

CITY OF MIAMI BEACH - DESIGN REVIEW BOARD

COUNCIL CHAMBERS

1700 CONVENTION CENTER DRIVE-MIAMI BEACH FLORIDA

July 2, 2019

E X C E R P T

ITEM NO: 16

DRB 19-0392

1201 20th Street - Palau Condominium Penthouse 04

DESIGN REVIEW BOARD MEMBERS

PRESENT:

James Bodnar
Sam Sheldon
Annabel Delgado
Elizabeth Camargo
Marsh Kriplen

STAFF PRESENT:

Nicholas Kallergis, Assistant City Attorney
James Murphy, Chief of Urban Design

* * * * *

MR. MURPHY: The next file is
DRB19-0392. 1201 20th Street, Palau
Condominium Penthouse 4.

The report can be found on Page 202
of the submitted Staff Report -- I'm
sorry, the Staff Report can be found on
Page 202 of the distributed agenda
package to the Board Members.

An application has been filed
requesting design approval for exterior
alterations to an existing five-story
building, including exterior design
modifications to an existing private
outdoor rooftop terrace, including new
decking, new shade structures, a new
stairwell bulkhead, new outdoor cooking
areas, landscaping and installation of
additional outdoor features, and
including the addition of deletion of
conditions found in the original Final
Order in order to accommodate the
exterior improvements mentioned above
to the rooftop penthouse deck, and to
permit outdoor cooking, and to allow

1 other penthouse owners, and the Palau
2 Sunset Harbor Condominium Association,
3 to do similar rooftop improvements,
4 subject to Staff review and approval,
5 and permit outdoor cooking.

6 This item was originally approved
7 in 2012 pursuant to DRB File No. 22889.

8 BOARD MEMBER KRIPLEN: I have a
9 quick disclosure. I had a telephone
10 conversation with the applicant about a
11 week or so ago which will, in no way,
12 affect my vote.

13 BOARD MEMBER CAMARGO: I have a
14 disclosure too. I met attorney and the
15 applicant, and I visit the rooftop unit.

16 BOARD MEMBER SHELDON: I have
17 spoken in general terms with the
18 attorney for the client.

19 MR. MURPHY: Okay. As you know,
20 Palau is a contemporary waterfront
21 residential building containing ground
22 floor retail and 50 residential units.
23 There are a total of eight penthouse
24 units with private rooftop terraces; two
25 face 20th Street, two face Sunset Drive,

1 and four face the Sunset Islands
2 Waterway.

3 The subject application is the
4 largest of the eight and is situated at
5 the northeast corner roof terrace unit
6 fronting both Sunset Islands Waterway
7 and 20th Street. None of the four
8 penthouses facing Sunset Islands
9 Waterway currently have private vertical
10 access directly from the interior of the
11 units below. Access to this subject
12 property rooftop, and the other three,
13 is currently gained through common stair
14 access and outdoor corridor that
15 currently lines the south edge of the
16 private terrace.

17 The original Palau development had
18 a contentious path to its final
19 approval. One of the more sensitive
20 aspects of the discussions between the
21 development team and the neighboring
22 residents from the Sunset Islands was
23 the reduction of the overall mass height
24 and encroachment elements on the
25 line-of-sight from Sunset Islands No. 4.

1 If you look at Sunset -- if you
2 look at Palau, Palau does have, in fact,
3 three rooftops; one is the pool deck,
4 the common pool deck, the second is a
5 higher roof elevation of that fifth
6 floor along 20th Street, and then the
7 lower 5th floor element of the
8 waterfront Sunset Islands facing
9 properties.

10 That's an important thing to note,
11 because the Code allows certain rooftop
12 encroachments to occur on top of the
13 main roof lines.

14 All of the elements contained
15 within the improvements, as part of this
16 application, are permitted by Code. No
17 variances are being sought, no
18 exceptions that are not fundamentally
19 allowed as a height exception is being
20 sought.

21 What is a primary fundamental
22 reason why this is before the Board is
23 because of that rather very specific
24 condition about any vertical or rooftop
25 improvements that expressly shown in

1 those original DRB plans cannot be
2 approved by Staff level, regardless that
3 there is a section of the Code that
4 allows for these height exceptions.
5 Those improvements have to come back
6 before the Board and subsequently that
7 condition must be stricken in order for
8 them to allow the vertical permanent
9 rooftop access elements.

10 I'll just finish with the notation
11 that it's important to note that this is
12 currently an active rooftop, meaning the
13 resident -- the owners of the penthouse
14 below, can come to the roof through that
15 common stair and go and enjoy their
16 private rooftop.

17 The proposal is not for activating
18 that which is already activated. What
19 they are seeking to do is improvements
20 in the form of the elements that I
21 identified earlier.

22 MR. LARKIN: Thank you, James.

23 Good afternoon, Mr. Chairman, Board
24 Members, Staff. Michael Larkin, 200
25 South Biscayne Boulevard, here with the

1 Nahmad Family Limited, A.J. and Erica
2 Nahmad, the owners of Penthouse No. 4;
3 Tim Dupont, our designer; Rudy Uhlemann,
4 our landscape architect; Darian Gersky,
5 attorney for the Palau; and my partner,
6 Matthew Amster, who shared with you a
7 handout containing the modified
8 conditions and indication of neighbor
9 support, and a couple of other
10 documents.

11 The Nahmad family, which is A.J.,
12 Erica, and their two young kids, a
13 daughter five-years-old, who is here
14 to do, and a son who could not be here,
15 he is away at camp, but Palau is where
16 they decided to make their home forever.
17 In a few months that I have gotten to
18 know them, they talk about being there
19 as grandparents and receiving their
20 grandkids there one day. I applaud them
21 for being so forward-thinking, and I
22 think that's pretty amazing.

23 And just like most families that
24 create a home, they want a private
25 outdoor space where the kids can run

1 around and enjoy together.

2 Their unit has a completely barren
3 rooftop terrace. But properly designed,
4 their rooftop terrace can be that place,
5 like the backyard of a single family
6 home, that is prevalent, of course, in
7 the Sunset Islands 3 and 4.

8 The Nahmad family is here before
9 you today to discuss the requested
10 modifications of two conditions to allow
11 rooftop improvements to the roof and to
12 allow outdoor cooking.

13 Modification of these conditions
14 and the improvement on the private
15 terrace will allow the Nahmad family to
16 have a private garden area to play,
17 relax and spend quality outdoor family
18 time together.

19 The Nahmads' penthouse unit is
20 located on the northeast corner of the
21 building, just over 4,000 square feet in
22 size with a barren rooftop terrace
23 above. The rooftop terraces are
24 currently unused due to restrictions in
25 place as a result of the DRB Order

1 active, as James noted, but unused
2 because they are really not that
3 habitable.

4 In October, 2012, the DRB approved
5 a Design Review for the demolition of an
6 existing structure, which was Mark's Dry
7 Cleaning, if you all remember, and the
8 construction of a five-story mixed use
9 building. The site plan featured
10 commercial units facing Sunset Drive and
11 20th Street, with parking for the
12 building on the first floor and part of
13 the second floor. Residential units are
14 located on the upper four floors with
15 private rooftop terraces on the top
16 residential floor.

17 At the time, no rooftop features
18 were included in the plans, and the DRB
19 order included the restriction, no
20 rooftop elements that are not explicitly
21 shown on the roof plans, and elevations
22 presented to the Board shall be approved
23 at a later date by Staff.

24 The Nahmads are seeking Design
25 Review approval from you all today for

1 modifications to the existing rooftop
2 terrace, including the addition of new
3 stairs directly for the unit below, with
4 a corresponding stair enclosure,
5 pergolas, a wood deck, artificial turf,
6 a dumbwaiter, outdoor cooking area,
7 cabinetry and planters along the
8 perimeter, along the parapet.

9 Additionally, the Nahmads and the
10 Association respectfully request
11 approval of the following modifications:

12 The condition of the DRB Order to
13 allow the Nahmads, the Association, and
14 other penthouse unit owners to make
15 similar rooftop improvements, to be
16 approved at Staff level, as may be
17 allowed by the Code of the City,
18 specifically deletion of Condition
19 B(4)(C) in the DRB Order to allow
20 rooftop improvements.

21 Second, a modification of Condition
22 B(13) and B(6) in the DRB Order to
23 remove the prohibition of outdoor
24 cooking at the residential terraces and
25 the Association's rooftop pool deck.

1 I'm going to invite A.J. up here.
2 He is going to give you a few remarks.
3 If you want to keep track of what
4 improvements we are proposing, they are,
5 of course, part of your handout. They
6 are listed there in a document.

7 without further ado, I'm going to
8 ask A.J. to offer some remarks to you
9 all.

10 MR. NAHMAD: Thank you, and thanks
11 for the time today. And it's hard to
12 follow the last owners. That was pretty
13 impressive.

14 This is very personal to us. This
15 is our home. As Michael said, we plan
16 for this to be our forever home. My
17 wife says she's going to die in this
18 place, so she's never moving again.

19 I thought it would be helpful to
20 give a little personal context. I grew
21 up in Miami. I grew up in Kendall, then
22 Coral Gables, went away to college in
23 Pennsylvania, where I met my wife almost
24 20 years ago now, which is crazy. We
25 lived in New York together for about

1 eight years, in Greenwich Village,
2 moved back down here to persue my
3 career, and today I'm the president of a
4 large public company based down here.

