

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Design Review Board

TO: DRB Chairperson and Members

DATE: October 02, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: DRB18-0305 (DRB18-0226)  
**100 South Pointe Drive – Continuum on South Beach, South Tower Condominium**

**DRB18-0305 (DRB18-0226), 100 South Pointe Drive—the Continuum South Tower.** The applicant, the Continuum Condominium Association, is requesting a re-hearing of a previous decision of the Design Review Board, wherein the Board denied exterior design modifications to the façades of an existing 41-story building to remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings. If the request for a re-hearing is granted, the matter may be heard immediately.

#### **Recommendation:**

**Denial** of the rehearing request

#### **LEGAL DESCRIPTION:**

Continuum on South Beach Condo, the South Tower, a portion of "OCEAN PARCEL", as said "OCEAN PARCEL" is described in Official Records Book 18053 at Pages 0580 through 0586, as recorded in the Public Records of Miami-Dade County, Florida.

#### **HISTORY:**

On September 15, 1998, the Design Review Board approved an application for the construction of two condominium towers, a beach club, and retail, restaurant and parking facilities, pursuant to DRB File No. 9611. On December 08, 1998, the Design Review Board reviewed and approved modifications to the application that consisted of changes to the design and massing of the north and west walls of the south tower portion of the project.

On June 05, 2018, an application to remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings was denied by the Design Review Board.

On June 29, 2018, the applicant filed a request for a re-hearing of the application.

On July 5, 2018, the applicant filed an appeal of the original decision of the DRB to the City Commission, pending outcome of the rehearing.

#### **REQUEST:**

Section 118-9 of the Miami Beach City Code specifies that the Design Review Board may consider a petition for rehearing by the original applicant(s), the city manager, an affected person, Miami Design Preservation League, or Dade Heritage Trust. For purposes of this section, "affected person" shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board

(directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project. The petition for rehearing must demonstrate to the board that:

- (i) there is newly discovered evidence which will probably change the result if a rehearing is granted, or
- (ii) the board has overlooked or failed to consider something which renders the decision issued erroneous.

In order to grant a re-hearing request, four affirmative votes are required.

The basis for the attached re-hearing petition submitted by the applicant is that there is newly discovered evidence which is likely to be relevant to the decision of the board.

The petition for rehearing claims that several items were overlooked or were failed to be considered by the Board. Specifically, the applicant has identified the following five items in the petition:

1. Uncontroverted expert testimony demonstrates that the metal panels are extremely dangerous and cannot be replicated safely through other means. **(Pg. 2)**
2. The DRB's analysis and the staff report on which the board relied fundamentally misunderstand the South Tower's design intent and draw conclusions unsupported by the record. **(Pg. 3)**
3. The DRB did not approve the defective balcony panels, and cannot now force them to remain. **(Pg. 4)**
4. New evidence calls into question the need to preserve the balcony panels. **(Pg. 4)**
5. The Association should be allowed to present its proposal to the full board. **(Pg. 4)**

#### **STAFF ANALYSIS:**

After reviewing the documentation and exhibits provided by the applicant, staff has concluded that the petition does not provide newly discovered evidence that could alter the result if a rehearing is granted, nor does the petition substantiate that the Board has overlooked or failed to consider something which renders the decision issued erroneous. Specifically, staff would note the following:

