MIAMI BEACH CITY COMMISSION

APPEAL OF DESIGN REVIEW BOARD
ORDER NO. DRB 18-0226

CONTINUUM ON SOUTH BEACH,
SOUTH TOWER CONDOMINIUM,
100 SOUTH POINTE DRIVE,
MIAMI BEACH, FL 33139

CONTINUUM ON SOUTH BEACH,
THE SOUTH TOWER CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

vs.

CITY OF MIAMI BEACH DESIGN REVIEW
BOARD,

Respondent.
_____/

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# PETITIONER'S INITIAL BRIEF

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## INTRODUCTION

Petitioner Continuum on South Beach, The South Tower Condominium Association, Inc. (the "Association"), the association of unit owners of the Continuum South Tower ("South Tower"), appeals the order of the City of Miami Beach ("City") Design Review Board ("DRB") in File No. DRB 18-0226 (the "Order"). The Order denies the Association's request for design approval to remove certain defective and dangerous metal panels that were taped to the South Tower's tempered glass balcony railings during 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 orders that approved the design of the South Tower. Due to their crude, unsafe design, the panels have begun to detach from the South Tower'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 DRB, in denying the Association's application to remove the defective panels, (i) failed to observe the essential requirements of law and (ii) failed to base its decision upon substantial competent evidence. The DRB's Order must be overturned.

## STATEMENT OF THE CASE AND FACTS

The South Tower is a forty-one story residential building that sits at the southern tip of Miami Beach's South Pointe neighborhood. *App., Ex. G, p. 1.*[1] The DRB approved the South Tower's design in 1998, pursuant to orders dated September 15, 1998, and December 8, 1998, under File No. 9611. *Id., App., Ex. H.* Skidmore, Owings and Merrill ("SOM") provided the conceptual architecture for the tower, and Fullerton Diaz Architects Inc. ("Fullerton Diaz") was the final architect of record. *App., Ex. J, pp. 28, 42, 46-47.*

Fullerton Diaz's implemental design for the South Tower's balconies called for a prominent metallic base fixed atop a concrete slab, with a channel to receive tempered glass panels, evoking a metallic horizontal band across the balconies when viewed from afar. *App., Ex. I, pp. 12-13, Ex. J, pp. 28-29.* That design was never implemented. *App., Ex. J, pp. 28-29, 42.* Instead, the existing balcony railing system consists of clear tempered glass railings with metal panels taped to either side of the glass with 3M acrylic foam tape. *App., Ex. F, p. 3, Ex. I, p. 14, Ex. J, pp. 13-14.*

The metal 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 orders. *App., Ex. H, Ex. I, Ex. J, pp. 6, 11, 28, 40-41.* In fact, the panels are not shown on any of the available permit documents. *App., Ex. J, pp. 28-29, Ex. R, p. 6.* The existing panels are believed to have been installed as a value-engineering substitute for the original railing system called for in the subsequent Fullerton Diaz implementing plan. *App., Ex. J, pp. 29, 42, Ex. R, p. 6.* Due to their deficient design, the existing panels have begun to delaminate and detach from the building's glass railings and tumble sharply to the ground below. *App., Ex. J, pp. 14-15.*

[1] References to the Appendix are noted as "App."

To date, more than 120 metal panels have detached and fallen from the South Tower's balcony railings, and 164 have become loose over time. *App., Ex. B, p. 1, Ex. J, p. 5.* The panels weigh more than five pounds individually, and can weigh sixty pounds or more when joined with broken shards of the tempered balcony railing glass to which they were taped. *App., Ex. J, pp. 6-7, 14, 35-36.* For more than a year, the Association has gone to great lengths, at a significant expense, to find an adequate and reasonable remedy for these unsafe panels, an urgent life-safety problem the Association inherited and had no role in creating. *App., Ex. J, p. 5, Ex. I, pp. 28-30.*

Because the DRB approved the South Tower's original design, City staff have asserted that the removal of the panels requires DRB approval, even if the panels themselves were not approved by the DRB. *App., Ex. G.* In late 2017, in response to urgent safety concerns, the Association sought an emergency permit from the City to remove the panels, pending DRB review. *App., Ex. B, p. 1.* Ana Salguiero, the City of Miami Beach Building Official, acknowledged the urgent life-safety concerns and the need for immediate action, notifying the Association as follows:

> **These 12" x 36" long pieces are detaching and falling off of the building.** The structural engineer B.P. Taurinski has provided a letter indicating this condition and the life safety concerns. **I sent structural and building inspectors to verify the field conditions. The concern is real.** They have applied for permit BC1705997 and that there is a planning requirement. "Proposed changes to railing may not be approved administratively and will require Board Approval." **The removal of the unsecured panels cannot wait for a board approval.** I am recommending emergency work be allowed to begin with a follow-up from our unsafe structures section if a building permit is not obtained by February 2, 2018.

