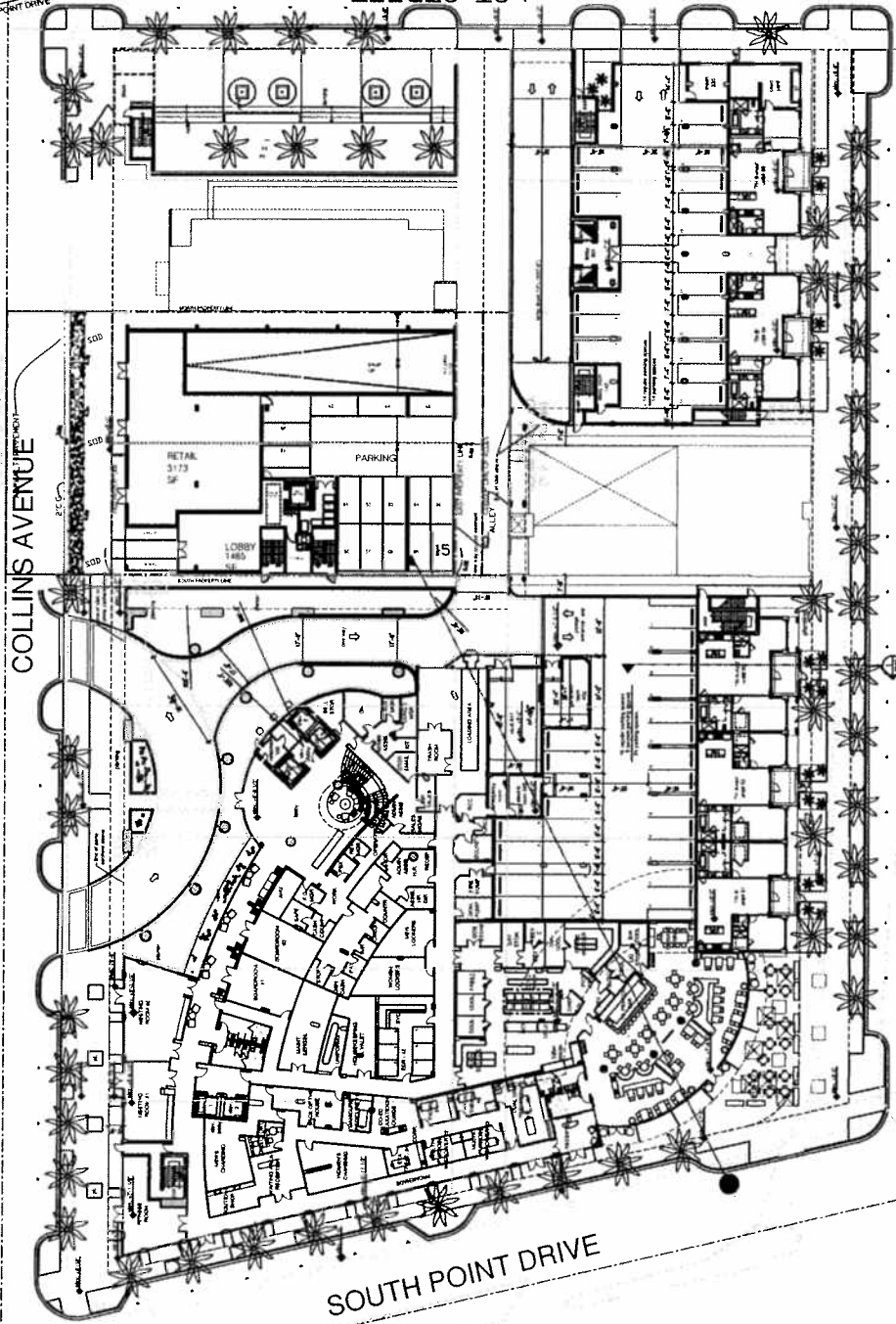
FINISHES	SEE SHEET A1.01
MECHANICAL	SEE SHEET A1.01
ELECTRICAL	SEE SHEET A1.01
PLUMBING	SEE SHEET A1.01
STRUCTURE	SEE SHEET A1.01

The Siegel Suarez Architectural Partnership
 2745 N.W. 11th St., Suite 200, Fort Lauderdale, FL 33304
 954.581.1111
 A1.02

Block 1
Miami Beach, FL



level 01



OCEAN DRIVE

SOUTH POINT DRIVE

lobby floor plan - level 01

1:16"

