

EXHIBIT J

MIAMI BEACH LAND USE BOARDS

DESIGN REVIEW BOARD AGENDA

DRB18-0226, 100 SOUTH POINTE DRIVE

THE CONTINUUM CONDOMINIUM ASSOCIATION

DATE TAKEN: Tuesday, June 5, 2018
TIME: 2:57 p.m. to 3:54 p.m.
PLACE: 1700 Convention Center Drive
3rd Floor
Miami Beach, Florida 33139
REPORTED BY: LAURIE YANNACCONE, FPR
and NOTARY PUBLIC

1 APPEARANCES :

2 APPEARING ON BEHALF OF THE CONTINUUM
3 CONDOMINIUM ASSOCIATION:

4 JED FRANKEL, ESQUIRE
5 Eisinger Brown Lewis Frankel & Chalet P.A.
6 4000 Hollywood Boulevard
7 Suite 265S
Hollywood, FL 33021
Jfrankel@eisingerlaw.com

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10
11
12 ALSO PRESENT:

13 Victor Diaz
14 William Osbourne
15 Lynn Mathon
16 Steve Howes
17 Adrianne Kreeger
18 Matt Hatcher
19
20
21

22 C O N T E N T S

23 CERTIFICATE OF REPORTER
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P R O C E E D I N G S

MR. MURPHY: Seeing that the time is reading to be 2:58 p.m. and we have a time certain for three o'clock, I see the person that requested the time certain to Mr. Bodnar is in attendance, and with that I will introduce the item DRB file number 18-0226, 100 South Pointe Drive, The Continuum South Tower. The staff recommendation can be found on page 158 of the distributed agenda.

The applicant, The Continuum Condominium Association, is requesting exterior design modifications to facade of an existing 41-story building to remove existing metal panels along the exterior glass balcony railings on all elevations of the building and retain all clear glass railings.

Additionally, the applicant is requesting deletion of condition of the original final order. This item was originally approved in 1998 pursuant to DRB file number 9611.

MR. FRANKEL: Good afternoon, Mr. Chairman.

Again, Jed Frankel of Esinger Brown on behalf of the Continuum on South Beach Condominium Association, Inc.

Before I address any of the points, I would

1 just like to get a clarification in terms of number
2 of board members that we have here and what the
3 number is going to be to affirmatively pass this --
4 the item at this point.

5 MR. MURPHY: Seeing the attendance of the
6 board is now down to the four members, you will
7 need an affirmative four votes. Staff is not a
8 voting body, so you will need all -- universal vote
9 from the people to my right.

10 MR. FRANKEL: On behalf of the association, we
11 take exception with the number of the points that
12 were set forth in the staff report, and rather than
13 hearing from me at this point, I would like to turn
14 it over to William Osbourne, who is going to speak
15 on behalf of the community, and then after that we
16 have several witnesses who will present their
17 testimony.

18 UNIDENTIFIED SPEAKER: If I can just interrupt
19 you for one moment, I would like to ask that
20 everybody in the room who has not been sworn in yet
21 to please raise your right hand.

22 Do you swear or affirm to tell the truth, the
23 whole truth, and nothing but the truth?

24 Thank you.

25 You may proceed.

1 (Witnesses are sworn.)

2 MR. OSBOURNE: Thank you.

3 My name is Will Osbourne, and I've been the
4 president of the South Tower board of directors for
5 the past three years, and I serve as director again
6 this year.

7 Our building has had several original defects
8 that has caused us to spend over \$15 million over
9 the past four years correcting, and we are here
10 today to ask approval for us to finish the job.

11 When I took over as president, succeeding
12 Victor Diaz, we finally began a long delayed
13 remediation project, and at the very first
14 construction meeting that we held with our
15 contractors they came to me with a change order and
16 a question. The question was: Where do we get
17 replacement metal panels for all the ones that have
18 fallen off the building?

19 What are you talking about, I asked? No one
20 had told me or any of our newly-elected board about
21 any panels coming off of the building. And what we
22 discovered over the subsequent 18 months that a
23 total of 126 panels had fallen off the building
24 never to be seen again. These are the panels
25 flying like a helicopter blade off of up to

1 41 stories high on our building. They weigh about
2 five pounds and they extended beyond the footprint
3 of the building, likely into the park or on the
4 grounds of our neighbor's property.