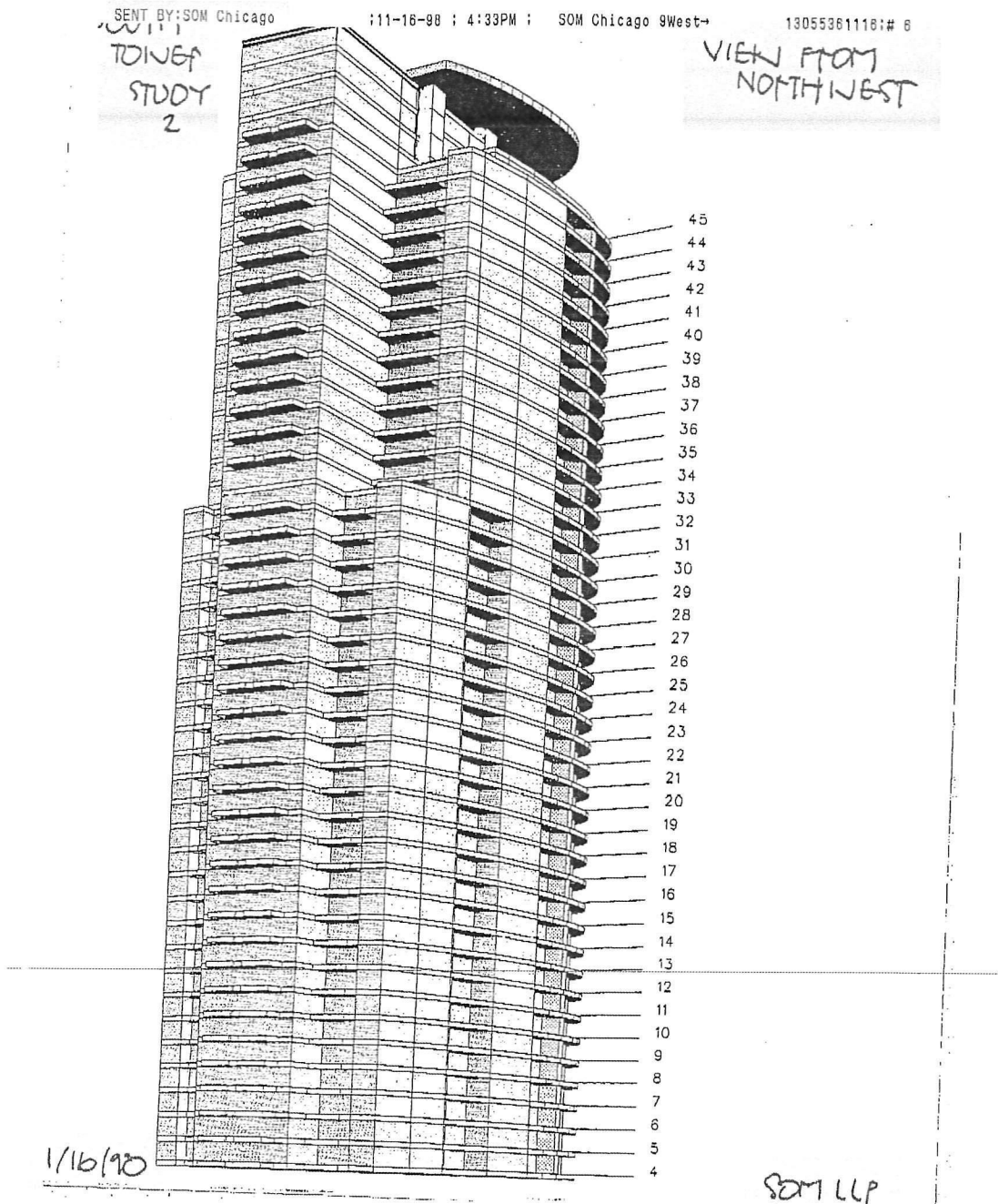
**Item 1.** Uncontroverted expert testimony demonstrates that the metal panels are extremely dangerous and cannot be replicated safely through other means. (Pg. 2 of the re-hearing petition).

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted. The applicant provided substantial testimony regarding the panels, which was fully considered by the DRB in its deliberations. Moreover, there is more than one way to obtain the effect as to the panels, which the Applicant never explored.

**Item 2.** The DRB's analysis and the staff report on which the board relied fundamentally misunderstand the South Tower's design intent and draw conclusions unsupported by the record. (Pg.3 of the re-hearing petition)

Documentation from the previously approved, original, DRB File No. 9611, 100 South Pointe Drive, includes massing studies and architectural drawings that show thickened balcony

slab ends, to match the horizontal stucco banding that runs along all elevations of the building.



**MASSING STUDY FROM THE OFFICE OF SOM 11-16-98**

**Item 3.** The DRB did not approve the defective balcony panels and cannot now force them to remain. (Pg. 4 of the re-hearing petition).