5 We originally moved to the Icon
6 South Beach, rented, and got to know
7 Miami Beach a bit. My sister lives in
8 Miami Beach. I have lots of cousins,
9 and Maggie has lots of cousins that live
10 in the Beach.

11 We found -- we were actually the
12 first to find the Palau. We got the
13 first marketing material in our news --
14 in our letter box, rather, and got the
15 first appointment with the broker, and
16 we immediately, on the site, signed the
17 subscription agreement, which was
18 mutually non-binding, I guess.

19 About a year or two later, there
20 was, like James -- Mr. Murphy suggested,
21 there was a contentious battle to get
22 the Palau built. We rode that out and
23 were patient.

24 But the reason that we loved the
25 space so much, is first of all because

1 Sunset Harbor is Sunset Harbor, and
2 thank you guys for helping make Sunset
3 Harbor what it is. I know that was a
4 big project of the City as well, and
5 it's fabulous. It is wherever you want
6 to be, it's where a lot of people want
7 to be. The building itself is
8 beautiful, and we ended up buying two
9 units, putting them together, and we
10 built it out as if it's our home.

11 It has a long hallway -- our
12 architect did an amazing job building
13 this thing, and it is our forever home.

14 I originally wanted a house so that
15 we could have a backyard, and do
16 barbecues, and the kids could run
17 around, and get in the pool, and so
18 forth. My wife wanted a condo because
19 it's safer and easier to maintain. I
20 travel for my work. So, this was an
21 amazing compromise because we have the
22 space of a home, kind of home on the 5th
23 floor of this unit, and the great
24 neighborhood, and while we have the home
25 inside, we also have the roof deck which

1 we could use as the backyard. That's
2 been the intent, that's still the
3 intent, and that's really what we are
4 here for today is just really to try to
5 make that dream a reality and create a
6 safe space that's nice, and friendly,
7 and kid friendly, that Maggie and our
8 son, Owen, can play and we can enjoy,
9 and hang out and enjoy -- it's a little
10 too hot today, but enjoy winters, you
11 know. That's it for me.

12 MR. LARKIN: Great. Thank you very
13 much, A.J.

14 I would like to have Tim Dupont
15 come up. He is our designer. He is
16 going to walk you all through the
17 drawings.

18 MR. DUPONT: Hi. My name is Tim
19 Dupont. I own Blue Design Company.
20 We've been working on this for years,
21 different iterations of it.

22 Basically, as Michael mentioned,
23 there are no variance requests. We
24 stayed within the parameters of what
25 would be allowed.

1 As a reference, on Page A-0.5, it
2 sort of gives you a feeling of the
3 building and a feeling of the interior
4 courtyard and the landscaping as it is
5 right now.

6 And A-0.6 shows you the extent of
7 the roof top for the Nahmads.

8 0.7 is what it looks like now. And
9 you can see the other units that are
10 finished behind it, especially in the
11 upper left picture, and the landscaping
12 that they have, as well.

13 0.8 is a sight line taken at the
14 midpoint of the backyards across the
15 canal that shows you that the structures
16 that were are proposing fall under the
17 sight-line of anyone who could see it
18 from those backyards.

19 There happens to be a park across
20 the street. Actually the back -- there
21 is only one backyard. There is a
22 backyard, there is a park, there is a
23 bridge and there is a canal. So, that's
24 what faces their terrace.

25 A-1.1 is what we propose; grass, a

1 wood deck, planter all the way around
2 the terrace, a little water area to the
3 upper right by those air conditioner
4 handlers. The two triangles in the back
5 are two hurricane nets so that we have
6 somewhere to store whatever they have
7 lose up there, in the event of a storm,
8 and they don't have to take it down.

9 To the -- in the center with the
10 skylights on the top, is a structure,
11 staircase coming from downstairs. And
12 the left of that is a pergola with
13 cabinetry, a sink, and a barbecue.

14 Contextually, on Coby's original
15 plans, A-4.01, the roof that is dropped
16 on the right, the section of the
17 building dropped on the right, that is
18 their rooftop and their unit directly
19 under it, so it sits lower than the rest
20 of the building.

21 This is the full elevations of the
22 entire --

23 CHAIRMAN BODNAR: Excuse me, how
24 much more time would you need for your
25 presentation?

1 MR. DUPONT: Three minutes.

2 CHAIRMAN BODNAR: Okay.

3 MR. DUPONT: The elevation showing
4 that everything meet Code and stays
5 within the limits.

6 These are the materials that we are
7 using; there is an existing wood
8 porcelain tile on the walls in many
9 locations, including the terrace. There
10 is existing white stucco walls. We are
11 proposing white fiberglass planters that
12 look like the white walls. The deck is
13 wood. And the walls of the structures,
14 since these are leaving them white
15 stucco, become reclaimed teak siding,
16 and we have synthetic grass that you can
17 use as recycled plastic bottles and soy
18 as its base, so everything is very green
19 that we are putting up here.

20 we have samples if any of you would
21 like to see.

22 Same thing but in color, just
23 illustrate the point of where everything
24 is located.

25 And then these are our renderings.

1 The left is the new pergola, the right
2 is the staircase bulkhead and planters.

3 What you can see behind, if you
4 look to the pergola to the left, the
5 white structure behind is the existing
6 structure of the building for the
7 penthouse that is behind it, that faces
8 the entrance to Sunset 3.

9 And then this is just a view
10 looking back across the terrace of what
11 our landscape architect designed, and
12 then the entire thing will end up being
13 covered in Bougainvillea when it's done.

14 All the plants, except a couple of
15 the flowers, are native throughout the
16 project.

17 That's it.

18 MR. LARKIN: Thank you very much,
19 Tim.

20 Mr. Chairman, I just have two
21 points left before -- one is about the
22 character of the hearing, then our
23 neighborhood outreach.

24 You know, since the Supreme Court
25 in 1992 filed this decision, something

1 called Snyder, it changed the character
2 of these hearings from legislative to
3 quasi judicial. And that elevated very
4 much the importance of the Staff
5 recommendations.

6 The Staff recommendations, what
7 they do, they look at design review
8 criteria, they apply it to all the
9 applications you all consider today.
10 The Staff recommendation is considered
11 substantial competent evidence. And
12 that's something that you all can rely
13 upon and feel comfortable in approving
14 this application.

15 Our application satisfies the
16 overall majority of this Design Review
17 criteria that are set forth in the
18 recommendations that you all have today
19 in your possession.

20 There are objectors here, and they
21 are going to ask you to deny this
22 application. It is their burden to
23 show, first, that somehow James'
24 analysis is flawed. And then second,
25 provide substantial competent evidence,

1 through expert witness testimony, not
2 lay person opinion, in order for you all
3 to rely upon to deny the application and
4 have something for a court to look at.

5 So, absent that, lay person opinion
6 is not relevant here. It is expert
7 witness testimony that forms substantial
8 competent evidence that you all must
9 rely upon.

10 But in our careful review of James'
11 analysis, we find no flaw in it.

12 And what James and his Staff did,
13 they actually visited the Palau, they
14 walked the rooftop terrace, they had a
15 very firm understanding, and as they
16 said in the Staff recommendation, the
17 proposed design does not adversely
18 affect the design vision of the original
19 architecture and will not negatively
20 impact any of the surrounding
21 properties.

22 And even in an operational basis,
23 we are very careful, we are not asking
24 to remove any condition regarding the
25 elimination of outdoor speakers, that

1 remains in place. And there is another
2 condition that says no live
3 performances, of course, that remains in
4 place. We are not a commercial rooftop.
5 This will be a family backyard. Period.
6 It might be construed to be something
7 else, in several e-mails that I had the
8 benefit of seeing in the last month or
9 so, but it is not. It simply will
10 function as a private family backyard,
11 not a commercial rooftop.

12 with regards to our outreach, of
13 course we reached out to the Board of
14 the Association, we met with them, they
15 approved it. There have been mail-outs
16 to all 53 owners of the Palau, there was
17 notice given to them.

18 We reached out to Marilyn Frohlich.
19 She's been an active force at Sunset
20 Harbor for a number of years, she lives
21 in the townhomes directly to the west of
22 us.

23 We met with Sara De Los Reys, the
24 Sunset Harbor Neighborhood Association.
25 They decided to remain neutral in all of

1 this, but we did meet with her, she had
2 no issue with the plans.

3 I reached out to Jackie Lalan.
4 She's the President of the Islands HOA
5 3 and 4. I've known her for a long
6 time. Even before notice went out, it
7 was important for me to call her and
8 talk to her about this. I sent her a
9 link with the plans knowing that it
10 would be wildly distributed, and that
11 was okay with me. It is better to be
12 transparent and not hide anything. So,
13 Jackie distributed the plans, and we
14 asked to meet with the Association and
15 the attorney.

16 I did talk to Tucker yesterday. He
17 is the attorney representing the
18 objectors, and we had a good
19 conversation.

20 Peter Luria is a long-time resident
21 of Sunset Islands 3. He can't be here
22 today. We met with him, he came to our
23 property, he's been here often in
24 connection with applications that you
25 all consider. With your permission,

1 Mr. Chairman, I would like to read his
2 letter of support into the record if you
3 feel that we have time. If not, I can
4 just submit it. It's your call.