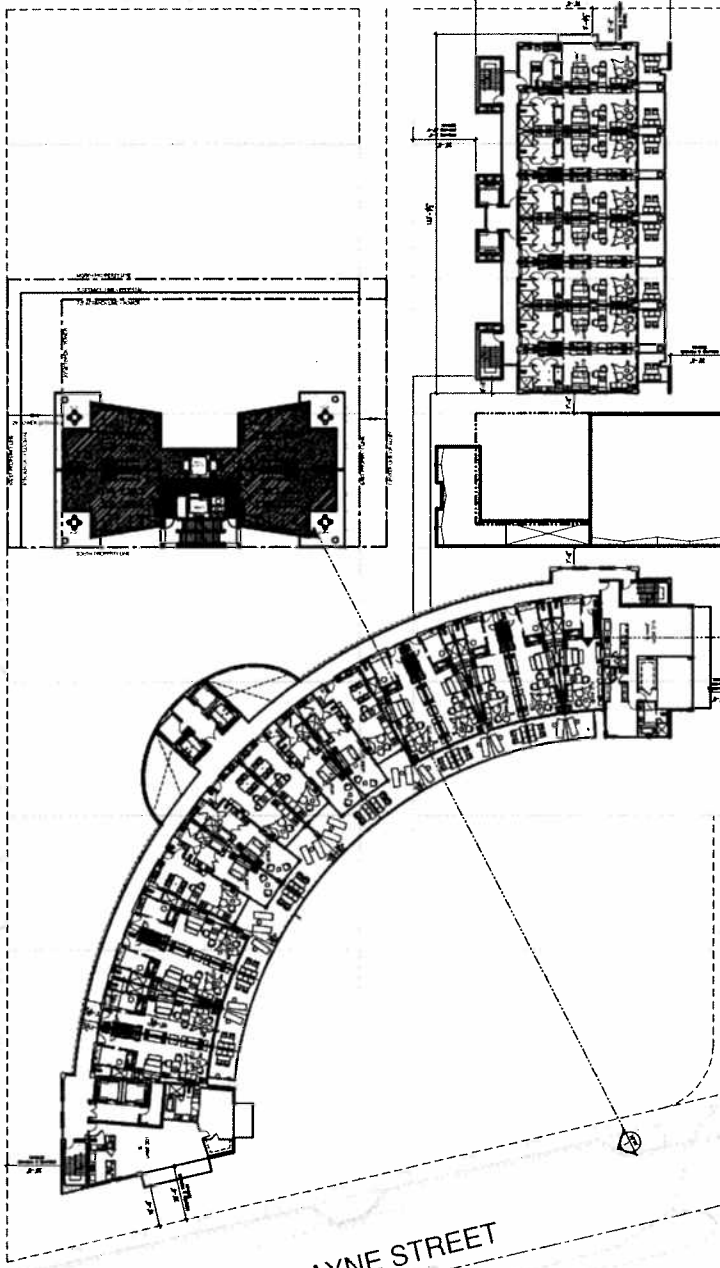
LEGEND
WALL
DOOR
GLASS
COLUMN
PLANT

The Sieger Suarez Architectural Partnership
A1.03

Block 1
Miami Beach, FL

COLLINS AVENUE
CENTER LINE OF ST.

level 3



BISCAYNE STREET
CENTER LINE OF ST.

OCEAN DRIVE
CENTER LINE OF ST.

floor plan - level 03

1/16"