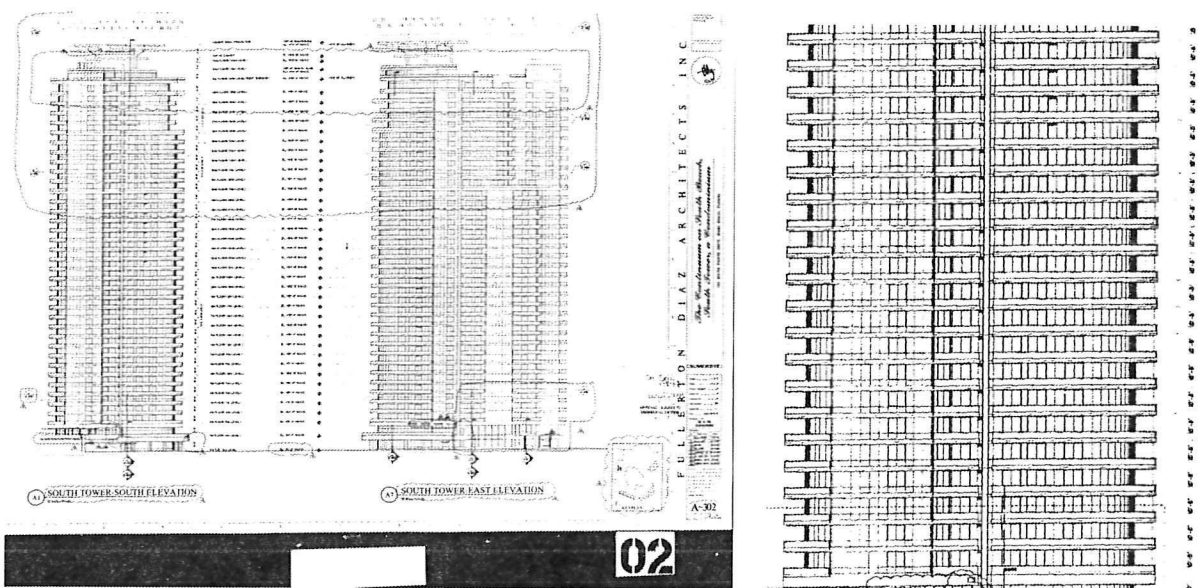
The Design Review Board approved a building design, at a design development stage that depicted thickened balcony slab edges to match the horizontal stucco banding that runs along all elevations of the building. The inclusion of the panels at the time of permit, to

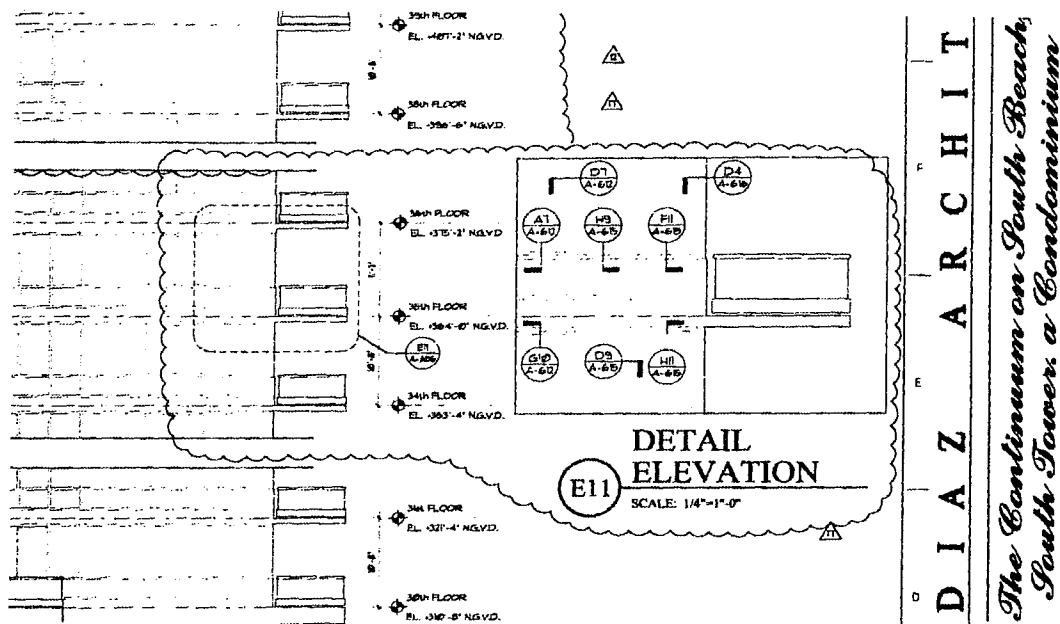
address building and construction requirements, were to ensure compliance with the approved DRB design.