5 We are petitioning to remove all panels, clean
6 and repair the glass on the balconies, replace or
7 repair the lower metal channels that hold the glass
8 in place, and replace the gaskets that seal the
9 glass to our railings. We don't want to replace
10 these panels again.

11 In our presentation today we will show that
12 the original design presented by our renowned
13 architecture firm, Skidmore, Owings & Merrill, did
14 not include panels, and the original design
15 approved by the final order of the DRB in December,
16 signed in January of 1999, did not include a
17 provision for panels to be added. In fact, the
18 conditions by the staff of the DRB in September of
19 1998, there were modifications to the design
20 presented that were pretty specific. They included
21 many structural landscaping, signage, color,
22 traffic, roadway, window and door and rooftop
23 requirements that had to be redrawn to allow the
24 building to get to the final order.

25 There was nothing in the minutes that referred

1 to adding additional metal banding to make it
2 consistent horizontal line, and given the
3 specificity of the design modification
4 requirements, one would think that that would have
5 been at the level of mentioning. There was even a
6 requirement to make the building slimmer, putting
7 metal panels to increase the horizontal lines of
8 the building hardly fix that requirement.

9 As everyone has been told by their mother,
10 horizontal stripes are not slimming, and nor was
11 there any modification for panels in the final
12 order which was signed January 9, 1999. So from an
13 aesthetic standpoint, we are returning to the
14 original design.

15 We will demonstrate with our international
16 recognized glass consultant and expert that any
17 material adhered to glass will compromise the
18 integrity of tempered glass negating the benefits
19 of glass that when broken will shatter into
20 smaller, less dangerous pieces, compared with a
21 60-pound piece that will break away and can do
22 cataclysmic damage.

23 And we can attest to the fact that any
24 adhesive material, tape, epoxy, silicone, glue or
25 chewing gum will inevitably erode and decay when

1 exposed to the extreme conditions of the unique and
2 exposed location of our tower. Sunlight, salt,
3 air, wind and the first line of defense for all
4 tropical storms and hurricanes heading towards
5 shore make this a very toxic environment for
6 adhesives.

7 We will show you the minimal difference that
8 elimination of metal panels will make to the
9 appearance of the building out from the outside,
10 and we note that no subsequent construction in our
11 neighborhood or beyond uses these metal panels to
12 make a design statement, mostly likely because
13 contractors and architects know just how unstable
14 such design elements are.

15 We will show you the overwhelming support this
16 project has from our own community. Our neighbors
17 are supporting this effort as reflected by the
18 pronouncement of the approval from the south of 5th
19 neighborhood association or Southna (phonetically).
20 And our residents and unit owners are overwhelming
21 in support of this as witnessed by an official
22 notice owners' meeting where a quorum voted
23 92 percent in removal of panels and repair of the
24 glass railings. Any perception that this is a
25 controversial issue within the Continuum family is

1 misconstrued, only a very few vocal residents
2 object to this plan.

3 We, as an association, cannot accept the
4 liability of proceeding with a plan that has been
5 proven to be unstable and a danger to our residents
6 and neighbors, our engineers won't certify it
7 either.

8 I would hope that the City of Miami Beach
9 would also understand the risks of life, safety and
10 ensuing liability, an existing structure far
11 outweighs minor aesthetic modifications.

12 Ladies and gentlemen, I'm on the board of the
13 New World Symphony, which is, of course, housed at
14 the magnificent New World Center, one block from
15 here, a Frank Gehry masterpiece. My wife sits on
16 the board at the Perez Art Museum, or PAMM, which
17 is housed in an iconic, universally-praised
18 structure for its groundbreaking architecture. We
19 appreciate the dramatic and exciting architecture
20 of this city, it's one of the important reasons why
21 we moved here as residents 10 years ago, and we
22 appreciate the work of this group doing to ensure
23 the development is not done, not only sensibly, but
24 with eye toward great design.

25 The changes we are proposing do not constitute

1 an assault on the senses, but our common sense
2 modifications and corrections to a set of
3 requirements made without the benefit with
4 experience of real life conditions. We now have
5 had the experience of 15 years living with this
6 design and it just doesn't work. Please don't
7 compound this mistake by denying our request to
8 repair this damage properly, and let us return our
9 building to its iconic and safe status.