5 MR. MURPHY: I also did forward
6 that letter to the Board Members, as
7 well as forwarded the various letters of
8 opposition to the Board Members that are
9 also printed and part of the file.

10 CHAIRMAN BODNAR: Thank you,
11 Michael, for making that clear.

12 MR. LARKIN: Would you like me
13 to --

14 CHAIRMAN BODNAR: No, I think we
15 all had the opportunity.

16 MR. LARKIN: Okay, very good.

17 CHAIRMAN BODNAR: Thank you.

18 MR. LARKIN: So, with that,
19 Mr. Chairman, I would like to reserve
20 time for rebuttal. Thank you very much.

21 CHAIRMAN BODNAR: I'm going to open
22 it up now to the public. Anyone wishing
23 to speak please come forward.

24 MR. GIBBS: Good afternoon. My
25 name is Tucker Gibbs with Law Offices at

1 3835 Utopia Court in Coconut Grove. And
2 I'm here today asking for you all to
3 continue this item. And I have some
4 other issues that I would like to talk
5 about. If I can have five minutes --
6 five to six minutes to make my
7 presentation. I'll give it a shot.

8 Because the applicant seeks the
9 removal of -- I represent Sunset Islands
10 3 and 4 Property Owners Inc. My clients
11 have a continuing interest in the Palau
12 development, in particular the provision
13 of the DRB Development Order that is at
14 issue today.

15 Because the applicant seeks the
16 removal of a condition that specifically
17 applies to all penthouse owners at
18 Palau, those affected unit owners
19 must -- should join as applicants. But
20 the only applicants here are the
21 penthouse owners and the Association.
22 And the record shows no resolution of
23 the Association that authorizes it to be
24 an appellant -- an applicant, excuse me,
25 nor is there any document giving the

1 authority to the applicant to represent
2 each of the penthouse owners in this
3 application.

4 Approval of this application would
5 allow one unit owner to seek deletion of
6 a condition on an Order that directly
7 applies to owners who are not applicants
8 and who may not want the changes. And
9 this matter should be continued until
10 the penthouse owners are included as
11 co-applicants.

12 In addition, Condition 4(B)(C),
13 which is the issue here today, is based
14 on the Planning Board's Conditional Use
15 Approval of the Palau project. The
16 Planning Board's condition states that
17 the applicant shall work with the Design
18 Review Staff to further modify the Palau
19 Development Proposal to address, among
20 other things, reducing the encroachment
21 on the line-of-sight from Sunset Islands
22 4, and that's Condition 5(A) of the
23 Order of the Planning Board for the
24 conditional use.

25 The Planning Board also retains

1 jurisdiction to modify the conditional
2 use approval.

3 The Design Review Board Staff, in
4 response to the Planning Board's
5 condition, worked with the developer to
6 revise the plans to reduce the
7 encroachment line-of-sight from Sunset
8 Islands 4. The DRB Staff Report on
9 October 2, 2012, specifically went
10 through this issue and discussed it in
11 the context of the issues relating to
12 Sunset Islands 4 and their sight line.
13 And the Design Review Board approved the
14 plans and imposed the condition that is
15 being sought to be rejected today. And
16 it reflects this implementation of the
17 Planning Board condition.

18 The applicant's request to delete
19 the condition in its entirety, in its
20 entirety, renders the Planning Board's
21 condition meaningless. The Planning
22 Board -- quite simply, deletion of this
23 condition by the DRB is contrary to
24 Section 5(E) of the Conditional Use
25 Approval, and the applicant has failed

1 to obtain Planning Board approval to
2 remove Condition 5(E), which is a
3 condition precedent to the Design Review
4 Board removal of its condition that it
5 protect the line-of-sight of Sunset 4
6 homeowners, which was part of the
7 Planning process -- part of the Planning
8 Board's decision for the conditional
9 use.

10 For this reason, also, this plan
11 should be continued until the Planning
12 Board addresses this matter and removes
13 its condition.

14 If the Design Review Board chooses
15 to hear this item, a look at the Staff
16 Report shows no factual basis for its
17 opinion. And that's really important
18 because -- because Michael discussed
19 Snyder, and the Staff Report is not
20 competent substantial evidence under
21 Snyder, it is not fact-based. So, look
22 at that report. It shows no factual
23 basis for its opinion that the
24 elimination of the sole condition that
25 addresses a protection of the

1 line-of-sight from Sunset 4 Homeowners,
2 will not negatively impact those
3 homeowners line-of-sight. Everything is
4 being deleted that protects that.

5 The report does not explain how the
6 elimination of this condition's
7 protection, quote, provides an efficient
8 arrangement of land uses when paying
9 particular attention to the surrounding
10 neighborhood and sight lines, as
11 required in criteria No. 7 of your
12 review criteria, nor does it explain how
13 these rooftops -- allowing these rooftop
14 structures and other elements would,
15 through the removal of the protection of
16 Section B 4(C) meet the criteria 6,
17 which requires a sensitivity to and
18 compatibility with the environment and
19 adjacent structures, given the Planning
20 Board's directive.

21 This is the only explanation Staff
22 gives for the complete -- complete
23 removal of the DRB protections and the
24 line-of-sight, that they understand and
25 they're sensitive to it. But as

1 building and neighborhoods evolve, Staff
2 is open to new proposals and revisions
3 for the redesign of this project. This
4 project was approved in 2012. The
5 question is, what happened? There are
6 no facts that supports the assertion
7 that there has been any changes that
8 warrant this removal of an important
9 protection, nor is there any facts
10 showing that the removal of the
11 condition will not negatively impact
12 surrounding properties. Removing this
13 provision allows encroachments into the
14 line-of-sight, contrary to Criteria 7,
15 and the Planning Board Order.

16 The bottom line here is, I'm just
17 finishing -- the bottom line here is the
18 applicant bought the property knowing
19 its limitations and paid a price based
20 on the value of the property with those
21 limitations.

22 The applicant now seeks to expand
23 its use of the property and allow
24 unlimited encroachments into the
25 line-of-sight by completely

1 eliminating -- completely eliminating
2 that important protection granted by the
3 DRB and the Planning Board to Sunset
4 Islands 4 Homeowners.

5 We urge you to confirm the promise
6 made to the neighborhood by the DRB in
7 2012 by implementing the Planning
8 Board's request to produce encroachments
9 in the line-of-sight of Sunset 4, and
10 deny this application.

11 I would like to place into the
12 record the basis of my presentation,
13 which are the Planning Board's -- the
14 recommendation of the Planning
15 Department, the Planning Board's Order,
16 the DRB recommendation from all these --
17 from 2012, and the DRB Order from 2012,
18 plus a presentation that was made to
19 this Board in 2012 regarding sight
20 lines.

21 CHAIRMAN BODNAR: Thank you.

22 BOARD MEMBER KRIPLEN: I have a
23 question. Concretely, sight lines, what
24 is the issue?

25 MR. GIBBS: The issue is being

1 able -- the issue, and Mr. Bienstock is
2 going to speak to it, is the concern of
3 the Association that this big structure,
4 and I know Mr. Murphy spoke about the
5 massing, and the height, all of that was
6 very important, and it came down to the
7 use of the rooftops and what would be on
8 those rooftops, how close to the
9 waterway those activities would be. And
10 the result, as a compromise, with the
11 developer, and brought before this Board
12 for approval, which this Board approved,
13 those issues came to protect the people
14 who live on Sunset Islands 4.

15 BOARD MEMBER KRIPLEN: I understand
16 that, and you went through that in your
17 presentation, but specifically when you
18 say sight line, you mean that the people
19 in Sunset Islands 4 have to look at this
20 roof deck, that is what you're saying
21 concretely.

22 MR. GIBBS: Be impacted by it --

23 BOARD MEMBER KRIPLEN: Having to
24 look at it.

25 MR. GIBBS: Okay, have to look at

1 and listen to it, and see it. And see
2 it at night, the lighting and everything
3 else at night.

4 BOARD MEMBER KRIPLEN: Okay.

5 CHAIRMAN BODNAR: Three minutes?

6 MR. BIENSTOCK: I'm speaking on
7 behalf of the Association. I would
8 appreciate five minutes.

9 CHAIRMAN BODNAR: Okay.

10 MR. BIENSTOCK: Terry Bienstock,
11 2312 Bay Avenue, Sunset Islands 3. I'm
12 also Vice President of the Sunset
13 Islands 3 and 4 Association.

14 I was President of the Association
15 during the entire Palau project, over a
16 decade, both from the inception through
17 the permitting and construction of
18 Palau, and through the transition to a
19 condo association and through the
20 Nahmads' transition of buying an
21 apartment and actually reaching out to
22 me a few years ago to make some of these
23 changes.

24 So, let me back up because it's
25 important for you all to understand who

1 we are and why we here. We are not
2 meanies. We are not trying to ruin
3 somebody's backyard. This is not their
4 backyard. This was a roof deck that had
5 severe restrictions placed upon it as a
6 deal with the developer by our
7 homeowners, 120 homeowners, to make sure
8 that this did not become party central,
9 that these decks would not be used in a
10 way -- and would not be visually seen in
11 a way that would impact.

12 Now, remember what Palau was.
13 Before Palau there was Mark's Cleaners
14 there. It was a one-story building.
15 There was no stories. We had the Sunset
16 townhouses that were two stories, and
17 five stories on the street side, but on
18 the bay side it was only townhouses.