*Id.* (emphasis added). Since then, the Association has been working diligently with its contractors, pursuant to the emergency permit, to remove the loose panels from the balcony railings, while also seeking formal design approval from the DRB to remove the panels, clean and reinstall the glass within the existing railing system, and make incidental repairs. *App., Ex. A, Ex. B, p. 1, Ex. F, p. 4, Ex. J, p. 6.*

The request to remove the defective panels permanently and to rectify the unsafe condition enjoys broad support throughout the neighborhood. *App., Ex. J, 8-9.* The South of Fifth Neighborhood Association (SOFNA), the Continuum Master Association, and the Continuum North Tower Condominium Association all support the removal of the panels. South Tower's residents and unit owners are also overwhelming in support. *Id.; App., Ex. I, p. 48, Ex. Q.* At a recent South Tower owners' meeting, 92% voted in favor of removing the existing panels permanently. *App., Ex. I, pp. 1-9, Ex. J, p. 8.*

The DRB heard the Association's application on June 5, 2018. *App., Ex. J.* At the hearing, the Association demonstrated, through the record evidence and the expert testimony of Mr. Stephen E. Howes, a glass and fenestration expert, that the existing condition is unsafe and that 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. *App., Ex. J, pp. 12-39.* Nevertheless, the DRB, without substantial competent evidence, and relying on unsupported presumptions,

rejected the Association's application. *App., Ex. L; This Brief, pp. 5-9.* The DRB focused on design to the exclusion of all other factors, including the critical safety criteria that by law they are required to apply. *Id.* They found that the existing metal panels, though never approved or required by the DRB, are a critical design feature and must remain or be adequately substituted. *Id.* The DRB reached this decision despite the uncontroverted record evidence that neither option is safe or feasible. *Id.*

The Association then sought rehearing, introducing additional expert testimony and supplementing the record in File No. DRB 18-0305. *App., Ex. M, Ex. R, pp. 7-19.* Specifically, the Association proffered as evidence:

- An expert report from Mr. Federico Balestrazzi, a licensed professional engineer, that evaluates the potential alternatives for preserving the horizontal banding and reaffirms that there is no safe and reasonable way of doing so;

- Cost estimates for several of the most relevant alternatives, bearing directly on the issue of viability and reasonableness;

- A letter from Project Vision Dynamics, a 3M partner responsible for design review and application of 3M tapes when utilized within building envelopes in the United States, confirming that 3M acrylic foam tape—the tape used to attach the existing panels to the tempered glass railings—should not be used to adhere metal panels to tempered glass railings because acrylic foam tape "does not meet the basic requirements for application."

- An official test report from Fenestration Testing Laboratory, Inc., showing that the existing metal panels detach from the glass railings with only a 255 pound-force load, meaning that they easily detach by hand and are especially susceptible to detaching with wind pressure, and, for that reason, recommending against using the panels in exterior balcony railings on high-rise towers.

*App., Ex. O, Ex. P, Ex. R, pp. 7-19.* Nevertheless, the DRB refused to consider this additional evidence and denied rehearing. *App., Ex. R, pp. 33-35, Ex. S., Ex. T.* Their decision was "based upon the esthetics" and, specifically, the DRB's insistence that the horizontal banding must remain, despite uncontroverted record evidence that it is unsafe and infeasible. *App., Ex. R, p. 27* (Mr. Bodnar, DRB Chairman: "I wanted to summarize the denial of the rehearing is based upon the esthetics.").

By denying the Association's application, as well as the opportunity to submit corroborating evidence on safety and reasonableness, the DRB required a defective and unsafe system to remain in place. The Association now appeals to the City Commission to remedy the DRB's errors and ensure the safety of the South Tower's residents and visitors and of the surrounding community.