PROJECTS
SET

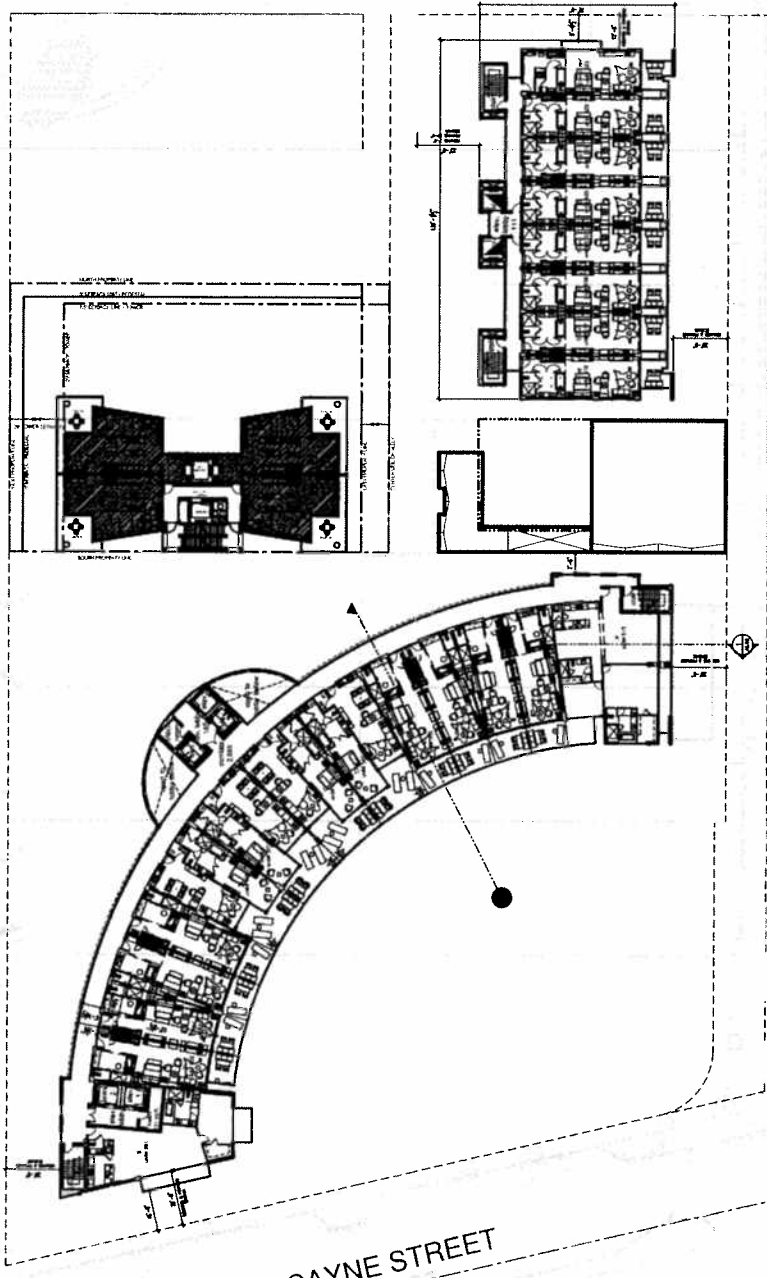
The Sieger Suarez Architectural Partnership
A1.05

Block 1
Miami Beach, FL

COLLINS AVENUE

CENTER LINE OF ST.

level 05



BISCAYNE STREET

CENTER LINE OF ST.

OCEAN DRIVE

CENTER LINE OF ST.

floor plan - level 05

1/16"

PROPOSED	EXISTING
CONCRETE	CONCRETE
GLASS	GLASS
STEEL	STEEL
WOOD	WOOD
ASPH/FLT	ASPH/FLT
PAVEMENT	PAVEMENT
LANDSCAPE	LANDSCAPE
TOPOGRAPHY	TOPOGRAPHY

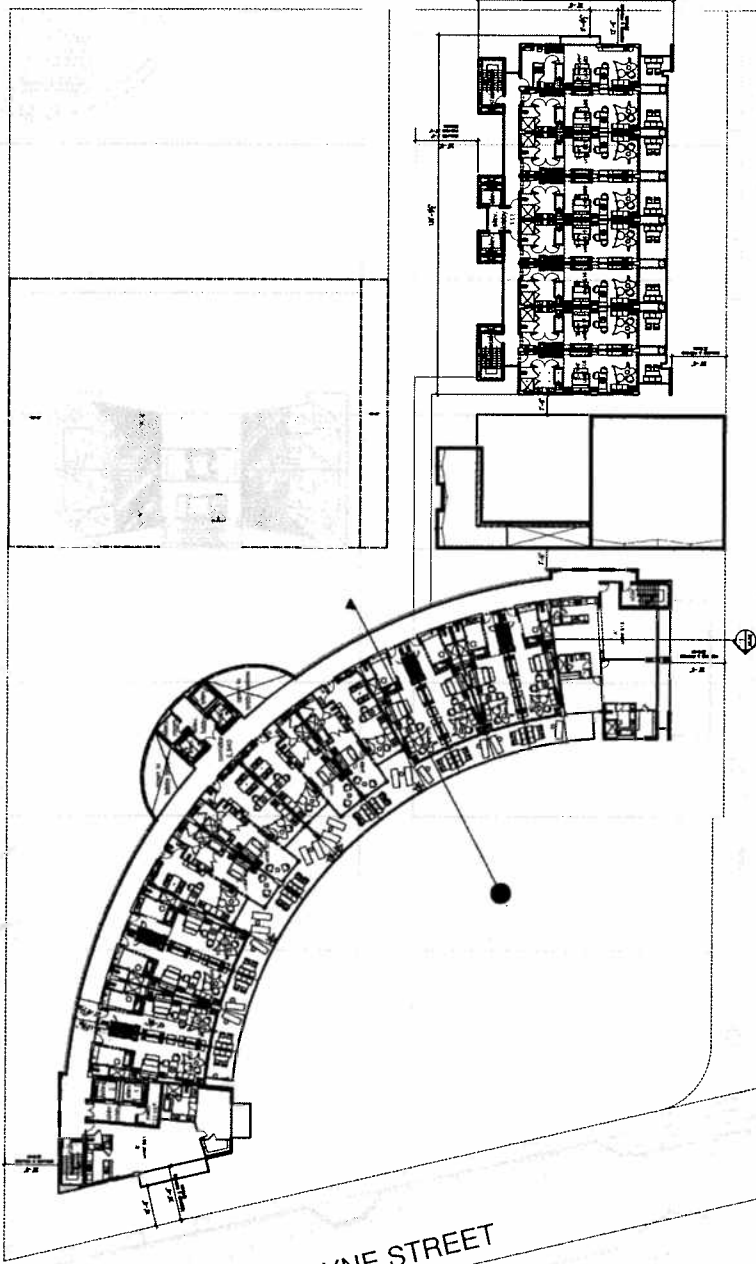
The Sieger Suarez Architectural Partnership
ESTABLISHED 1978
5750 N. MIAMI AVE., SUITE 200
MIAMI BEACH, FL 33137
A1.07