19 The transition between single
20 family home neighborhood and a
21 condominium development and mixed use
22 neighborhood is a complex one that the
23 City has had to deal with many times.
24 Palau is one of the first times we had a
25 direct relationship where you were

1 literally building a five-story
2 condominium building right across the
3 street from single family homes, with
4 views from their back -- from their
5 balconies into the backyards of these
6 single family homes.

7 So, needless to say it became very
8 contentious in 2011/2012. The owners of
9 the Sunset Islands were up in arms
10 because we had fought successfully with
11 the Sunset townhouses, 20 years earlier,
12 those were supposed to be two towers,
13 and we negotiated a resolution with them
14 where they built townhouses instead that
15 were low impact on the water.

16 So, we put together a team, our
17 residents included some of the leading
18 developers and architects in the
19 country, not just in the area, but in
20 the country, people like Chad Oppenheim,
21 and Scott Robins, Coby Carp was the
22 architect, he lived on our island. He
23 was the architect for Palau. This was a
24 very cordial, productive relationship
25 where we sat with them and said, look,

1 we wants you to redevelop this project,
2 we want you to build Palau, we just want
3 a more of a transition so people aren't
4 looking into backyards, and there is not
5 going to be a lot of noise, and odors,
6 and, you know, visual pollution.

7 Build townhouses on the water, and
8 then you build your five-stories on the
9 street. And they said no, no, no.

10 How about if we build four-stories
11 on the water, and instead of townhouses
12 and five-stories on the street.

13 And we said, no, how about if you
14 build three-stories on the water and
15 then step them back -- the bottom line,
16 we went back and forth, and back and
17 forth over a period of years, while we
18 were going to the Planning Boards, and
19 the DRB, and the Commission, and back
20 and forth on the various things, until
21 we negotiated a resolution, supported by
22 staff. What's incredible to us is that
23 after having spent \$100,000 fighting
24 this in 2011/2012, we are here having
25 to do this all over again, as if it

1 didn't happen.

2 we reached a settlement. The
3 building was built according to that
4 settlement. There was a process in the
5 settlement. If anyone had a problem
6 with it and they wanted to change
7 anything, they had an obligation to come
8 to us first, not after, first. They had
9 an obligation to come to our Association
10 and seek modifications, and we could say
11 yes or no.

12 In fact, this owner came to us
13 first, a few years ago, about doing --
14 making changes to the roof deck. And we
15 said, "Have you gotten Palau's
16 approval?" This is still when it was
17 owned by Palau. "Have you gotten
18 Palau's approval, because that is
19 required under the Agreement," and they
20 came back and -- never came back to us.
21 And my understanding is that Palau
22 turned them down.

23 So, this is not folks who, gee, we
24 are shocked we surprised, this has
25 nothing to do with the Nahmads, I'm sure

1 they are lovely, lovely people, I know
2 that is why there is only one resident,
3 out of 140 homes, that you have seen the
4 support for their application, and
5 that's because what he told me is he
6 apologized with me and said, "They are
7 my friends, I have to support them,"
8 even though he was leading the
9 opposition to Palau with me. He was on
10 the Board and leading the opposition.
11 And I get it.

12 But it's not about the Nahmads.
13 Everything you approve today is time
14 six. Every structure you see that they
15 are proposing is times six, because it
16 means every other homeowner can do the
17 exact same thing, and all of a sudden,
18 and you have -- so I have photos I want
19 to hand out --

20 CHAIRMAN BODNAR: Do you need
21 additional time?

22 MR. BIENSTOCK: Yes, if I could, a
23 couple of more minutes.

24 CHAIRMAN BODNAR: Do you want to
25 keep it to two?

1 MR. BIENSTOCK: I'm going to do my
2 best. I have a few things I have to get
3 through. We are representing -- instead
4 of having 120 people here, I have a
5 Petition with almost 80 signatures from
6 our homeowners opposing. Not one, 80.
7 I have a Resolution of our Board that
8 was unanimous opposing this application,
9 I'm handing it up to you. And when the
10 City said, "Your contract with Palau,
11 that's between you and the Association,
12 the Condo Association, the Nahmads, that
13 has nothing to do with the City," we
14 filed suit last week against the Condo
15 Association, and Palau to enforce the
16 Settlement Agreement and to ask for
17 Injunctive Relief that they cannot do
18 what they are asking to do today.

19 we believe that it should be --
20 this should be summarily denied because
21 it changes the fundamental agreement
22 between the parties that allowed this
23 building to be built. Absent this
24 Agreement, this building would not have
25 been built.

1 And now they are coming in a few
2 years later, where the Agreement worked,
3 it got built, it got sold out one week,
4 everyone who bought knew what they were
5 buying, and the restrictions of what
6 they were buying, and the same problems
7 arise today and they arose in 2012.

8 For the people, and some of them
9 are here and are going to speak, people
10 who live across the canal do not want
11 this. And I don't mean some of the
12 people, I mean all of the people,
13 because they have all signed the
14 petition and they are all opposed to it.

15 You have to take into account, as
16 one of the criteria, how this will
17 impact the neighborhood and the
18 neighbors. And we went through this in
19 2012, and Staff agreed with us, that
20 this was impactful to the neighborhood,
21 and supported, reducing the height of
22 the building along the canal, and along
23 Sunset Drive, and this would literally
24 undo everything we accomplished in 2012.

25 And we ask that it not be done,

1 that the -- what they have described to
2 be built is nothing short of just
3 another story, the fifth story that we
4 got taken out is now coming back with a
5 vengeance. And now during the day
6 having, you know, parties there and
7 people there, and at nighttime with
8 lights, it is just not what we signed up
9 for and it shouldn't be allowed.

10 Some of our residents want to come
11 and speak. Thank you.

12 CHAIRMAN BODNAR: Thank you.

13 MR. LEHR: Francis Lehr. I live on
14 Sunset Islands 4 for 15 years, 1460 West
15 21st Street, the sixth house in on the
16 canal.

17 I was not involved in -- I have
18 lived there for 15 years. I did not get
19 involved in the contentious 2011/2012
20 designing, but I knew it was going on.

21 I was happy with the end product.
22 I can see it very well from my master
23 bedroom, from the living room of my
24 home. I can see the northwest corner,
25 the northwest penthouse, not the

1 Nahmads' penthouse. And I can very well
2 see that -- it must be the common
3 stairway that comes up. And the reason
4 I'm here to object to it today is that
5 you will have -- you do have all those
6 different penthouses, and they are in
7 the line-of-sight. And what's so
8 beautiful about it right now is it's
9 very clean and uniform, and you really
10 do see it from the home, and I do think
11 it was well thought out by the City of
12 Miami Beach, and the developer, in
13 conjunction with, you know, the Board of
14 Sunset 3 and 4. It's a transitional
15 location between the commercial district
16 of Sunset Harbor and Lower North Bay
17 Road and the Sunset Islands, and so
18 really some of this taller structures on
19 the building do face the commercial
20 neighborhood. And on the more
21 residential side, the Sunset Islands and
22 the North Bay Road, they don't -- your
23 line-of-sight is more protected. And I
24 think about it now, especially since
25 this has come up, I can see it from my

1 bedroom, and I do think it's a beautiful
2 building. I think it's a great addition
3 to the neighborhood.

4 My concern, and the reason for my
5 objection today, is that in the
6 line-of-sight, there will be -- there
7 could potentially be everybody in the
8 penthouse will have a new stairway
9 coming out of their apartment somehow,
10 and different -- everybody has different
11 tastes, so, what's a beautiful pergola
12 to one guy might not -- the next door
13 neighbor might have a different notion.
14 So, instead of being uniform, and
15 beautiful, and modern, really what they
16 ended up with was a big success, you
17 know, I think it's a great part of
18 Sunset Harbor, it's going to be not
19 uniform and potentially cluttered, and
20 we just don't know. And, so, that's why
21 I'm here to object today. Thank you.

22 CHAIRMAN BODNAR: Okay. Thank you.

23 Anyone else? Please come forward.

24 MS. TOBIN: Hi. My name is Teresa
25 Tobin, 120 Street, Apartment 208. I do

1 not have a penthouse at Palau, sadly.

2 I would like as much time as
3 Mr. Bienstock had.

4 Sadly, some of our residents at
5 Palau were not aware of everything that
6 was going on for A.J., and Erica, and
7 their lovely children, otherwise I'm
8 sure we would have a house full of
9 people.

10 I took time out of my day, recently
11 married, and sat here all afternoon
12 because this is important to us. Not
13 just because it's A.J., his wife and
14 lovely children, but because it matters.

15 You know, I moved to Palau because
16 of all of the effort that Mr. Bienstock,
17 you know, made. The grassroots effort
18 that sold the building out in one week.
19 Your decisions, okay, made that amazing
20 building and made that one week sell out
21 possible. Why wouldn't you want to live
22 in that building? It's small, it's
23 boutique, it is beautiful, absolutely
24 beautiful. It's the reason why I moved
25 there, it's the reason why I live there,

1 and it's the reason why people like
2 A.J., and Erica, who have, you know, the
3 benefit of living anywhere else, chose
4 that as their primary residence,
5 absolutely.