RENDERING FROM THE OFFICE OF SOM

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**Item 4.** New evidence calls into question the need to preserve the balcony panels. (Pg. 4 of the re-hearing petition).

No newly discovered evidence that could alter the result if a rehearing is granted has been submitted to staff. As such, no newly discovered evidence which will probably change the result if a rehearing is granted has been provided.

**Item 5.** The Association should be allowed to present its proposal to the full board. (Pg. 4 of the re-hearing petition)

A full board consists of seven members. At the time of the original hearing the DRB consisted of six members, due to an unfilled vacancy on the Board.. A quorum of the DRB is four members for Design Review approvals.

An option to continue the item to a later meeting date was discussed at the June 05, 2018 meeting. At the end of the Board discussion, the Board Chairman indicated "You can continue it if you want to come back". However, the applicant responded "We would like a vote today, please."

Board attendance is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

# **RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the request for a re-hearing of the subject application be DENIED.

TRM/JGM



# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Design Review Board

TO: DRB Chairperson and Members

DATE: October 02, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: DRB18-0226

**100 South Pointe Drive – Continuum on South Beach, South Tower Condominium**

The applicant, the Continuum Condominium Association, is requesting Design Review Board approval for exterior design modifications to façades of an existing 41-story building to remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings. Additionally, the applicant is requesting the deletion of a condition of the Final Order. This item was originally approved in 1998, pursuant to DRB File No. 9611.

**NOTE:** The subject staff report has been prepared in the event the DRB grants the request of the applicant for a re-hearing.

#### **Recommendation:**

**Denial**

#### **LEGAL DESCRIPTION:**

Continuum on South Beach Condo, the South Tower, a portion of "OCEAN PARCEL", as said "OCEAN PARCEL" is described in Official Records Book 18053 at Pages 0580 through 0586, as recorded in the Public Records of Miami-Dade County, Florida.

#### **HISTORY:**

On September 15, 1998, the Design Review Board approved an application for the construction of two condominium towers, a beach club, and retail, restaurant and parking facilities, pursuant to DRB File No. 9611. On December 08, 1998, the Design Review Board reviewed and approved modifications to the application that consisted of changes to the design and massing of the north and west walls of the south tower portion of the project.

On June 05, 2018, the item was denied by the Design Review Board with a vote of 4-0.

#### **SITE DATA:**

Zoning: RPS-4  
Future Land Use: RPS-4

#### **NEIGHBORING PROPERTIES:**

East: Atlantic Ocean  
North: The Continuum, the North Tower  
South: South Pointe Park  
West: South Pointe Towers

#### **EXISTING STRUCTURE:**

41-story multifamily building (2000 SOM Skidmore Owens and Merrill)

#### **THE PROJECT:**

The applicant has submitted plans and renderings entitled "Emergency Glass Railing System Repairs" as prepared by B. P. Taurinski, P.E., P.A Structural Engineers, signed, sealed and dated March 28, 2018.

The applicant is seeking to remove decorative kick-plate metal panels from all of the glass panels of the balcony railing system.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code. The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

**COMPLIANCE WITH DESIGN REVIEW CRITERIA:**

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**Not Applicable**
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.  
**Not Applicable**
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.  
**Not Applicable**
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.  
**Not Satisfied; See Staff Analysis**  
**The existing metal panels affixed to the balconies are an integral part of the exterior design of the building.**
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.  
**Not Satisfied; See Staff Analysis**  
**The existing metal panels affixed to the balconies are an integral part of the exterior design of the building.**
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.

**Not Satisfied; See Staff Analysis**

**The existing metal panels affixed to the balconies are an integral part of the exterior design of the building.**

7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.

**Not Applicable**

8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.

**Not Applicable**

9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

**Not Applicable**

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.

**Not Applicable**

11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

**Not Applicable**

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

**Not Applicable**

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

**Not Applicable**



14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.  
**Not Applicable**
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).  
**Not Applicable**
16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.  
**Not Applicable**
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.  
**Not Applicable**
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.  
**Not Applicable**
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.  
**Not Satisfied; see below**

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.  
**Not Satisfied**  
**A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.**
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Not Applicable**
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not Applicable**
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.  
**Not Applicable**

- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

**Not Applicable**

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

**Not Applicable**

**While the site is currently built-out, the applicant is proposing to remodel the existing balconies.**

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

**Not Applicable**

**While the site is currently built-out, the applicant is proposing to remodel the existing balconies.**

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

**Not Applicable**

**While the site is currently built-out, the applicant is proposing to remodel the existing balconies.**

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

**Not Applicable**

**The proposal does not include any habitable space located below the base flood elevation.**

- (10) Where feasible and appropriate, water retention systems shall be provided.