10 Thank you very much.

11 MR. BODNAR: Does that complete your
12 presentation?

13 MR. FRANKEL: No. We have several witnesses.
14 Go ahead.

15 Introduce yourself.

16 MS. MATHON: Good afternoon.

17 I'm Lynn Mathon from B.P. Taurinski Structural
18 Engineers. We're the engineer of record for the
19 Continuum South Tower.

20 We were asked to come to the building because
21 they had this life safety issue. We notified the
22 city in December after being hired and coming up
23 with a plan and filing for a standard permit to do
24 the repair to the outside of the building.

25 Today, now that the building has opposition as

1 to the aesthetic issues with the outside of the
2 building, we've done a little research and we've
3 created a handout with some supporting documents
4 that will help you to make a realistic decision for
5 this building. Within the package there's the
6 owners' petition to remove the panels and leave the
7 glass clear. Inside also is the notice of all the
8 unit owners that did vote in favor of this and the
9 minutes from the board meeting for proof.

10 There's also photographs of the original SOM
11 design, we've chosen the particular elevation,
12 which you'll find it's labeled A8 or page, I
13 believe, 10 of the pdf that was submitted. It
14 shows the two elevations of the north tower and the
15 south tower.

16 When SOM designed these buildings, they
17 designed the concept to have clear glass, which is
18 noted on both elevations. The north tower
19 currently has clear glass, as you can see, in the
20 elevation there on the poster board in front, and
21 the two buildings together you can see that they
22 both have -- one has clear glass as originally
23 designed by SOM.

24 The Continuum South Tower was also meant to
25 have the same look. We believe that a lot of the

1 architectural features that SOM meant were things
2 like as ionic crown, its slender line, and just the
3 look from what it looks like when you come in on
4 the ocean. And I don't think that putting the --
5 we don't believe that putting those panels back on
6 really or taking them off takes away from the
7 slender line of the building, as you can see in the
8 before and after renderings on the poster boards in
9 front of you also.

10 Now, to speak to the glass, we have Steve --
11 also inside the package there's Mr. Steve Howes'
12 résumé and a letter to the board explaining the
13 conditions of tempered glass and the severity of
14 gluing things to it, and there's also
15 Mr. Turinsky's (phonetically) résumé and letter to
16 the city of the life safety issue.

17 At this time I would like to ask Mr. Howes to
18 come up and speak on behalf of the glass and the
19 safety.

20 UNIDENTIFIED SPEAKER: Mr. Chair, how much
21 time would like for me to add?

22 MR. BODNAR: For the total presentation,
23 including the current person, five minutes.

24 MR. HOWES: Good afternoon, Chairman. Good
25 afternoon, board.

1 Tempered glass, which is what these balconies
2 are constructed with, and with aluminum railings
3 there is a common factor up until a couple of years
4 ago when we found they weren't safe enough and we
5 went to impact. Impact is a laminated glass
6 products, in fact, was one of the original
7 inventors of it.

8 Many years ago, after Hurricane Andrew, there
9 was change of glass dramatically, but tempered
10 glass is no longer used in a balcony or safety
11 glass application. Tempered glass was designed to
12 break, and it breaks very easily, everyone thinks
13 it's a lot stronger, it takes four times the
14 loading to break it, but it self-detonates, and I
15 have documents. If you would like, I can show you.

16 It self-detonates, and it has inclusions in it
17 called nickel sulfate. And any small flying stone
18 can detonate it, and you get showered with this.
19 It's fairly safe. As you can see, I'm picking it
20 up, I'm not -- nothing's been done to it, it's
21 standard tempered glass. If it hits you, you may
22 get a few small cuts.

23 If you -- if you adhere a panel to it, like
24 these panels -- if you adhere a panel with -- first
25 things first, these are adhered with a foam tape, a

1 3M acrylic foam tape that doesn't have a life
2 expectancy if more than a few years than UV. So
3 that's why they become flying off the building.
4 And I've been told, in my letter I put 20, but I
5 got the number wrong, it's 120, and these have been
6 flying around south Florida.

