

October 17<sup>th</sup>, 2011

Re: Loews Miami Beach permit application #B1103686  
Request for Waiver from Accessibility Requirements

Outline of hardships as per section 554.512 Florida Statutes, which states The Florida Building Commission shall provide by regulation criteria for granting individual modifications of, or exceptions from, the literal requirements of this part upon a determination of unnecessary, unreasonable or extremes hardship, provided such waivers shall not violate federal accessibility laws and regulations.....

**1.** The applicant is requesting waiver based that there is unnecessary and unreasonable hardship due to exceptional cost without substantial benefits to persons with disabilities. Reason being is that there are equal facilities of roof and elevated outdoor deck space throughout the pool grounds area that are equal or greater in access and use for persons with disabilities. The application includes a plan graphic showing the distribution of over 50,000s.f. of outdoor ‘accessible’ sun deck space. The cabana roof deck is two buildings of about 730s.f. each.

Within the application is a photo of some of the existing accessible roof deck space just to the west of the cabana project. The existing roof deck in this photo is directly adjacent to the cabana roof decks and currently offers about 1,800s.f. of accessible roof sun deck space. Approximately another 8,000 s.f. of roof and elevated accessible decks and terraces surround the property.

The up front costs of providing the lift are not the only concern, due to wind load requirements for this location this lift/ elevator will also require an enclosed structural shell and foundation. This structural shell, based on my experience with the city, will become a design issue with the Miami Beach historical review board whom had spent 1 year on the approval process of what these two buildings look like today. This process will add more time and money to the project if not a complete project delay. On top of these up front cost will be long term maintenance costs for the up keep of this item in a corrosive environment as this property is on the beach. *Overall, these costs do not justify an amenity that is already abundant at this site and thus constitutes a hardship that is unnecessary and unreasonable.*

The ADAAG which has been adopted by Florida recognizes the concept of equivalent facilitation.

**2.** The applicant is also requesting waiver based on the compliance of the “FBC”, the “ADAAG” as well as the “Florida ADA-Architecture Barrier Removal and Compliance Manual” which all use the same wording that indicate that the proposed project is too small to require vertical access to the roof deck level.

In all these publications the wording is basically the same:

Accessible buildings: New Construction reads:

Vertical accessibility shall be provided to all levels above and below the occupiable grade level, regardless of whether the code requires an elevator to be installed in such building, structure or facility, except for: (1) elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms; (2) unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas; and (3) occupiable spaces and rooms that are not open to the public and that house no more than five persons including, but not limited to, equipment control rooms and projection booths. However, as provided in Section 553.509, Florida Statutes, buildings, structures, and facilities must,

at a minimum, comply with the requirements of ADAAG. Therefore, facilities subject to the ADA may be required to provide vertical access to areas otherwise exempt under Section 11-4.1.3 (5) (3) of the code.

**Exception 1:** *Elevators are not required in facilities that are less than three stories or that have less than 3,000 square feet (279 m<sup>2</sup>) per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the U.S. Attorney General.* The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in Section 11-4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then a toilet or bathing facility must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of Section 11-4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage...

The wording in this code indicates that there is an exception that vertical accessibility shall be provided to all levels. This exception makes sense when it is for very small buildings like ours. Our two buildings are actually half the size that a single building can be and still receive the same exception. Also note this is for new construction.

#### Intent of the Florida Statutes, Section 553.501- 553.513

What is the purpose of the Florida Statutes Section 553.501 – 553.513. The purpose of this Statue is indicted under ‘*Intent*’ within the Statues’ of which states, ‘ is to incorporate into law of this state, the accessibility requirements of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 42 U.S.C SSI2101 et seq.,’

The following section is from the ‘Americans with Disabilities Act of 1990’ of which pertains to our project.

Sec. 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms,

telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

*(b) Elevator*

*Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.*

Here in sub section (b) it is evident that the intent of the ADAAG publication of which the Florida Statutes have enacted as code for 'accessibility to New Construction', has made it clear that a building under 3,000 s.f shall not be required to have an elevator. Thus we conclude that if the ADAAG has made it clear that our proposed project does not require an elevator, then the Florida Statutes of which reverts to the ADAAG must draw the same conclusion. This then makes the proposed project in compliance with Florida Building Code as the project is in line with the Florida Statutes.

Sincerely,



Steven Bugay  
Principal, DEMA Architecture and Design