Block 1
Miami Beach, FL

COLLINS AVENUE

CENTER LINE OF ST.

level 06



BISCAYNE STREET

CENTER LINE OF ST.

OCEAN DRIVE

CENTER LINE OF ST.

floor plan - level 06

1/16"

---	WALL
---	DOOR
---	WINDOW
---	STAIR
---	ELEVATOR
---	MECHANICAL
---	PLUMBING
---	ELECTRICAL
---	TELEPHONE
---	REVISION

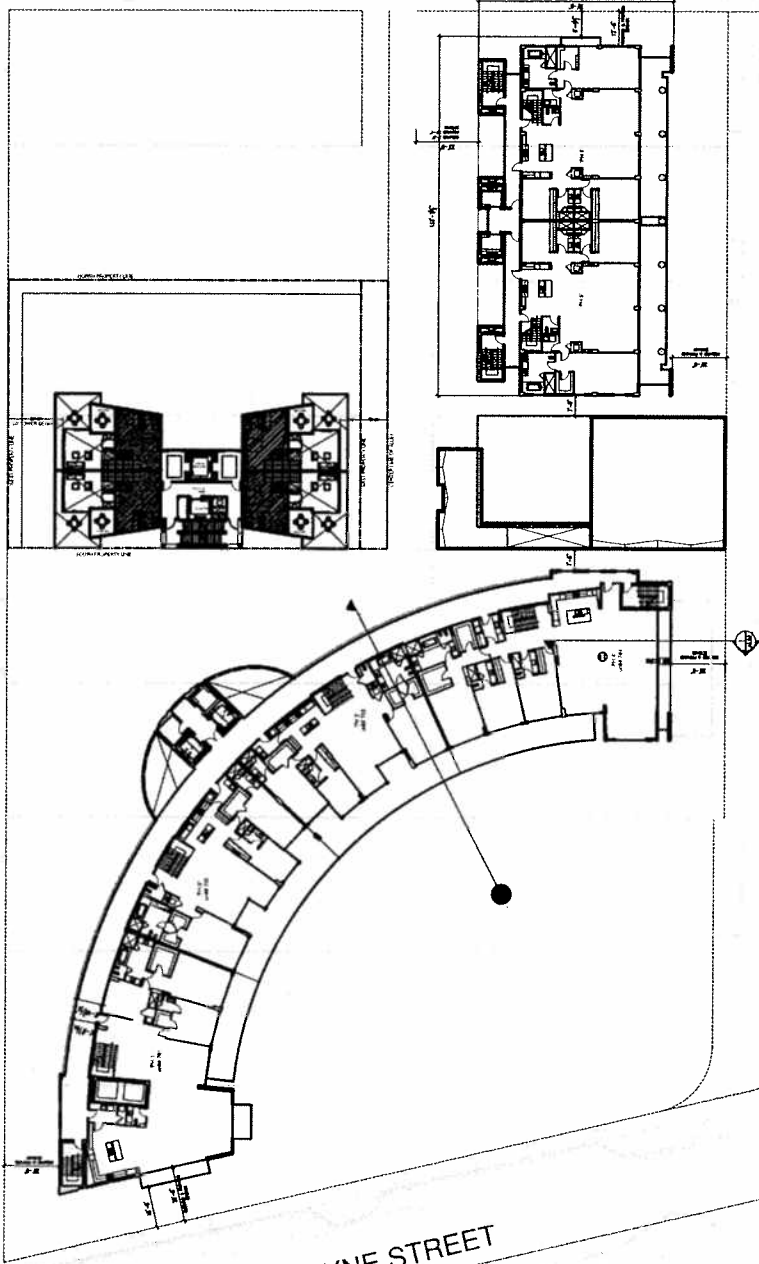
DATE: 07/20/04
BY: [Signature]