## JURISDICTION

The City Commission has jurisdiction to hear appeals of DRB orders on applications for design approval. *Sec. 118-9(c)(2)(B), City Code.* The Association, as the original applicant, has standing to appeal, and its appeal was timely submitted.[2] *Sec. 118-9(c)(3), City Code.*

## STANDARD OF REVIEW

The City Commission must overturn the DRB's Order if it finds that the DRB (1) failed to provide procedural due process; (2) failed to observe the essential requirements of law; or (3) failed to base its decision upon substantial competent evidence. *Sec. 118-9(c)(4), City Code.* The standard of review is identical to the standard applicable to first-tier certiorari appeals of land use board decisions in circuit court. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195 (Fla. 2003). A petitioner need satisfy only one of the three standards to sustain an appeal. *Id.*

## SUMMARY OF ARGUMENT

The DRB's Order is legally deficient and must be overturned.

1. The DRB failed to observe the essential requirements of law by disregarding the express, code-mandated safety criteria in its decision-making and failing to ensure the safety of the South Tower and its surroundings. By law, the DRB was required to understand, evaluate, and apply all of the design review criteria, and to do so uniformly. The DRB's failure to comprehend and apply the express code-mandated safety criteria in its decision-making requires reversal.

2. The DRB's Order and findings are not supported by substantial competent evidence. The record contains no substantial competent evidence that the existing horizontal panels were required by the DRB approvals for the South Tower, nor is there any substantial competent evidence that the existing balcony railings can be retrofitted safely to replicate the horizontal banding that the defective panels evoke from afar. Since no competing evidence was ever introduced to refute the Association's expert testimony, the uncontroverted record evidence mandates reversal of the Order and approval of the Association's application.

[2] The DRB rendered its Order on June 14, 2018, and the Association filed a notice of appeal with a summary of its arguments twenty days thereafter, as required by Section 118-9(c)(3) of the City Code. *App., Ex. U.* Since the Association's petition for rehearing was then pending before the DRB, the Association requested that the City hold the appeal in abeyance pending the conclusion of the DRB process. *Id.* Following the DRB's denial of the Association's petition for rehearing on October 2, 2018, the Association and the City agreed to a briefing schedule that requires that this brief be filed by November 5, 2018, with the City Attorney's brief being due twenty days thereafter, and with the Association's reply brief being due fifteen days after submission of the City Attorney's brief.

## ARGUMENT

### A. The DRB Failed to Observe the Essential Requirements of Law by Disregarding the Express, Code-Mandated Safety Criteria in its Decision-Making and Failing to Ensure the Safety of the South Tower and its Surroundings.

Section 118-251 of the City Code enumerates the specific review criteria that the DRB must apply in evaluating an application for design review (the "Design Review Criteria"). These criteria expressly 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), City Code.* More specifically, Design Review Criterion seven mandates that "particular attention shall be given to safety [and the proposal's] impact on contiguous and adjacent buildings and lands." *Sec. 118-251(a)(7), City Code.*

In evaluating an application for design approval, the DRB must give each Design Review Criterion due weight and consideration. *Broward County v. G.B.V. Int'l, Ltd.,* 787 So. 2d 838, 842 (Fla. 2001) ("A decision granting or denying a [quasi-judicial] application is governed by local regulations, which must be uniformly administered."). The DRB cannot prioritize esthetic considerations to the exclusion of safety concerns, especially not when the City Code directs the DRB to give safety "particular attention." *Id.*

Yet, in denying the Association's application, the DRB overlooked this express regulatory obligation and focused exclusively on their design preferences, disregarding uncontroverted expert testimony that the metal panels are dangerous—and, in fact, life-threatening—to South Tower residents and visitors, as well as to adjacent buildings and the surrounding community, and that there is no safe and effective way to replicate the horizontal band that the panels evoke from afar.

It is undisputed that the defective metal panels are dangerous and must be removed. *App., Ex. J, p. 35* (Mr. Bodnar, DRB Chairman, 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." *App., Ex. J, 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. *App., Ex. J, 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." *App., Ex. J, 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. *App., Ex. J, p. 25.* The latter, in turn, would be "like having razor blades

all around," posing a serious hazard to children and others. *App., Ex. J, p. 36.* In the end, the expert testimony is clear: "you can't apply anything to tempered glass" and guarantee safety. *App., Ex. J, p. 34.*

The DRB's decision to deny the Association's application evinces a consistent and near-total misunderstanding of the Design Review Criteria that, by law, they are required to apply. During the proceedings, several DRB members made token references to safety, but the record lacks the careful and reasoned consideration of the safety criteria that the law demands. By and large, the DRB's focus was on design and, more specifically, on the DRB's hardened preference that the horizontal bands remain, to the exclusion of all other factors.