7 And you'll see when you attach it correctly,
8 which is what we've done here, we've structured
9 silicone now, when it falls, now you've got a
10 lethal weapon. This is not safety, in fact, it's
11 dangerous, because you have expansion, contraction
12 different to what the glass does, and we've
13 impacted this ourselves, but you'll see it has
14 glass still sticking up, and it's possible for it
15 still to fall with the whole panel. This one is
16 approximately 15 pounds. From a 40-story building,
17 it would decapitate somebody. I mean, this is
18 extremely dangerous to do. I wouldn't even want to
19 be around the building that has this.

20 So what they've got is they've got panels
21 coming off the building because it's taped on, I
22 say temporary, they're all flying and coming off
23 the building. If one of them hits you, it's like
24 a helicopter blade, as we heard, but I think it's
25 more like a guillotine when you adhere glass to it.

1 Now, I've read staff's letter and I've
2 responded what I thought the most important part is
3 they're asking -- it's asking us to put a bad
4 product to an extremely bad product that could kill
5 people and do a lot of damage.

6 That's it.

7 MR. BODNAR: Does anyone else want to present
8 on behalf of the applicant, or to summarize, the
9 remaining minute and 20 seconds?

10 MR. OSBOURNE: Public --

11 MR. BODNAR: Say that again.

12 MR. OSBOURNE: For public comment or just --

13 MR. BODNAR: No, no. I'm leaving it open to
14 you for the remainder of the time.

15 MR. FRANKEL: We're done with the presentation
16 at this point, I would just reserve any time for
17 rebuttal.

18 MR. BODNAR: Okay. Thank you.

19 At this --

20 MR. HOWES: Thank you to the board.

21 MR. BODNAR: Thank you.

22 At this time I want to open it up to anyone
23 from the public that wishes to speak concerning
24 this project for any try -- we'll try to keep the
25 presentation down to two minutes.

1 UNIDENTIFIED SPEAKER: And do any board
2 members -- this may be a good time to ask, do any
3 board members have any disclosures to make other
4 than the e-mails which I'm assuming we have copies
5 at the -- in book.

6 MS. KREEGER: My name is Adrienne Kreeger --

7 UNIDENTIFIED SPEAKER: Seeing no other
8 disclosures.

9 You can go ahead.

10 Thank you.

11 MS. KREEGER: My name is Adrienne Kreeger.

12 I'm an original owner at the Continuum. I'm
13 respectfully speaking to you today, not only as a
14 resident, but as a mother and a grandmother.

15 When a tiny piece of debris fell off our
16 building during the stucco repair, the south tower
17 spent \$600,000 to -- in order to add additional
18 protection at the slightest provocation of danger
19 to our residents. We have spent money, this is our
20 main concern.

21 I have previously had two couches, 80 pounds
22 each, lift off my terrace. One couch ended up at
23 the beach, which is around the corner from the
24 terrace in perfect condition, a wind sheer lifted
25 it and we brought it back up to the apartment. On

1 the other balcony the same type of couch lifted off
2 and ended up in Nikki Beach, not able to bring it
3 back up, it was smashed to smithereens. I don't
4 understand aerodynamics, but I do believe the
5 position of our building and the high winds of the
6 building puts it in a very unusual situation.

7 I have been for many years on the Miami Beach
8 commission for women and one of our top priorities
9 was always the health and well-being of our
10 community, especially children. Our property has
11 so many young families with children that are out
12 and about on our property, how can we put these
13 innocent lives at risks with the possibility of
14 flying panels, injuring them or possibility causing
15 death.

16 I know how life changing it is when someone is
17 injured. I have a husband, due to a freak
18 accident, who is unable to walk at this time, I am
19 pleading with you to do the right thing for our
20 community.

21 Many residents who had planned to be here
22 today were not able to because the meeting was
23 changed because of one resident, I find that
24 bizarre.

25 My question to the board is: After hearing

1 all the evidence presented by experts on our
2 reasons for panel removal, who will assume the
3 liability when a panel flies off and injures or
4 kills someone on our property?

5 Please do the right thing.

6 MR. BODNAR: Thank you.

7 Anyone else wish to speak?

8 MR. DIAZ: I will.

9 Good afternoon, members of the board. My name
10 is Victor Diaz. I am a unit owner at
11 3705 100 South Pointe Drive.

12 I want to thank the chairman of the board for
13 granting the time certain request. I want to
14 apologize to the extent that that inconvenienced
15 any of the residents. I want the board to know
16 that all of the residents received notice of the
17 chairman's decision in a letter communicated by the
18 community manager well in advance of this meeting,
19 so in no way was there a lack of notice to the
20 public that this matter would be taken up at
21 three o'clock this afternoon.