The Sieger Suarez Architectural Partnership
5747 N.W. 11th Ave., Suite 200, Miami Beach, FL 33150
A1.08

Block 1
Miami Beach, FL

COLLINS AVENUE

level 07



BISCAYNE STREET

OCEAN DRIVE

floor plan - level 07

1/16"

DATE	07/20/09
BY	AS
CHECKED	AS
SCALE	1/16"
PROJECT	THE SIEGER SUAREZ ARCHITECTURAL PARTNERSHIP
NO.	A1.09

The Sieger Suarez Architectural Partnership
ARCHITECTS
1000 BISCAYNE BLVD., SUITE 200
MIAMI BEACH, FL 33139
TEL: 305.673.1234
WWW.SIEGER-SUAREZ.COM

Block 1
Miami Beach, Fl.

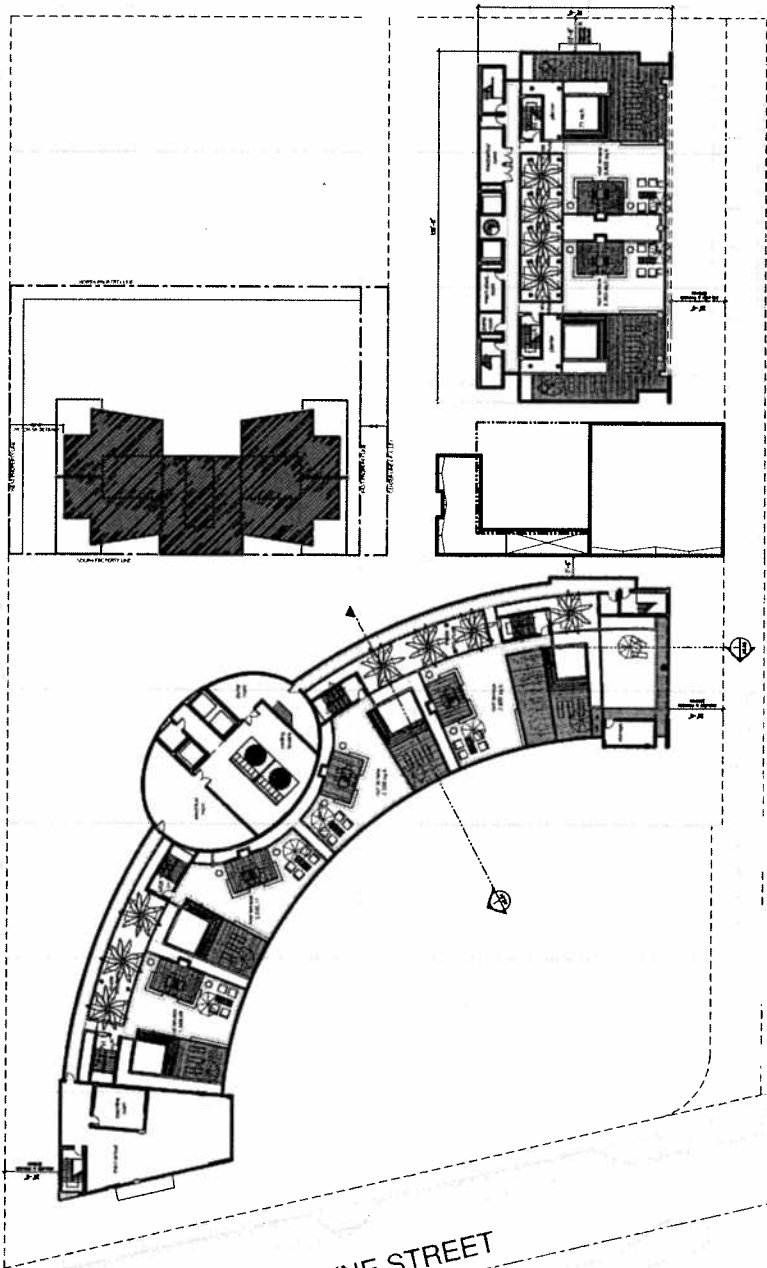
COLLINS AVENUE

BISCAYNE STREET

1 ST. STREET

OCEAN DRIVE

level 08



mechanical floor plan - level 08

1/16"