**Not Applicable**

**While the site is currently built-out, the applicant is proposing to remodel the existing balconies.**

#### **STAFF ANALYSIS:**

Staff must preface this analysis by underscoring the critical role the Continuum South Tower plays in the evolution of the overall hi-rise aesthetic at the southern tip of Miami Beach. When the first hi-rise tower was constructed in 1987 (South Pointe Towers) a very unique, and nautically influenced structure was introduced within an area that, at the time, was still searching for an identity. Portofino Tower, with its unique cruciform structure, followed in 1994 and by the time the original developer of the Continuum site made their first proposal in late 1997, the South Pointe area had already reached luxury real estate status.

Various design concepts for a unique and cutting edge residential tower grouping were proposed for the Continuum site. Ultimately, the DRB approved the existing combination of buildings by the world-renowned Skidmore, Owings and Merrill (SOM). The existing Continuum south tower was immediately recognizable by its carefully executed massing and

design detail. The towers that followed Continuum (Murano and Apogee) are also uniquely designed, scaled and massed.

Collectively, all of the towers that form the visual termination of the southern tip of Miami Beach are highly unique to the City, as well as fully distinguished from one another. Unlike other coastal Cities that have embraced an 'any waterway USA' approach to residential tower design, based solely on views from the interior, since South Pointe Towers was built in 1987, the DRB has insisted upon a unique individuality for the residential structures that define the southern tip of the City. This unique, and iconic approach to residential buildings has always focused on the outside design of the tower, not the inside looking out.

The applicant is proposing exterior façade modifications to existing balconies of the 41-story South Tower of the Continuum. Specifically, the applicant is proposing to remove the lower metal panels affixed to the 42" high glass railing systems found throughout the exterior balconies on all elevations. Once the "kick plate" break panels are removed and the gaskets replaced, the glass panels will be removed, cleaned, prepared, and reinstalled within the balcony framing systems, with the existing cap top railing to remain. The applicant is currently in the process of systematically removing the aesthetic panels that are affixed to all the balcony handrail glass. The applicant has concerns with the architectural panels as they have been delaminating from the handrail glass and as originally constructed. No new balcony elements, demolitions, or enlargements therein, are proposed as part of this application.

The applicant maintains that the removal of the metal panels is a life safety concern and that the panels were "falling off the building." A permit for emergency railing repair has been applied for under BC1705997. The applicant does not propose to reinstall new panels to the existing glass panel railings. Had the applicant reinstalled the lower metal panels, DRB review would not be necessary.

The subject residential tower has become an iconic signature building at the southern tip of Miami Beach. The SOM design includes balconies that continue the horizontal architectural banding that is dominated by the white stucco wall below the fixed window glazing, matching and continuing the strong horizontal element of the floor slab along each of the 41 floors. The architectural metal panels, coupled with the white stucco balcony slab, are a critical component of the architectural design, as they facilitate the movement of the banding that runs along each façade of the building.

As stated in the 1998 staff recommendation for the project, *"the elevations have been simplified...a more straightforward array of painted concrete and glass balcony rails has been combined with elegantly stepped exterior walls"*. The emphasized horizontality offers a visual relief for the eye and breaks up the vertical scale of the tower.



The applicant is requesting to remove these architectural metal panels without replacing them. As proposed, the balcony panels would be full glass, thus eliminating the continuity of the horizontal banding. Although the original developer and contractor failed to secure the metal panels in a method that meets code for windload, such panels can and should be reintroduced with a code compliant method of installation, such as an epoxy adhesive. The metal panels are an integral design detail of the building's façade and is a driving feature of the architectural anchor of the south end of the peninsula of Miami Beach.