22 There is a dispute in the record between the
23 representations contained in the staff report and
24 the statement made by the presenter that this
25 architectural feature was integral part of the

1 original exterior design of this building as
2 approved by the Design Review Board 20 years ago.
3 No explanation is offered by the applicant as to
4 why if, in fact, this was not the SOM-approved
5 design by the DRB, it was built and has existed
6 there for the 20 years. So I think that it is an
7 issue that this board needs to take into account,
8 whether, in fact, this was an integral part of the
9 original design.

10 Second point that I think is important to make
11 is that any proposed change in the design needs to
12 be based on the objective Design Review Board
13 criteria and not in the change of popular opinion
14 about what may or may not be aesthetics. None of
15 the proponents of the alternative design can be
16 heard to complain that they will be aggrieved by
17 staff's recommendation in some effort to preserve
18 the original design be made as we all bought into
19 the original design. The only aggrieved parties
20 can be the community and those that oppose a change
21 in the exterior architectural appearance of this
22 iconic structure.

23 From inception this applicant -- this
24 applicant has disrespected the design review
25 process. They initially attempted to pull a permit

1 without seeking design review approval for this
2 knowing exterior modification to the building and
3 were stopped by the planning staff who refused to
4 approve that permit. They then applied to the
5 building department for an emergency permit saying
6 this was a life safety issue that the panels were
7 falling off the building.

8 I defy any of my residents to tell me that any
9 of us who lived in the building were aware of the
10 fact that the balcony panels were delaminating
11 imposed any risk of injury in the first 10 to 12
12 years that many of us lived in that building.
13 There is no reported incidents of an injury, there
14 was no prior notice. The suggestion that somehow
15 this is a newly discovered problem that was
16 inherited by the new board is just as a matter of
17 fact untrue, and I'm prepared to cross-examine
18 anyone who suggests to the contrary.

19 After staff objected and said, If you seek to
20 make an exterior modification to an iconic
21 structure of Miami Beach, merely make an
22 application to DRB. They then circumvented staff
23 and went into the building department to try to get
24 an emergency permit pulled to do a life safety
25 repair saying there was an emergency life safety

1 problem presented by the delamination of these
2 panels.

3 That permit has been subsequently revoked by
4 the authority of the building director because this
5 applicant grossly exceeded the scope of the permit
6 that was granted by the building director
7 exercising extraordinary authority in circumventing
8 the design review process, saying, Go ahead and
9 take off the building any panels that may pose a
10 life safety issue and just limit your work to that,
11 but they didn't. They went ahead and removed
12 additional panels in order to rally community
13 support for the fact that you would have a better
14 view if those panels were not there.

15 MR. BODNAR: Two more minutes.

16 MR. DIAZ: So this is being prepared at the
17 time that they presented that to the building
18 director, they said that the public safety threat
19 was the delamination of the panels and, as
20 Mr. Osbourne said, these panels flying off the
21 building and decapitating someone.

22 Today they proffer an alternative
23 justification that the replacement of the panel,
24 which they first said was technologically not
25 feasible, is technologically feasible, but they

1 would compromise the integrity of the tempered
2 glass. That is a new argument that they have
3 presented here today and never presented to staff
4 before, and which staff has not had an opportunity
5 to evaluate, nor have I had an opportunity to
6 cross-examine, but there is a more fundamental
7 issue, because no attempt -- and I challenge, and I
8 would love to have an opportunity to cross-examine
9 their experts.

10 No attempt has been made to look at
11 alternative ways of preserving the original design
12 without compromising the integrity of the tempered
13 panels, for example, simply frosting the glass so
14 as to maintain the original banding horizontal
15 appearance, which is an integral part of the
16 streamline look and the design of the building as
17 it was presented and as we -- as it has become an
18 iconic part of Miami Beach architecture.

19 Lastly, I'd like to point out that as they are
20 before you today, the applicant is here in knowing
21 violation, and has made other architectural
22 modifications to this building without Design
23 Review Board approval, including modifications to
24 the original color pallet of the building.