PROCESSED BY
DATE

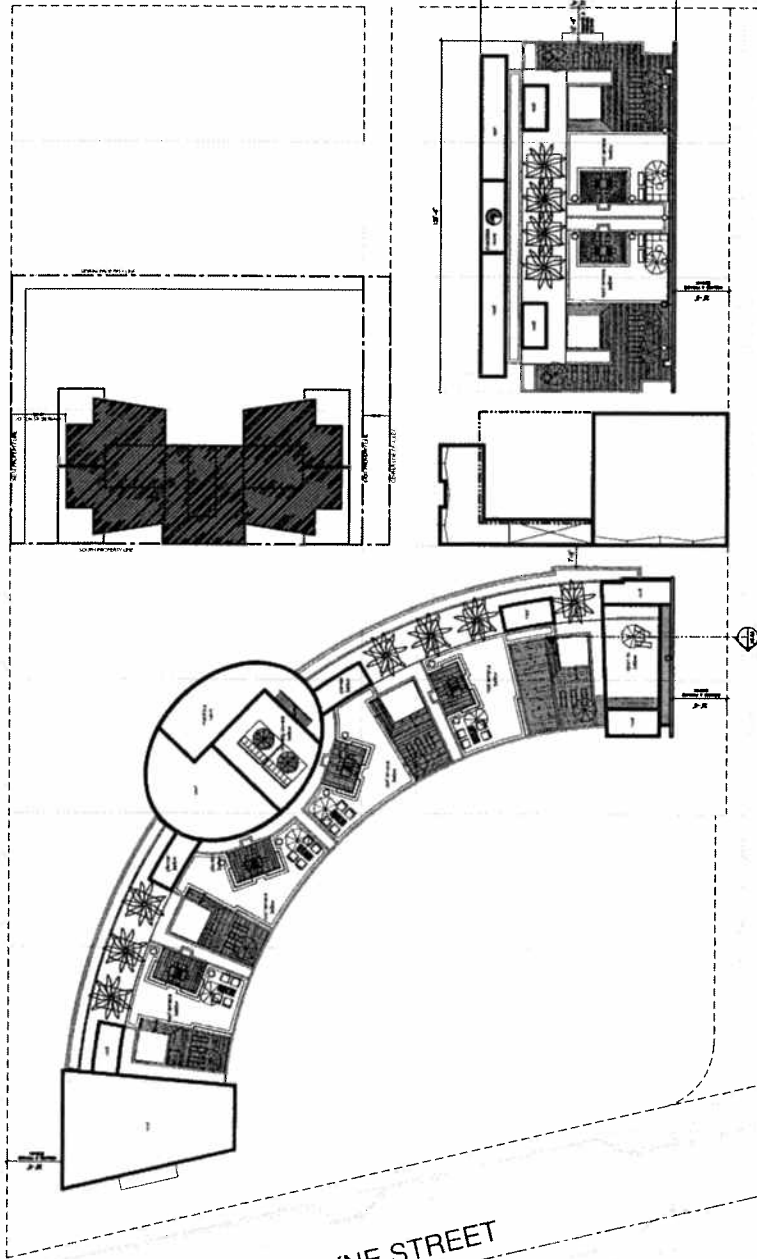
The Sieger Suarez Architectural Partnership
A1.10

Block 1
Miami Beach, Fl.

COLLINS AVENUE

CENTER LINE OF ST.

roof plan



BISCAYNE STREET

CENTER LINE OF ST.