6 And I can't thank Mr. Bienstock and
7 the residents of Sunset Islands 3 and 4,
8 and anybody who, you know, put forth
9 that amazing effort to block the
10 developer and make sure that, you know,
11 whatever had to happen to make that
12 boutique building unique, you know, did
13 so.

14 And, for the record, I'm an owner's
15 rep and I do this for a living, and I
16 never imagined I would say those words.

17 But, you know, I chose that
18 building because there is a handful of
19 units. And I was one of the first
20 people to live in that building. And I
21 know everybody. I talk to everyone.
22 I'm originally from the Midwest, I'll
23 talk to a wall.

24 And I know my neighbors, and I know
25 the Board, and I can tell you that we

1 have very strict guidelines in that
2 building. And I think that what worked
3 really well to protect everyone, back
4 then, did a very effective job.

5 Now, you know, I heard
6 Mr. Bienstock say that, you know, there
7 is an obligation for the DRB and for
8 everybody to go back to them and say,
9 "Hey, we need to change things up." I
10 disagree. Because you know what, what
11 worked in 2011 and 2012 is no longer
12 relevant today.

13 I believe, okay, that sight
14 lines --

15 CHAIRMAN BODNAR: Do you need more
16 time?

17 MS. TOBIN: I do, please.

18 CHAIRMAN BODNAR: One minute.

19 MS. TOBIN: I need at least seven
20 more minutes, please.

21 CHAIRMAN BODNAR: I'm sorry, but --

22 MS. TOBIN: Five more minutes,
23 please.

24 CHAIRMAN BODNAR: How about three?
25 we'll see if you can get --

1 MS. TOBIN: I will do my best.

2 Thank you.

3 I believe that what is being
4 proposed for the penthouses, or for the
5 penthouse, okay, or at least what is
6 being presented for A.J., okay, with
7 everything being setback closer to the
8 center, I believe what is being proposed
9 is no more of a nuisance than just the
10 decks that are in back, the balconies
11 that exist today.

12 I believe that kayakers passing by,
13 and boats, I believe that the neighbors
14 next door to, you know, the single
15 family homes, are more of a nuisance
16 than any of the penthouse unit owners
17 will ever be, just acoustically, having
18 done a million acoustic tests in the
19 past for other residents, and knowing
20 our building.

21 So, I believe that delaying this
22 application for another hearing is a
23 waste of taxpayer dollars. I think it's
24 a waste of time. I think it's -- it's a
25 big mistake because you guys already

1 achieved what you were set out to do
2 back in 2011 and 2012. That is no
3 longer relevant.

4 Further, as far as sight lines are
5 concerned, if the concern is what -- an
6 inconsistency, okay, in what's being
7 designed, then just stipulate that, you
8 know. It is something that I believe
9 can easily be achieved through our Condo
10 Association.

11 And if you want what A.J. is
12 proposing to set a precedent for other
13 penthouse unit owners, then make that as
14 such, don't let that delay what you are
15 doing here today.

16 So, Mr. Bienstock, and all of you
17 guys, what you have done, thank you, you
18 have created an amazing place for me to
19 live in, for people like A.J. and the
20 rest of us at Palau to live in.

21 I have a 24-year-old disabled son,
22 and I chose that building because there
23 is only, like, 38 residents who live
24 there. I don't want to live in a
25 highrise, like the 1800, 1900 building.

1 And guess what, there is no where else
2 on the Beach that I can live.

3 So, to all of you Board Members, I
4 hope you will accept their application.
5 I hope that you will approve it without
6 delay. There is no reason to delay this
7 application, and I speak on behalf of,
8 you know, the rest of our neighbors who
9 didn't know this was happening today.

10 So, I urge you to please approve
11 this application.

12 CHAIRMAN BODNAR: Thank you.

13 Anyone else wishing to speak?

14 MR. MORBER: Good afternoon,
15 Mr. Chairman. My name is Andrew Morber,
16 and I've been a resident of Sunset
17 Islands 3, same home, since 1983, a
18 resident of Miami Beach before that,
19 former Deputy City Attorney.

20 So, when Mr. Larkin talks about
21 experts and zoning, I lived it quite a
22 bit here. I have testified in court on
23 zoning issues, et cetera, although I no
24 longer practice.

25 So, first thing I think you need to

1 look at is the application. You know,
2 your application forms are very
3 specific. They say you have got to list
4 the owners. If the owners are a
5 corporation, you have got to list the
6 people behind the corporation. I guess
7 even before Russians were invented in
8 the last political cycle, we knew we
9 wanted to know who the Russians are, if
10 they owned things.

11 This application simply lists unit
12 owners, several of which are Limited
13 Liability Corporations, with no
14 disclosures of the ownership behind it.

15 So, in that respect, the
16 application is inefficient and defective
17 because it does not meet the disclosure
18 requirements of the City.

19 Now, second thing is, I think you
20 need to look at the general rule of
21 zoning. And the general rule of zoning
22 is, you can't come back and ask for
23 modification of something that was an
24 order, first of all, in part, not in
25 whole, and it's impossible to do this

1 one in part because the building is
2 built already, but the change of
3 circumstance -- there has got to be a
4 change of circumstances.

5 Now, what's the change of
6 circumstances here? Building was
7 permitted, or approved, by this Board in
8 2012. I did a little research last
9 night. I learned that man learned to
10 cook with fire some time between 200 and
11 400,000 years ago. So, I don't
12 understand what the change of
13 circumstances is.

14 Sunset Harbor, the Sunset Harbor
15 Townhouses, were built before 2012. The
16 various things across the street, all
17 built before. There is no change of
18 circumstances. The change of
19 circumstances is that this particular
20 owner would like something. I
21 understand he would like that. But,
22 that, in and of itself, is not a valid
23 change.

24 Now, last thing, if you look at the
25 Zoning Analysis, when they talk about

1 this building, they show the allowable
2 floor area ratio is 109 -- 109,530
3 square feet existing as 108,994 square
4 feet, or 536 feet under the allowed. It
5 could be argued that's the pergolas and
6 all that add 500 feet, not the 106 feet
7 that the applicant's math shows.

8 Do that times seven or eight, you
9 have now gone well beyond the permitted
10 floor area ratio of this building.
11 That's a variance. A variance requires
12 a unique and peculiar hardship. As much
13 as I love grilling myself, inability to
14 grill is not a hardship.

15 Therefore, I hope you will deny
16 this application, and respect the
17 Agreement that the applicant's
18 predecessor in fact made by accepting
19 the DRB Order and building the building.
20 Thank you.

21 CHAIRMAN BODNAR: Thank you.

22 Anyone else wish to speak?

23 MR. MUSKCAD: Hi. Thank you for
24 having me. My name is Michael Muscad,
25 and I respectfully request that you

1 don't approve this application.

2 This will negatively impact and
3 affects me, more than anyone you have
4 heard here today. Why? Because it is
5 my home that is directly behind Palau.
6 1420 West 21st Street.

7 So, everything you have heard from
8 everybody that is against this approval,
9 I'm probably the main person you should
10 listen to.

11 I, and my family, have owned and
12 own homes and businesses in Miami Beach
13 for over a decade. My family's Sunset
14 Island home was built and has been
15 around way before Palau was developed.

16 I respectfully request you don't
17 approve this application, or that you
18 continue it, of making a decision, for
19 the following reasons that negatively
20 impact me:

21 1. Line-of-sight. My home's
22 backyard directly looks at Palau. And
23 in 2012, there were many, many meetings
24 with the developer, and an Agreement was
25 made as to the line-of-sight, as to how

1 the rooftops will be used, and what
2 would be allowed.

3 In fact, an Agreement was made with
4 the developer and with our Association.

5 Noise. There is a canal right
6 behind my home between me and Palau.
7 And as you all know, if you have been
8 boating, sound travels quickly and
9 easily above water. And at that height,
10 towering down at my home, I'll hear
11 everything.

12 There is a reason the developer
13 didn't originally put stairs in each
14 unit. There is a reason the developer
15 originally didn't put structures on the
16 rooftops of these penthouses. And you
17 know that reason. It was an Agreement
18 made with our Association.

19 But today they are trying to break
20 that deal. In fact, our Association
21 filed a suit against Palau last week,
22 which is another reason that the Board
23 should consider waiting and hearing what
24 happens with that case before making a
25 decision.

1 In closing, I'm sure that the
2 Nahmad family is nice. So is my family.
3 I'm married, I have kids too. However,
4 we don't know the other penthouse owners
5 if they're married, and they have kids,
6 or, if they are not nice, if they are
7 single party animals, because the Nahmad
8 family is not coming here just for their
9 rooftop. This is for all the rooftops.

10 In closing, and finishing now,
11 everyone who bought at Palau knew this
12 when they purchased their units. They
13 were aware of it. It's not a surprise
14 to them. It is now that they are trying
15 and wanting to make this change.

16 I respectfully request you wait to
17 make this decision, or that you don't
18 approve it. Thank you for your time.

19 CHAIRMAN BODNAR: Thank you very
20 much. Anyone else?

21 MR. GERSKY: Good afternoon. My
22 name is Darren Gersky. I serve as
23 General Counsel to the Palau Condominium
24 Association.

25 I just want to clarify a couple of

1 comments made and give you an
2 explanation as to the Association's
3 position with respect to the
4 application.