25 And I want to say something to my neighbors,

1 I'm not opposed to a majority of the people in the
2 building wanting to make a change in the appearance
3 of the building, but in this city public opinion
4 it -- designed aesthetics is not about public
5 opinion, it's not about a majority of the people
6 thinking this is good -- looks good and the
7 majority thought the building should be painted
8 purple tomorrow, it would -- that is not an
9 objective design review criteria.

10 Having served on land use boards for 16 years,
11 I believe in the integrity of the City's design
12 review process. I don't think this application has
13 been rigorously examined. There are alternative
14 means that could have been preserved, explored by
15 the applicant and tested by staff to make sure that
16 the original integrity of the design would be
17 preserved while making sure I, like every other
18 resident of the building, want to live in a safe
19 building and provide for safety for my community.

20 MR. BODNAR: Thank you very much.

21 MR. DIAZ: And with that I would reserve any
22 opportunity to the extent that there is an
23 opportunity to cross-examine their expert.

24 MR. BODNAR: Thank you.

25 Is there anyone else from the public who

1 wishes to speak at this time?

2 Seeing no one, do you want to rebuttal?

3 MR. FRANKEL: Yes, just briefly with regard to
4 the majority of Mr. Diaz's presentation really
5 addressed issues that are not before this board in
6 terms of permitting and reported violations and
7 other things like that.

8 I think the two central issues here today,
9 number one is, what was the original design intent,
10 and I think we've demonstrated that that did not
11 include these panels that are now at issue. So
12 a -- if that is what the concern is, that is
13 obviously meant by removal of those.

14 Second -- second item is with regard to
15 safety, and that is one of the key criteria that
16 this board is empowered to look at. And you've
17 heard from the experts that, you know, that these
18 panels are dangerous. When you attach them to the
19 glass, they are doubly dangerous, and anything that
20 you attach to glass is going to make it dangerous,
21 and I think we wanted to address that point.

22 MR. HOWES: Yes, tempered glass is under
23 compression -- tempered glass is under compression.
24 That's a -- it's like a -- it's like a balloon. If
25 you --

1 MR. BODNAR: Let me -- I'm sorry to interrupt
2 you, but if you can explain for about 20 seconds
3 about -- tempered glass, but all of that --

4 MR. HOWES: You cannot -- you cannot temper
5 safety glass and expect it to be safety anymore.

6 MR. DIAZ: Frost --

7 MR. HOWES: You can frost -- that's what I'm
8 saying, if you take off the surface, you then
9 completely change the concept of temper glass.

10 MR. BODNAR: The understanding that I have is
11 that the exterior surface is --

12 MR. HOWES: Yes, if you touch the surface --

13 MR. BODNAR: -- it shatters.

14 MR. HOWES: That's correct.

15 MR. BODNAR: And because the molecular
16 structure of the glass inside the outside surface
17 is different.

18 MR. HOWES: Yes. And the whole panels,
19 it's -- because we're trying -- I don't want to
20 look about looks, it's not important to me. It's
21 important is the safety and integrity of the
22 product itself, and by doing that it will not work,
23 and you're now putting the glass under even more
24 problems.

25 MR. DIAZ: Mr. Bodnar, may I ask a question?

1 MR. BODNAR: Let him finish the rebuttal.

2 MR. DIAZ: Okay.

3 MR. HOWES: You can't change this to laminated
4 glass. There is not one approved product in south
5 Florida, Miami-Dade for impact that has tempered
6 glass in it, so the building would have to spend
7 millions of dollars to replace all this.

8 MR. BODNAR: We'll come back to that.

9 MR. FRANKEL: I'm done with my rebuttal.

10 Thank you.

11 MR. BODNAR: You're finished.

12 Thank you.

13 MR. DIAZ: Let me just ask one question of the
14 expert, Are you saying that there is no such things
15 as tempered frosted glass?

16 MR. HOWES: No, I'm not saying that.

17 MR. DIAZ: Okay. It's the same --

18 MR. HOWES: I'm saying it's the safety
19 glass --

20 MR. DIAZ: -- aesthetic -- could the same
21 aesthetic appearance of the banding be preserved
22 with tempered glass that does not have to have
23 metal panels attached to it?