1 ST. STREET

OCEAN DRIVE

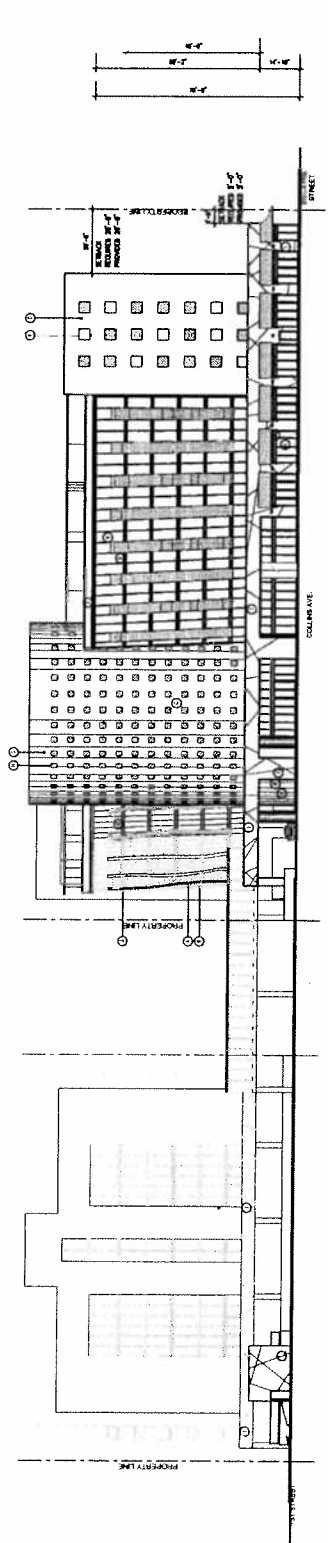
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roof plan

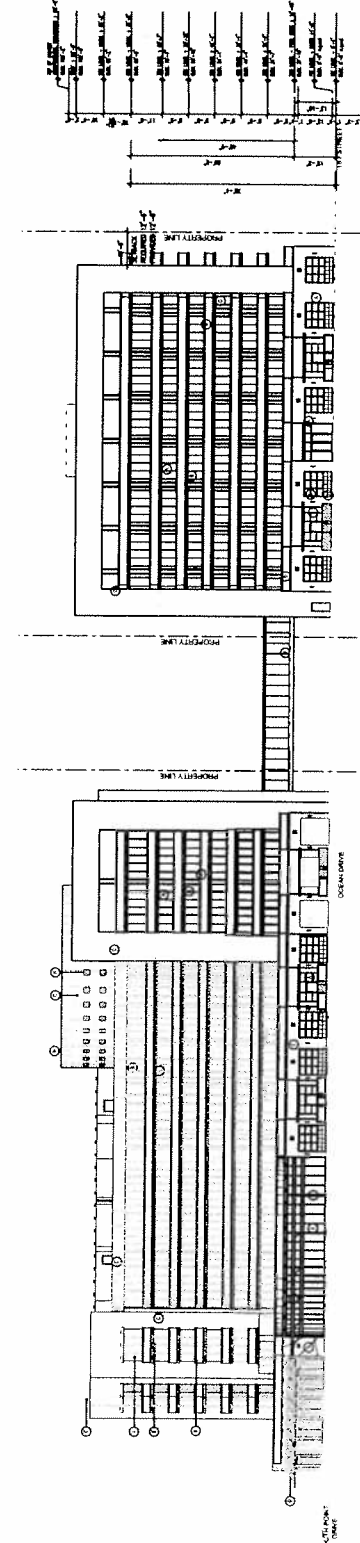
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Block 1
Miami Beach, Fl.



west elevation



east elevation

- material key:
- 1) grey glass (decks/windows)
 - 2) white mullions
 - 3) white succo
 - 4) grey (glass railing)
 - 5) stainless colored aluminum louver
 - 6) aluminum frame canopy
 - 7) aluminum panels and glass (to be attached by structural steel)
 - 8) colored glass windows
 - 9) white succo with scored lines
 - 10) precast concrete
 - 11) garage door

east & west elevations

1/16"

SOUTH TOWER HOTEL

Level	Number of Units	Unit Area	Balcony Area	Core / Mechanical	Common	Restaurant	Garage	Gross Area	F.A.R.
Roof		807	9,617	5,837	3,360			19,621	807
7	4	13,354	2,794	1,016	3,019			20,183	17,389
6	14	13,107	2,794	1,164	2,941			20,006	17,212
5	14	13,107	2,794	1,164	2,783			19,848	17,054
4	14	13,107	2,794	1,164	2,608			19,873	16,879
3	15	13,671	1,852	1,160	2,427			19,110	17,258
2 - pool deck	13	11,079	4,523	1,257	4,495			21,354	16,831
1 - units @ 8'	3	4,011	0	1,397				5,408	5,408
1 - garg/lobby below 8'	0			1,597	20,409	7,363	8,691	38,060	14,685
Sub - garage	0			987			54,222	55,209	494
TOTAL	77	82,243	27,168	16,743	42,042	7,363	62,913	238,472	124,016

SITE AREA (for lots 5 thru 13, including alley) = 61,626 x 2.0 = 123,252 sq. ft.