Similarly, the City's Staff Report, upon which the DRB relied in rendering its Order, totally ignores the safety criteria. In fact, the Staff Report concludes that Design Review Criterion seven—which mandates that "particular attention . . . be given to safety"—is "**Not Applicable**" to the Association's application. *App., Ex. G, p. 3.* And at the June 5, 2018, hearing, the City's Chief of Urban Design advised that:

> **This is not an unsafe structure board, this is [the] Design Review Board. And at the root of this application is the removal of the horizontal banding**, which is integral in staff's opinion, and sounds as though getting the board to agree [is] integral to the verticality of this building to break up [the] massing.

*App., Ex. J, p. 46* (emphasis added). These omissions ignore the City Code's express Design Review Criteria and discount the DRB's critical role in protecting and promoting the safety and welfare of the general public. *Sec. 114-2(b), City Code* (the City's land development regulations, through which the DRB was established, are "the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare.").

The DRB so misunderstood the essential requirements of law, that at the October 2, 2018, rehearing, a DRB member asserted that issues of safety are beyond the DRB's jurisdiction:

> [W]e were very clear that the confines of our criteria that we apply as members of the DRB—again, it's not because we're insensitive to **the safety of the community members of Miami Beach City, it's just that's not within the purview of what we deal with. We deal with pure design issues within the criteria[**.]

*App., Ex. R, pp. 34-35* (emphasis added).

DRB members "do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations." *Omnipoint,* 863 So. 2d at 377; *see also Baker v. Metropolitan Dade County*, 774 So. 2d 14, 19-20 nn. 12-14 (Fla. 3d DCA 2001), *rev. denied*, 791 So. 2d 1099 (2001). They must understand, evaluate, and apply <u>all</u> of the Design Review Criteria, and they must do so uniformly. *G.B.V.*, 787 So. 2d at 842.

The DRB's failure to comprehend and apply the express code-mandated safety criteria in its decision-making ignored the essential requirements of law. The Order must be reversed. *Alvey v. City of North Miami Beach*, 206 So. 3d 67 (Fla. 3d DCA 2016) (failure to consider and apply essential provisions of the city code renders a decision void).

**B. The DRB's Order and Findings are Not Supported by Substantial Competent Evidence.**

The DRB rejected the Association's application on grounds that the defective panels emphasize a "horizontality" that, in the board's mind, is a critical design feature of the South Tower. Removing the panels, in the DRB's mind, would compromise the building's design intent, rendering the proposal inconsistent with Design Review Criteria 4 and 6. These conclusions are not supported by substantial competent evidence. Moreover, the record lacks substantial competent evidence that the DRB's decision satisfies the City Code's safety criteria.

**i. The Record Lacks Substantial Competent Evidence That the Existing, Defective Horizontal Balcony Panels Were Required by the DRB Approvals for the South Tower or That The Defective Panels Form an "Integral Part" of the South Tower's Architecture.**

The record is clear that the defective metal 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 orders that approved the design of the South Tower. *App., Ex. H, Ex. I, Ex. J, pp. 6, 11, 28, 40-41.* In fact, the existing balcony railing system "was never developed to put panels on it." *App., Ex. J, p. 32.* The panels were apparently installed as a value-engineering substitute for the approved railing system, which was never implemented. *App., Ex. J, pp. 28-29, 42.* Had the developer or contractor installed the railing system as designed, the Association would not now be faced with this critical life-safety problem. *Id.*

Despite the record evidence, the DRB relied on an erroneous Staff Report that presumed, without supporting proof, that the defective metal panels are an "integral part" of the South Tower's architecture. *App., Ex. G, p. 2.* ("The existing metal panels affixed to the balconies are an integral part of the exterior design of the building."). Nothing in the record supports a finding that the metal panels were contemplated by the DRB-approved plans, much less that they were an "integral part" of the South Tower's design. In fact, the record evidence supports precisely the opposite finding. Yet the Association need not demonstrate that the weight of the evidence cuts in its favor, only, as it has done, that the DRB lacked substantial competent evidence to support its Order. *G.B.V.,* 787 So. 2d at 846.

Since the defective panels were <u>not</u> required by the DRB orders that approved the South Tower, the panels cannot be an "integral part" of the South Tower's architecture, and the DRB cannot require them to remain.[3] The DRB's presumptions to the contrary lack any factual support

[3] The Association asserts that, because the existing metal 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 orders that approved the design of the South Tower, the DRB does not now have the jurisdiction or authority to require that the defective panels remain attached to the building. The DRB is a board of limited jurisdiction and its review power is constrained by law. *Sec. 118-252, City Code.* Although the DRB is entitled to review modifications to its previous orders and "alterations [to]

and, therefore, do not substantiate the board's findings. *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1995) (evidence is substantially competent only if it is "fact-based.").