5 So everybody is aware here, and I
6 think Tucker may have mentioned this
7 earlier in the presentation, the
8 Association had a duly noticed Board
9 Meeting and approved, by a majority of
10 the Board of Directors, to join in on
11 the application to assign. So, the
12 Association did operate with proper
13 protocol. The signature of the
14 Treasurer on the application, Ben
15 London, was done in accordance with
16 Florida Law, and it should be accepted.

17 With respect to the signing of the
18 application, putting aside whatever the
19 lawsuit that Sunset Harbor 3 and 4 may
20 have initiated, while we believe there
21 are significant flaws with respect to
22 that lawsuit, we don't believe that that
23 lawsuit should be utilized to some sort
24 of threat, or delay dilatory tactic with
25 respect to your rule to proceed in

1 passing of this -- or proceeding with
2 the approval of the application.

3 And just so you're further aware,
4 we haven't even yet been served with
5 such a lawsuit, although we are aware of
6 it, we haven't been served with it, so
7 we don't know if that is just more of
8 the dilatory tactics with respect to
9 this particular proceeding.

10 But the Association supports it
11 and, obviously, there would be aspects
12 to whatever ultimately, if the
13 application is approved, the Association
14 has separate obligations on their end
15 with respect to its governing documents.

16 One last point. I think there is
17 some further maybe confusion with
18 respect to Sunset 3 and 4's position
19 with this particular application. The
20 outdoor cooking component to it, the
21 Association desires for all its unit
22 owners, and interestingly enough, all
23 the unit owners look across the water
24 and see the Sunset Islands people
25 cooking, so it is, say, sort of

1 confusing as to why there would be any
2 sort of objection related to that
3 component of the application.

4 That's it. Thank you very much for
5 your consideration.

6 CHAIRMAN BODNAR: Thank you.

7 Michael, is there anyone else that
8 wants to speak before your rebuttal?

9 I see no one. So, how long would
10 you like?

11 MR. LARKIN: Let's start with five
12 minutes.

13 CHAIRMAN BODNAR: Okay. Try to do
14 five.

15 MR. LARKIN: So, just different
16 points on rebuttal, Mr. Chairman, Board
17 Members.

18 With regards to line-of-sight
19 drawing, it is clearly in your
20 architectural drawing packet. We used
21 the same one from 2012 DRB approval.
22 The only thing visible from the
23 line-of-sight, and just to be clear
24 about what light-of-sight means, it
25 emanates from the rear yard of the homes

1 on the north side of the canal, and then
2 it goes angle going back towards the
3 Palau. The only thing visible are the
4 plantings in the planters.

5 Now, we have the ability to push
6 back the planters themselves three feet
7 from the parapet, but it is also
8 important to note that the parapet
9 itself is setback eight feet already
10 from the edge of the roof. So, we could
11 setback the planters even more. That
12 would be over 11 feet from the edge of
13 the roof, and we are happy to do that,
14 if that resolves this particular issue.

15 Just as a starting point, the only
16 thing visible in the line-of-sight are
17 the plantings and the planters.
18 Everything else, all the taller
19 elements, are pushed back to the south
20 side of the rooftop terrace and not
21 visible at all in the line-of-sight.

22 A remark was made that we are right
23 next door to the single family homes.
24 That is not correct. There is a
25 120-foot wide canal, along with the rear

1 yards between us and the single family
2 homes on the north side of the canal.

3 With regards to the Nahmads'
4 particular configuration, you have one
5 single family home, then you have a pump
6 station, and then you have a park, and
7 then you have a bridge. Those are our
8 neighbors collectively.

9 We do have support, more than just
10 Mr. Luria. There has been eight that
11 signed a support petition that has been
12 given to James. There was a comment
13 made, there are six penthouse units
14 facing north, there are four.

15 There are multiple references to an
16 Agreement. Well, first, we don't
17 believe this Agreement is relevant to
18 this proceeding.

19 Second, we believe that the
20 Agreement is actually no longer valid.
21 It had a finite life in between the time
22 that they were litigating and the time
23 that the TCO issued. Other than that,
24 we believe the Agreement is no longer
25 valid.

1 As an alternative position, even if
2 you assume the Agreement is valid, we do
3 not believe we violate the Agreement.

4 But that's all that I really want to say
5 about it because as has been mentioned,
6 a lawsuit has been filed, based upon our
7 alleged violation of the Agreement, and
8 I'm confident the trial court will sort
9 that out. But it's not relevant today
10 to this proceeding.

11 With regard to the last comment
12 made by Mr. Bienstock where he went into
13 a little bit of an exaggeration mode
14 saying parties, people and lights.

15 You know, bear in mind that the
16 Nahmads are not party people. And the
17 very idea that somehow owners of
18 multi-family units are somehow less
19 responsible in their conduct than owners
20 in single family homes is simply
21 ridiculous. They are going to be in the
22 same level of conduct. And if you look
23 at the noise handout that Mr. Amster
24 passed out to you all, the conditions in
25 the DRB Order remain in place. There

1 will never be outdoor speakers here,
2 there are no live performances. The
3 City has very strict regulations
4 regarding noise. After 11:00 p.m. you
5 cannot make any noise that is plainly
6 audible, which means conversations more
7 than 100 feet from your property. The
8 Condo docs themselves prohibit any type
9 of nuisance. So, if anything was going
10 on in the rooftop, the Condominium
11 Association would take action first to
12 protect the peace and quiet of its
13 residents before anything else.

14 Mr. Lehr talked about different
15 color pergolas, but of course the
16 pergolas will be outside the
17 line-of-sight. You won't be able to see
18 any of the pergolas because they are
19 recessed for the south part of the
20 rooftop terrace.

21 Again, there was -- the last
22 speaker made an elusion to party
23 animals. You know, lighting can be down
24 lit. They are simply the concerns that
25 they are voicing to you all will not be

1 realized by these modifications.

2 In summary, the objectors did not
3 meet their burden. They did not show
4 that James' analysis was flawed. They
5 did not introduce any expert testimony
6 to serve as substantial competent
7 evidence for you all to depend upon to
8 deny this application.

9 We, again, respectfully request
10 that you approve this application.

11 The last thing I want to do is
12 invite Tim up here to walk you all
13 through the line-of-sight drawing just
14 to be clear, because I can tell you, but
15 it's also easier if you see it, as well.

16 MR. DUPONT: Could I have this back
17 up?

18 This is the line-of-sight drawing
19 from the mid point of someone's
20 backyard, approximately 160 feet from
21 the edge of the building. And as you
22 can see, the only visible thing are the
23 plantings and the planters.

24 The pergola and the stair structure
25 are pulled all the way to the right, on

1 purpose, so that they would be out of
2 the line-of-sight.

3 If we, as was noted earlier, pulled
4 back the planters another three feet,
5 you would not see the planter at all.
6 However, the planter is white stucco,
7 just like the building, so it will just
8 look like another element of the
9 building. And we are more than happy to
10 pull that back three feet and wrap it
11 with wood. So, it clearly shows that
12 you can't -- you can't see anything.

13 As a matter of fact, we've gone
14 over to the park, several times, across
15 the way and looked up to see, and you
16 can barely see the neighbor behind it,
17 which is several feet higher.

18 CHAIRMAN BODNAR: Okay.

19 MR. LARKIN: Thank you, Tim.

20 That's all, Mr. Chairman.

21 CHAIRMAN BODNAR: Thank you very
22 much. I'm going to close the public
23 portion of this hearing and turn it over
24 for the Board to comment.

25 BOARD MEMBER KRIPLEN: I have a

1 question for the POA. I just read the
2 Settlement Agreement. Where in the
3 Settlement Agreement is Palau bound with
4 respect to subsequent projects?

5 MR. LARKIN: It's not.

6 BOARD MEMBER KRIPLEN: That's what
7 I thought.

8 MR. LARKIN: That's the way it was
9 written, perhaps wrongfully, but that's
10 the way it was written.

11 BOARD MEMBER KRIPLEN: I support
12 this application. I don't see a
13 hardship across the canal to having to,
14 you know, this sort of line-of-sight is
15 being -- that phrase is being used, but
16 concretely we are talking about they are
17 going to have to look at a roof deck
18 with plants. I actually think it's an
19 improvement over -- right now you
20 have -- I don't know if this is for A/C
21 or elevator, you have these boxes on top
22 of the building.

23 As for noise, you know, we already
24 have ordinances. You know, I have --
25 you know, this isn't -- this isn't a

1 nightclub that they are proposing to
2 open up on, you know, they are putting a
3 roof deck for their family, and this is
4 residential.

5 You know, so there is nothing to
6 preclude the folks from Palau to call
7 and complain if there is noise.

8 So, I don't see noise as a relevant
9 consideration. I don't see the
10 disruption of the line-of-sight as being
11 particularly burdensome on the Sunset
12 Islands folks.

13 I would agree that this Settlement
14 Agreement does not apply to this
15 particular project.

16 So, I see no reason -- oh, and the
17 fact that -- an argument was made that
18 because this Complaint was filed last
19 week, that we should not act. I don't
20 think that is a persuasive argument.
21 One of the forms of relief that Sunset
22 Islands sought in this Complaint is an
23 Injunction. And, so, if the Court wants
24 to enjoin these proceedings, they can.
25 I would not do that voluntarily.