Totals	
Total Unit Area	82,243
Total Number of Units	77
Total Gross Area	238,472
Total F.A.R.	124,016

Common Areas Detail Lobby level	SQ.FT.	PAINT-TO-PAINT
Spa	4,140	
Restaurant	3,825	
Kitchen *	3,538	
Lobby	3,977	
Meeting Rooms	2,320	
Fitness	631	
Back of House	8,115	
Premenade	1,226	
Total	27,772	0

PARKING

Required per unit: 77 x 1.5 = 116
 Retail: 7.5 x 77 = 578 - 5,849 = 5,271 / 400 = 4
 Spa: 720 / 60 = 12
 Restaurant: 3,837 / 100 = 39
 Total: 181

Parking	level 00	level 01	Total
Regular	33	20	53
Tandem	138	4	142
Handicap	4	0	4
Total	175	24	199

Common Areas Mezzanine level	SQ.FT.	PAINT-TO-PAINT
Bar area	2,495	2,375

NORTH TOWER HOTEL

Level	Number of Units	Unit Area	Balcony Area	Core / Mechanical	Common	Garage	Gross Area	F.A.R.	
Roof		310	5,806	1,197	1,511		8,824	310	
7	2	5,796	1,145	535	706		8,182	7,037	
6	8	5,796	1,145	535	706		8,182	7,037	
5	8	5,796	1,145	535	706		8,182	7,037	
4	8	5,796	1,145	535	706		8,182	7,037	
3	8	5,796	1,145	535	706		8,182	7,037	
2	8	5,796	3,136	527	1,493		10,952	7,816	
1 - units @ 8'	2	2,600	254				2,854	2,854	
1 - garg. Below 8'				1,239		6,871	1,239	620	
Sub				588		22,192	22,781	285	
TOTAL	44	37,686	14,921	6,227	6,534	0	29,063	87,560	47,079

SITE AREA (for lots 1 thru 3, and lot 17) = 23,750 x 2.0 = 47,500 sq. ft.

Totals	
Total Unit Area	37,686
Total Number of Units	44
Total Gross Area	87,560
Total F.A.R.	47,079

Parking	level 00	level 01	Total
Regular	23	14	37
Tandem	28	0	28
H.C.	2	0	2
Total	53	14	67

PARKING

Required per unit: 44 x 1.5 = 66

TOTAL	GROSS	TOTAL
	326,032	171,095

EXHIBIT B

EXHIBIT B



MIAMI-DADE COUNTY, FLORIDA
METRO-DADE FLAGLER BUILDING

BUILDING CODE COMPLIANCE OFFICE
METRO-DADE FLAGLER BUILDING
140 WEST FLAGLER STREET, SUITE 1603
MIAMI, FLORIDA 33130-1563
(305) 375-2901 FAX (305) 375-2908

CONTRACTOR LICENSING SECTION
(305) 375-2527 FAX (305) 375-2558

CONTRACTOR ENFORCEMENT SECTION
(305) 375-2966 FAX (305) 375-2908

PRODUCT CONTROL DIVISION
(305) 375-2902 FAX (305) 372-6339

MEMO

TO: All Building Officials in Miami-Dade County

FROM: Herminio F. González, P.E., Secretary
Miami-Dade Board of Rules and Appeals

DATE: January 31, 2007

SUBJECT: Board of Rules and Appeals
Guidelines for Waterproofing Plazas Decks, Terraces and Parking
Garages

On April 29, 2002 the Board of Rules and Appeals, again, endorsed guidelines involving waterproofing systems, previously developed under the South Florida Building Code. The guidelines were intended to assist building officials regarding the void in the building code involving the use of waterproofing systems. Fundamentally, the guidelines offered a mechanism whereby waterproofing could be used in lieu of an approved roofing system, where appropriate.

At their meeting of January 18, 2007, the Board of Rules and Appeals discussed the intended purpose of the "Waterproofing Guidelines". The Board reaffirmed that the "Waterproofing Guidelines" were never expected to serve as a local technical amendment. Further, the Board reiterated that the "Waterproofing Guidelines" were intended to provide procedures aiding building officials with the design and installation of compliant waterproofing systems. The Board reaffirmed that the "Waterproofing Guidelines" were intended to be advisory in nature and the use of the guidelines by building officials is discretionary.

If you have any questions, please contact Mr. Michael L. Goolsby, RRC at (305) 375-4496.