### ii. The Record Lacks Substantial Competent Evidence That the DRB's Decision Satisfies the Code's Safety Criteria.

The Association established, through competent substantial evidence, that the defective metal panels are dangerous and must be removed, and that there is no safe and effective way to retrofit the building's existing tempered glass railings to mimic the faint horizontal band the defective panels evoke from afar. *This Brief, pp. 5-6.* The Association has thus shown that there is no way to ensure the "safety . . . of the project in relation to the site, adjacent structures and [the] surrounding community," consistent with the Design Review Criteria, absent removal of the defective panels.

To reach a contrary decision, the DRB must rely on competent substantial evidence that rebuts the Association's expert testimony. *Irvine v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986) (once an applicant shows that its application satisfies the relevant criteria, the burden shifts to the opposing party "to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [application] did not meet such standards[.]") (internal quotations omitted). The DRB's Order, however, is predicated entirely on the unsupported presumption that the existing balcony railings can be retrofitted safely to replicate the horizontal banding. There is simply no record evidence to support this conclusion.

At the June 5, 2018, hearing, the DRB questioned the Association's glass expert about numerous potential alternatives for replicating the horizontal banding if the panels are removed. For each alternative, Mr. Howes demonstrated, through his expertise, their dangers and ultimate unviability. *App., Ex. J, pp. 13-40.* The only reference addressing the DRB's insistence that a viable banding alternative be found is the Staff Report's conclusory demand "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," based on an unsubstantiated inference (not fact) that "There is no doubt that this can be accomplished in a code compliant manner." *App., Ex. G, p. 7.*

Substantial competent evidence is evidence that establishes "a substantial basis of fact from which the fact at issue can be reasonably inferred." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). In other words, it is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *Id.* Substantial competent evidence is "real, material, pertinent, and relevant," and has "definite probative value." *Lonergan v. Estate of Budahazi*, 669 So. 2d 1062, 1064 (Fla. 5th DCA 1996) (internal citations omitted). "[S]peculative or merely theoretical evidence or hypothetical possibilities" are legally insufficient. *Id.*

City staff are not experts on balcony railing systems nor on the glass and engineering systems that railings require. Their loose presumptions on the topic carry no weight. *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990) (opinions unsubstantiated by competent

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exterior surface finishes and materials," nothing in the City Code grants the DRB the power to compel the preservation of a design element that it did not approve or require, much less so when doing so poses serious dangers. *Id.*

facts are not evidence). *Div. of Admin. v. Samter*, 393 So. 2d 1142, 1145 (Fla. 3d DCA 1981) ("[n]o weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning"). Worse still, the Staff Report's ultimate recommendation—that the Association adhere the defective metal panels to the balcony railings with "an epoxy adhesive"—would be wholly unsafe and directly contrary to all evidence supplied by experts competent to testify. *App., Ex. G, p. 7.* As Mr. Howes explained in his opinion letter to the DRB:

> 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 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**, which I will explain.

*App., Ex. I, p. 38-39* (emphasis added). In fact, the DRB itself did not believe staff on this point. *App., Ex. J, p. 35* (Mr. Bodnar, DRB Chairman: "We all agree the metal is a bad solution."); *App., Ex. R, p. 21* (Mr. Bodnar, DRB Chairman: "I agree it's a dangerous situation, from our minutes, the last meeting. And I agree that at some point the railings have to be replaced. But I'm going to recommend that we deny the rehearing.").

The DRB may prefer that the South Tower incorporate horizontal elements, but their reliance on the Staff Report is misplaced, and their conclusions are not supported by substantial competent evidence. *First Baptist Church v. Miami-Dade Cty.*, 768 So. 2d 1114, 1116 (Fla. 3d DCA 2000) ("flawed" and "erroneous" staff recommendations are "invalid" and "d[o] not constitute competent evidence."). Since no competing evidence was ever introduced to refute the Association's expert testimony that the balcony railings cannot be retrofitted safely to replicate the horizontal banding that the panels evoke from afar, the uncontroverted record evidence mandated approval of the Association's application. *G.B.V.*, 787 So. 2d at 842.

## CONCLUSION

For these reasons, the Association respectfully requests that the City Commission reverse the DRB's Order and approve the Association's application for design approval.

Respectfully Submitted,

**AKERMAN LLP**

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished to the individuals listed below by e-mail generated this 5th day of November 2018.

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