1 So, that's what I have to say about
2 this.

3 CITY ATTORNEY: And since they said
4 to invoke the Settlement Agreement, I
5 just want to advise the Board that I've
6 reviewed the Agreement, I've met with
7 both sides here, neither the Agreement
8 nor the litigation involved the City at
9 all, and we not parties to either.

10 So, we take no position on the
11 Settlement Agreement. Nothing in the
12 Settlement Agreement bars the
13 application from being heard or approved
14 by the Board, and, you know, everything
15 that you've heard -- heard about, as to
16 the settlement or litigation, we
17 consider a private dispute.

18 CHAIRMAN BODNAR: I live south of
19 5th, and there is extremely stringent
20 rules and regulations about sounds,
21 lighting, activities. It's a pretty
22 strong operation, if you are familiar
23 with it, and it makes that character and
24 neighborhood completely different from
25 everything north of 5th, of course. And

1 I think that we could set up or one
2 could set up a set of guidelines that
3 would be applied to all terraces and
4 rooftops at this building.

5 I do think, also, that there is a
6 precedent being set here in terms of the
7 planters being pulled back, or the
8 stucco color matching the building, and
9 all of that which we would want to be
10 consistent, and would also ask the
11 Condominium Association to be a party to
12 that decision, and understand that all
13 the other rooftops -- and I assume these
14 are roof rights that these people have.

15 MR. LARKIN: Say that again,
16 Mr. Chairman?

17 CHAIRMAN BODNAR: These are roof
18 rights? They have the complete rights
19 to their rooftops?

20 MR. LARKIN: Right. It's a
21 completely common element that they have
22 exclusive access to.

23 CHAIRMAN BODNAR: And we would want
24 to encourage that the Condominium
25 Association be party to those

1 consistencies that could make this
2 elevation improve, as you were saying,
3 and make it more unified over time as
4 the owners came in.

5 And the same requirements and
6 setbacks and requirements and all the
7 other things that could be seen and
8 should not be seen by the one.

9 BOARD MEMBER SHELDON: I would
10 include a plant palette in those
11 considerations with the Condominium
12 Association, as well. But also, Tim,
13 you had mentioned something about
14 pulling the planters back an additional
15 distance?

16 MR. DUPONT: If we pulled them back
17 an additional three feet, they would be
18 eight feet from the edge of the parapet.
19 You would never even -- in these
20 people's front yards, you wouldn't be
21 able to see the planters.

22 BOARD MEMBER SHELDON: Would you
23 consider making those planters wider, as
24 opposed to just pulling them back, so
25 that they still nestled up against the

1 railing, instead of five feet wide --

2 MR. DUPONT: They are at three feet
3 now.

4 BOARD MEMBER SHELDON: Six feet
5 wide.

6 MR. DUPONT: They could be
7 five feet wide, and have more planting
8 in them.

9 BOARD MEMBER SHELDON: So that you
10 have a little bit denser planting, in
11 addition, and that would be on the north
12 side only, where you would have that
13 width, which would also keep people
14 further from the rail and protect the
15 privacy of those on Sunset Islands from
16 views from above, from the rooftops.

17 MR. DUPONT: Sure.

18 BOARD MEMBER SHELDON: I'm just
19 going through one technical thing in
20 here, since I've got the mike on, that
21 is, I think you need to take another
22 look at how you are tying down the
23 trees. If this moves forward, you need
24 to look again how you're tying those
25 trees down, securing them with a dead

1 man.

2 MR. DUPONT: We'll need a
3 structural engineer when we get to that
4 point.

5 BOARD MEMBER SHELDON: I think it's
6 going to have to be more than what is
7 shown in the diagramatic sections.

8 BOARD MEMBER DELGADO: I agree with
9 creating some consistent palette for the
10 rooftop terraces. And I'm a little
11 hesitant about having two pergolas. I
12 wonder if those could be combined into
13 one element.

14 MR. DUPONT: There is one pergola
15 and one bulkhead for a staircase.

16 BOARD MEMBER DELGADO: Okay, but it
17 has that pergola vocabulary, so it looks
18 like two separate elements. I wonder if
19 it's just cleaner to have one thing in
20 the roof rather than two separate
21 things.

22 MR. DUPONT: It is going to depend
23 on the post tension cables situation.
24 we know that from a north/south
25 perspective, part of the reason why it

1 is placed here is not only to keep it
2 out of the line-of-sight, but also
3 because where the post tension cables
4 are, that's the only place that you can
5 put it, from a north/south perspective.
6 From an east/west perspective, we have
7 to x-ray the slab -- slabs before we
8 know for sure where that could be
9 positioned.

10 BOARD MEMBER DELGADO: Are you
11 talking about the cooking area or the
12 bulkhead.

13 MR. DUPONT: The bulkhead.

14 BOARD MEMBER DELGADO: Yeah. Can
15 the pergola be attached to the bulkhead?

16 MR. DUPONT: Yes, it could be.

17 BOARD MEMBER DELGADO: Because it's
18 even further away from -- from your
19 north view then.

20 MR. DUPONT: It looks like one
21 continuous unit.

22 BOARD MEMBER DELGADO: And then the
23 other comment I had is whether that
24 pergola should, in character, remember
25 the pergola that is on the other side,

1 the structure that exists in the
2 building. I'm just trying to find a
3 common vocabulary from the building that
4 extends to your private garden.

5 MR. DUPONT: The other penthouses
6 on the east and the south side all have
7 concrete canopies over them, concrete
8 columns that hold them up.

9 BOARD MEMBER DELGADO: Is the wood
10 vocabulary part of the building?

11 MR. DUPONT: Yes. The building is
12 covered everywhere, and wood-looking
13 porcelain tile, everywhere, inside and
14 out. Even the edges of the interior of
15 the terraces.

16 BOARD MEMBER DELGADO: Because that
17 would be sort of my, you know, if this
18 had been designed from the beginning,
19 what would these terraces be like? And
20 that's what I think should, you know, if
21 you're building --

22 MR. DUPONT: They already have wood
23 elements all the way up the elevation.

24 BOARD MEMBER DELGADO: Right.

25 MR. DUPONT: Wood-looking.

1 BOARD MEMBER DELGADO: Okay. Those
2 are my comments.

3 CHAIRMAN BODNAR: Thanks.

4 BOARD MEMBER CAMARGO: So, I
5 accepted the invitation from the
6 attorney and the applicant to see -- to
7 go up on the rooftop, because I heard
8 both sides before, and I was partially
9 present when the whole dispute between
10 Palau and the Sunset Islands took place
11 way back then.

12 So, I accepted the invitation
13 because I wanted to see the condition
14 with my own eyes, and understand exactly
15 what was the argument, or the lack of
16 privacy.

17 And after being at the rooftop, I
18 realized that what the applicant is
19 proposing is not actually diminishing
20 the privacy of the residents on the
21 Sunset Islands because of the sight line
22 that we just saw here. There is no way
23 one can see the other, and vice versa.

24 And I think with your suggestion of
25 moving the planters, and making them

1 wider, and creating a wider buffer will
2 minimize whatever residual lack of
3 privacy their might be.

4 And also in terms of the sounding
5 buffering, if there's any noise, the
6 planting also helps that.

7 But I would encourage the
8 Homeowners Association of the Palau to
9 create some design guidelines so future
10 applicants at the penthouses decided
11 to do the same improvements to their
12 rooftops, at least from the Sunset
13 Islands' perspective, you see a uniform
14 treatment of the building, and if they
15 are concerned with the look and the
16 hodge-podge potential look of the
17 building from their side, that would be
18 minimized, and hopefully everybody will
19 feel like the same situation.

20 BOARD MEMBER SHELDON: I move to
21 approve the application.

22 MR. MURPHY: Sam, in accordance
23 with the Staff recommendation?

24 BOARD MEMBER SHELDON: Yes.

25 BOARD MEMBER KRIPLEN: And with the

1 conditions that there be some --
2 Condominium Association standardizing
3 design guidelines.

4 BOARD MEMBER SHELDON: I think it
5 is going to be an issue with the next
6 person. I think they are assuming -- we
7 are about to approve, I think they are
8 going to sort of set the esthetics for
9 their neighbors, and I don't have a
10 problem with that.

11 MR. MURPHY: I would agree with
12 that. And if something arises to the
13 level that is outside of my jurisdiction
14 to review, it comes before the Design
15 Review Board. They are not saying that
16 it doesn't.

17 Jim, if you recall, south of 5th,
18 One Ocean, we, very coincidentally, had
19 one -- on one agenda two different
20 penthouse units coming before the Board.
21 And those elements that they were
22 proposing improvements from did differ,
23 not dramatically from one another, and
24 we actually had one kind of regulate the
25 other. But Tim has already done a good

1 job at introducing the materials and the
2 colors that are already existing on
3 Palau, which is the first thing that I
4 looked at.

5 And aside from the 20th Street
6 elevation, that has a very strong white
7 stucco trellis, or canopy that extends
8 over the front, and it is a very loud
9 presence, this is -- this is nice and
10 quiet. And all of the elements are
11 moved away in a very modest sighting and
12 in a modest clouding of the material.
13 And that's why Staff is supportive of
14 it.