Additionally, as specifically noted in the 1998 DRB report, *"Given the size of the tower and its massing, the key component for this project to be truly successful will be the color chosen for the structures, as well as the color and variety of fenestration and balcony rails."* The architecture features floor to ceiling windows within the units throughout all façades. If the architect intended the balconies to have full transparency, like the floor to ceiling windows, they would have designed the balcony railing without the low metal component. Instead, due to the overwhelming verticality of the tower on the acreage, a horizontal repetition is necessary to scale down the enormity of the building. The permanent removal of the 12" x 36" panels will disrupt the horizontal harmony of the building since the banding is a key architectural feature.

This is further emphasized and reinforced through the visual alignment of the top of the balcony rails, another strong solid white architectural presence, to the horizontal mullion of the lower transom window system. This linkage at the top and the bottom carries the horizontal datum in order to break up vertical clusters of glass.





Indeed, the exhibits submitted by the applicant clearly show the impact of removing the panels on the iconic, continuity of the architecture. The balconies, as proposed by the applicant, are more akin to coastal Cities that do not place a strong emphasis on architecture and urban design.

Staff **STRONGLY** recommends that the applicant be required to reintroduce the architectural metal panels into the balcony system, in a manner that meets all structural and wind load codes. There is no doubt that this can be accomplished in a code compliant



manner.

Staff has met with the applicant's engineer on numerous occasions and has stressed the importance of reintroducing the low metal panels. Accordingly, staff recommends denial of the application as presented.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **denied**.

TRM/JGM

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June 29, 2018

Via Electronic Mail

Thomas R. Mooney  
Planning Director  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

Re: PETITION FOR REHEARING — DRB 18-0226  
Continuum on South Beach, South Tower Condominium  
100 South Pointe Drive, Miami Beach, FL 33139

Dear Mr. Mooney:

We are counsel to Continuum on South Beach, The South Tower Condominium Association, Inc. (the "Association"), the association of unit owners of the Continuum South Tower Condominium (the "South Tower"). On behalf of the Association, we respectfully request that the Design Review Board (the "DRB") rehear application number DRB 18-0226, which seeks design approval to remove certain defective and dangerous metal panels that were taped to the South Tower's tempered glass balcony railings after the building's construction. The panels were not part of the South Tower's original design, were not shown on the DRB-approved plans, and were not required by the DRB's order. Due to their crude, unsafe design, the panels have begun to detach from the building's glass railings and fall like helicopter blades as much as forty-one stories below, posing grave life-safety concerns and requiring their immediate and permanent removal.

The Board heard and denied the application on June 5, 2018, and the final order was rendered on June 14, 2018. Enclosed is a transcript of the June 5<sup>th</sup> hearing (the "Transcript"). The Association, as the original applicant, has standing to request a rehearing, and this petition is timely submitted. *Secs. 118-9(a)(2)(A) & 118-9(a)(2)(B)(i), Miami Beach City Code.*

### Justification

Rehearing is justified because there was a disregard of key expert testimony and critical facts that are material to the DRB's decision and outweigh the design considerations the board prioritized, and because there is new evidence that bears directly on the matters most influential to the board in its denial of the application. *Sec. 118-9(a)(2)(C), Miami Beach City Code*. Rehearing is also needed to afford the Association an opportunity to present its proposal to the full board, as only four DRB members attended the June 5<sup>th</sup> hearing, the bare minimum for a quorum. *Sec. 118-75, Miami Beach City Code*. Rehearing before the full board would allow for a more representative and thorough consideration of critical life-safety and design concerns affecting this important Miami Beach structure.

Specifically, the DRB should reopen the case for the following reasons:

- 1. Uncontroverted expert testimony demonstrates that the metal panels are extremely dangerous and cannot be replicated safely through other means.**

It is undisputed that the defective metal panels are dangerous and must be removed. *Transcript, p. 35* (Mr. Bodnar observing that "We all agree the metal is a bad solution."). Mr. Stephen E. Howes, a glass and fenestration expert, testified, for example, that the existing metal panels are "extremely dangerous" because they detach very easily from the building's tempered glass balcony railings and fall several stories below, becoming like a "helicopter blade," "guillotine," or another "lethal weapon" on the way down, and could "decapitate somebody." *Transcript, p. 14*. Further, Ms. Lynn Mathon, from B.P. Taurinski Structural Engineers, testified that the existing balcony railing system is not designed to support the additional weight of the defective metal panels, compounding the problem. *Transcript, pp. 29-30*.

Just as importantly, and contrary to the DRB's and staff's presumptions, there is no safe and effective way to retrofit the building's existing tempered glass railings to mimic the faint horizontal band the metal panels evoke from afar. That is because tempered glass is designed to "break[] into lots of pieces and fall[] down safely," and applying a film, paint, or other coating to the existing glass will keep the glass intact if struck "until it hits somebody" or it "go[es] straight through a vehicle." *Transcript, pp. 34-36*.

Other potential solutions, like frosting the glass or attaching the metal panels to the concrete slab in front of the balcony railings, are no safer. The former would "completely change the concept of tempered glass," and carries the same risks as with film or paint coatings. *Transcript, p. 25*. The latter, in turn, would be "like having razor blades all around," posing a serious hazard to children. *Transcript, p. 36*. In the end, the expert testimony is clear: "you can't apply anything to tempered glass" and guarantee safety. *Transcript, p. 34*.<sup>1</sup>

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<sup>1</sup> Mr. Howes supplemented his testimony in an opinion letter to the board, in which he concludes: "It is my opinion [that] there is no way of structurally fixing the decorative kick plates permanently to the glass without creating a much larger

These critical safety concerns also affect the South Tower's neighbors, and the Association's proposal to remove the defective panels permanently and rectify an unsafe condition enjoys wide support from key neighbors and community constituencies, including from Continuum on South Beach Condominium, The North Tower Association, Inc.; the Continuum on South Beach Master Association, Inc.; and the South of Fifth Neighborhood Association. *Transcript, p. 8.*

The City's design review criteria require the DRB to ensure the "safety . . . of the project in relation to the site, adjacent structures and [the] surrounding community." *Sec. 118-251(a), Miami Beach City Code.* Yet, in denying the application, there was an acute failure to properly weigh the uncontroverted expert testimony that the metal panels are dangerous and, in fact, life-threatening. Rehearing is justified to allow the DRB to accord these compelling safety concerns their due weight.

**2. The DRB's analysis and the staff report on which the board relied fundamentally misunderstand the South Tower's design intent and draw conclusions unsupported by the record.**

The DRB rejected the Association's application almost exclusively on grounds that the defective panels emphasize a "horizontal" that, in the board's mind, is a critical design feature and distinguishes the South Tower from its more "vertical" sibling, the Continuum north tower. Removing the panels, in the DRB's mind, would compromise that critical design intent. These conclusions are not supported by the record.

The DRB-approved plans for the South Tower, prepared by Skidmore, Owings & Merrill ("SOM"), do *not* show any horizontal accentuation, and, in fact, incorporate clear glass balcony railings identical to those for the north tower. *Transcript, p. 11.* It was not until sometime *after* the South Tower obtained DRB approval that the project's successor architects, Fullerton Diaz Architects Inc., introduced a more horizontal banding aesthetic to the balconies. *Transcript, p. 28.* The Association's request to remove the defective panels and return to clear glass railings closely observes SOM's design intent, as depicted on the SOM elevations on file with the board and as affirmed on the record by the Association's experts. *Transcript, pp. 28-29.*

Similarly, the staff report's insistence that the South Tower's original DRB approval requires horizontal banding is erroneous. In support of their theory, staff rely on two passages from the original 1998 staff report that, in fact, do little to substantiate their argument. The first passage provides that "the elevations have been simplified . . . a more straightforward array of painted concrete and glass balcony rails has been combined with elegantly stepped exterior walls." The second passage states that "Given the size of the tower and its massing, the key component for this project to be truly successful will be the color chosen for the structures, as

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potential danger to people and property around the vicinity of this building, i.e. panels falling off the building to the ground below. That in itself is extremely dangerous, but to then structurally adhere the panels as recommended by staff (page 7 of 7) would create a massive problem[.]"

well as the color and variety of fenestration and balcony rails.” From this, the staff report concludes that the original DRB approval *requires* horizontal banding, and that the removal of the panels “will disrupt the horizontal harmony of the building since the banding is a key architectural feature.” Yet, *nothing* in the original DRB order mentions—much less *requires*—horizontal banding, and *nothing* in the quoted passages evinces a clear intent on the part of the board to require banding. Staff may prefer that the South Tower incorporate horizontal elements, but their conclusions on this point are not supported by the record. Accordingly, the DRB should not have relied on the staff report as a valid refutation of the Association’s testimony.