15 BOARD MEMBER SHELDON: So, there
16 are no conditions then with our motion?

17 MR. MURPHY: I wouldn't --

18 BOARD MEMBER SHELDON: Staff
19 conditions only?

20 MR. MURPHY: I would not defer to a
21 Condominium for their design guidelines
22 to regulate what goes above on the
23 rooftop, and leave it to when we come to
24 a new penthouse unit coming before the
25 Board.

1 BOARD MEMBER KRIPLEN: Can you
2 motion that and I'll just second?

3 BOARD MEMBER SHELDON: Should I
4 withdraw the motion? Do you want to
5 make the motion?

6 BOARD MEMBER KRIPLEN: Did you take
7 anything --

8 MR. MURPHY: I don't know if you
9 want to enlarge the planters, maybe that
10 should be spoken of.

11 MR. LARKIN: That's fine.

12 MR. DUPONT: That's totally fine.

13 MR. MURPHY: So, the planters to
14 remain flush with the railing, though.

15 BOARD MEMBER KRIPLEN: Correct.

16 MR. LARKIN: Minimum five feet in
17 width.

18 BOARD MEMBER KRIPLEN: Five feet in
19 width.

20 MR. MURPHY: On the north side.

21 BOARD MEMBER KRIPLEN: On the north
22 side. On the side facing the canal.

23 MR. MURPHY: And then is there
24 anything that you would like to add
25 about combining the trellises -- the

1 cooking trellis with the stairwell
2 bulkhead trellis?

3 MR. LARKIN: Yes, that's fine,
4 right?

5 MR. DUPONT: Make it one continuous
6 structure.

7 MR. MURPHY: So, explore combining
8 the two trellis elements into one.

9 MR. DUPONT: Into one continuous
10 structure.

11 MR. LARKIN: Correct.

12 MR. MURPHY: With that, we have a
13 motion.

14 BOARD MEMBER KRIPLEN: Second.

15 MR. MURPHY: Second by Marsh.

16 All in favor?

17 (All Board Members present
18 responded affirmatively).

19 MR. MURPHY: The application is
20 approved 5-0.

21 MR. LARKIN: Great. Thank you very
22 much for your time.

23 (Item adjourned.)

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF DADE

4 I, JANICE AGUIRRE, Registered
5 Professional Reporter, do hereby certify that I
6 was authorized to and did stenographically report
7 from the audio file the DESIGN REVIEW Board
8 Meeting of July 2, 2019; that a review of the
9 transcript was requested; and that the foregoing
10 transcript, pages 1 through 78, is a true record
11 of my stenographic notes.

12 I FURTHER CERTIFY that I am
13 not a relative, employee, or attorney, or counsel
14 of any of the parties; nor am I a relative or
15 employee of any of the parties' attorney or
16 counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED this 8th day of
19 September, 2019 at Miami, Dade County, Florida.

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25



JANICE AGUIRRE

Registered Professional Reporter
Notary Public, State of Florida
Commission NO. GG 160089
My Commission Expires: December 8, 2021

-	agree [3] 65/13 70/8 75/11 agreed [1] 39/19 agreement [25] 12/17 36/19 38/16 38/21 38/24 39/2 51/17 52/24 53/3 53/17 59/16 59/17 59/20 59/24 60/2 60/3 60/7 64/2 64/3 65/14 66/4 66/6 66/7 66/11 66/12 AGUIRRE [2] 79/4 79/18 air [1] 16/3 all [60] 5/14 9/7 9/25 11/9 12/25 14/16 16/1 18/14 19/8 19/9 19/12 19/18 20/2 20/8 21/16 21/25 22/25 23/15 24/2 24/17 30/16 31/5 32/25 35/25 37/17 39/12 39/13 39/14 41/5 43/11 43/16 47/16 48/3 49/24 50/16 51/6 53/7 54/9 56/21 56/22 58/18 58/21 60/4 60/24 61/25 62/7 62/12 62/25 63/5 63/20 66/9 67/3 67/9 67/12 68/6 72/6 72/23 76/10 78/16 78/17 alleged [1] 60/7 allow [9] 2/25 6/8 8/10 8/12 8/15 10/13 10/19 25/5 29/23 allowable [1] 51/1 allowed [7] 5/19 10/17 14/25 38/22 40/9 51/4 53/2 allowing [1] 28/13 allows [3] 5/11 6/4 29/13 almost [2] 11/23 38/5 along [6] 5/6 10/7 10/8 39/22 39/22 58/25 already [8] 6/18 46/25 50/2 58/9 64/23 72/22 75/25 76/2 also [15] 13/25 23/5 23/9 25/25 27/10 32/12 58/7 62/15 67/5 67/10 68/12 69/13 71/2 74/4 74/6 alterations [1] 2/12 alternative [1] 60/1 although [2] 48/23 56/5 am [3] 79/8 79/9 79/10 amazing [6] 7/22 13/12 13/21 43/19 44/9 47/18 among [1] 25/19 Amster [2] 7/6 60/23 analysis [4] 19/24 20/11 50/25 62/4 and -- [1] 36/20 Andrew [1] 48/15 angle [1] 58/2 animals [2] 54/7 61/23 Annabel [1] 1/17 another [8] 21/1 40/3 46/22 53/22 63/4 63/8 69/21 75/23 any [16] 5/24 17/20 20/20 20/24 24/25 29/7 29/9 46/16 57/1 61/5 61/8 61/18 62/5 74/5 79/9 79/9 anybody [1] 44/8 anyone [9] 15/17 23/22 36/5 42/23 48/13 51/22 52/3 54/20 57/7 anything [7] 22/12 36/7 61/9 61/13 63/12 77/7 77/24 anything -- [1] 77/7 anywhere [1] 44/3 apartment [3] 32/21 42/9 42/25 apologized [1] 37/6 appellant [1] 24/24 appellant -- [1] 24/24 applaud [1] 7/20 applicant [12] 3/10 3/15 24/8 24/15 24/24 25/1 25/17 26/25 29/18 29/22 73/6 73/18 applicant's [3] 26/18 51/7 51/17 applicants [4] 24/19 24/20 25/7 74/10 application [37] 2/10 4/3 5/16 19/14 19/15 19/22 20/3 25/3 25/4 30/10 37/4 38/8 46/22 48/4 48/7 48/11 49/1 49/2 49/11 49/16 51/16 52/1 52/17 55/4 55/11 55/14 55/18 56/2 56/13 56/19 57/3 62/8 62/10 64/12 66/13	74/21 78/19 applications [2] 19/9 22/24 applied [1] 67/3 applies [2] 24/17 25/7 apply [2] 19/8 65/14 appointment [1] 12/15 appreciate [1] 32/8 approval [16] 2/11 3/4 4/19 9/25 10/11 25/4 25/15 26/2 26/25 27/1 31/12 36/16 36/18 52/8 56/2 57/21 approve [9] 37/13 48/5 48/10 52/1 52/17 54/18 62/10 74/21 75/7 approved [14] 3/6 6/2 9/4 9/22 10/16 21/15 26/13 29/4 31/12 50/7 55/9 56/13 66/13 78/20 approving [1] 19/13 approximately [1] 62/20 architect [5] 7/4 13/12 18/11 34/22 34/23 architects [1] 34/18 architectural [1] 57/20 architecture [1] 20/19 are [105] area [7] 8/16 10/6 16/2 34/19 51/2 51/10 71/11 areas [1] 2/18 aren't [1] 35/3 argued [1] 51/5 argument [3] 65/17 65/20 73/15 arise [1] 39/7 arises [1] 75/12 arms [1] 34/9 arose [1] 39/7 around [4] 8/1 13/17 16/1 52/15 arrangement [1] 28/8 artificial [1] 10/5 as [60] 3/19 5/15 5/19 7/19 8/25 9/1 10/16 11/15 13/4 13/10 14/1 14/22 15/1 15/4 15/12 17/17 17/18 20/15 21/10 23/6 23/7 24/19 25/10 28/10 28/25 31/10 33/5 35/25 39/15 43/2 43/2 44/4 47/4 47/4 47/13 51/3 51/12 51/13 52/25 52/25 53/7 54/22 55/2 57/1 58/15 60/1 60/5 62/6 62/15 62/21 63/3 63/13 64/23 65/8 65/10 66/15 68/2 68/3 68/12 68/23 aside [2] 55/18 76/5 ask [6] 11/8 19/21 38/16 39/25 49/22 67/10 asked [1] 22/14 asking [3] 20/23 24/2 38/18 aspects [2] 4/20 56/11 assertion [1] 29/6 assign [1] 55/11 Assistant [1] 1/22 association [33] 3/2 10/10 10/13 21/14 21/24 22/14 24/21 24/23 31/3 32/7 32/13 32/14 32/19 36/9 38/11 38/12 38/15 47/10 53/4 53/18 53/20 54/24 55/8 55/12 56/10 56/13 56/21 61/11 67/11 67/25 68/12 74/8 75/2 Association's [2] 10/25 55/2 assume [2] 60/2 67/13 assuming [1] 75/6 assuming -- [1] 75/6 attached [1] 71/15 attention [1] 28/9 attorney [10] 1/22 3/14 3/18 7/5 22/15 22/17 48/19 73/6 79/8 79/9 audible [1] 61/6 audio [1] 79/5 authority [1] 25/1 authorized [1] 79/5 authorizes [1] 24/23 Avenue [1] 32/11 aware [5] 43/5 54/13 55/5 56/3 56/5	
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