**3. The DRB did not approve the defective balcony panels, and cannot now force them to remain.**

The defective metal panels were never a part of the South Tower’s original design, were not shown on the DRB-approved plans, and were not required by the board’s final order. As Mr. Howes stated on the record, the existing balcony railing system “was never developed to put panels on it.” *Transcript*, p. 32. The panels are believed to have been installed as a decorative substitute for the railing system proposed by Fullerton Diaz sometime after the South Tower obtained DRB approval. Had the Fullerton Diaz railing system been constructed as designed, the Association would not now be faced with this critical life-safety problem.

We will present new evidence as to how the balcony design evolved and how it was approved. We are also exploring potential alternative design solutions, including the cost and feasibility of replacing the railings with the system contemplated in the Fullerton Diaz plan, and we will present new testimony on that issue at the hearing. Ultimately, however, because the DRB did not require the existing panels as part of its original approval of the South Tower, it cannot now force them to remain.

**4. New evidence calls into question the need to preserve the balcony panels.**

Even if SOM’s design can be seen to evoke a perceptible “horizontal,” modifications to the South Tower since its construction have all but destroyed that aesthetic. Today, the South Tower is very much a vertical building. For example, the window frames along the exterior façades, though originally intended to blend seamlessly with the tower’s glass windows, have been painted white and now accentuate the tower’s verticality. We will present new evidence at the hearing that the introduction of these and other more vertical elements since the original DRB approval calls into question the need to preserve the balcony panels. We will also demonstrate that a desire to preserve whatever “horizontal” remains, cannot, and does not, justify risking death or serious injury to residents, neighbors, and the general public.

**5. The Association should be allowed to present its proposal to the full board.**

Finally, rehearing is needed to afford the Association an opportunity to present its proposal to the full board, as only four DRB members attended the June 5<sup>th</sup> hearing, the bare



minimum for a quorum. *Sec. 118-75, Miami Beach City Code*. Although the quantum of vote for approval remains the same (4 votes in favor), rehearing before the full board would allow for a more representative and thorough consideration of this important Miami Beach structure, and of the critical life-safety and design concerns this application raises.

**Request**

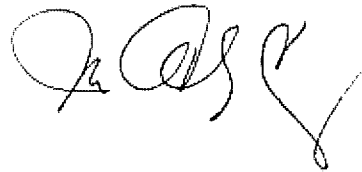
For these reasons, and for others that we may bring to your attention, we respectfully request that the DRB reopen the hearing, admit new testimony, and reverse its decision.

Please docket this request for consideration by the board at the next available meeting.

Sincerely,



Neisen O. Kasdin



Joni Armstrong Coffey

Enclosure

cc: Rafael E. Granado, City Clerk  
Eve A. Boutsis, Chief Deputy City Attorney  
James G. Murphy, Chief of Urban Design  
Kristofer D. Machado, Akerman LLP



Kristofer D. Machado

Akerman LLP  
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98 Southeast Seventh Street  
Suite 1100  
Miami, FL 33131

T: 305 374 5600  
F: 305 374 5095

July 5, 2018

**By Hand and Electronic Mail**

Rafael E. Granado  
City Clerk  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

**Re: APPEAL TO THE CITY COMMISSION — DRB 18-0226  
Continuum on South Beach, South Tower Condominium  
100 South Pointe Drive, Miami Beach, FL 33139**

Mr. Granado:

On behalf of our client, Continuum on South Beach, The South Tower Condominium Association, Inc., enclosed is a formal appeal of the denial of design review application number DRB 18-0226. As noted in the enclosed documents, we have petitioned the Design Review Board ("DRB") for a rehearing, and we would ask that the City Commission stay consideration of this appeal until the DRB rules on the rehearing petition.

The following documents are enclosed for your review:

- A. Appeal to the City Commission;
- B. DRB Order 18-0226;
- C. Staff Report for DRB 18-0226;
- D. Transcript of the June 5, 2018 DRB hearing;
- E. DRB orders dated September 15, 1998 and December 8, 1998; and
- F. Petition for Rehearing, filed with the Planning Director on June 29, 2018.

We are also enclosing a check for the application fees due under Section 118-9(c)(3)(C)(ii) of the City Code.

Please let us know if you have any questions regarding this appeal.

Thank you.

Sincerely,

Kristofer D. Machado

Enclosures

akerman.com

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