24 MR. HOWES: Yes, it's possible.

25 MR. DIAZ: Thank you.

1 MR. BODNAR: Okay.

2 UNIDENTIFIED SPEAKER: But does the glass have
3 to be -- can the existing glass be frosted or do
4 you have to have all new glass?

5 MR. BODNAR: If there is no one else who
6 wishes to speak from the public, I'm going to close
7 the public hearing portion of this applicant.

8 MR. HOWES: You can --

9 MR. BODNAR: We'll come back to that. We'll
10 come back to that. Okay?

11 MR. HOWES: I'm sorry.

12 You can frost --

13 MR. BODNAR: I'm closing the public hearing
14 portion of this hearing at this time.

15 Thank you.

16 Now, I'm going to turn it over to our board
17 for comment.

18 Any questions?

19 MS. DELGADO: To me there are two issues that
20 are really important: Obviously safety is one of
21 them, but secondly, from where we stand, this is
22 really prominent architect creating a prominent
23 building in the city, and particularly on points in
24 the city that is sort of the first part that cruise
25 ships see, and it's sort of welcoming to Miami.

1 It's not only Miami Beach, it's really Miami.

2 That's how you reach the port, that's what greets
3 you from the ocean.

4 In looking at the drawings that you presented,
5 I do believe that it was intended for that band to
6 read fatter than what you're arguing. And in
7 looking at the details, and I may be mistaken, it
8 has a double frame at the bottom. It's not glass
9 coming into the concrete, it has actually a
10 thickened frame, and I'm just trying to read what
11 the dimensions are here. And maybe it says a foot,
12 and I can't really make out, I'm looking at sheet
13 A341.

14 MS. MATHON: Yes, you're correct. And if you
15 look at the next two pages after, it shows a
16 section blown up of what the intention of that
17 railing was supposed to be, somewhere between the
18 SOM design and Fullerton taking over of the project
19 after their submission of which at some point it
20 had to be submitted the new architect.

21 Both elevations never show a -- this
22 architectural design, however, in permitting when
23 you've pulled the building's department, this is
24 what you find. So at some point someone somehow
25 changed it, but it was intended to be a railing

1 system with a bottom metal channel to receive the
2 glass.

3 MS. DELGADO: So could you consider that as an
4 option?

5 MS. MATHON: That would cost the building
6 millions of dollars in order to replace the entire
7 railing system. That is a completely different
8 design, it was never executed.

9 MR. STEFFENS: The original intention was a
10 double metal extrusion that was about equivalent to
11 that dimension --

12 MS. MATHON: In height.

13 MR. STEFFENS: -- a foot that is value
14 engineering, that's what you ended up with --

15 MS. MATHON: The railing that's --

16 MR. STEFFENS: -- want to build this.

17 MS. MATHON: The railing that is on the
18 building currently does not -- would not meet the
19 wind loads back in 1997 or '98 when this permit
20 went in for this to be adhered, it wouldn't meet it
21 today. The railing itself is not designed to take
22 that load. This is obviously an afterthought --

23 MR. STEFFENS: Are you saying the railing
24 today that's there is not designed to take what
25 load?

1 MS. MATHON: The additional weight of this
2 metal panel.

3 I agree, it's been around.

4 MR. BODNAR: It's been around.

5 So I have a question for the glass expert, if
6 you don't mind. So let me ask you if you were to
7 recommend a solution here, regardless of money, you
8 don't really care, because it's not your money and
9 you don't care about the aesthetics, would you
10 recommend a replacement tempered glass or safety
11 glass?

12 MR. HOWES: Well, it has to be impact glass.
13 Tempered glass is not safety glass, and in that
14 condition it's dangerous glass. So the only way to
15 do it would be a fully impact system in. Anyway,
16 you cannot use tempered glass and convert it to
17 safety glass in this application. If you banged it
18 or you take the glass out and you do more than a
19 certain percentage, you would have to replace it
20 all with an impact system.

21 MR. BODNAR: So I look to the owner of -- the
22 representative of the owners of the building and
23 ask you: What would you do if it were not your
24 money for the safety of everyone in the building
25 and to meet code?

1 MR. OSBOURNE: I would remove the panels, I
2 would take the glass out and clean it. I would put
3 in new railings at the bottom and put the gaskets
4 around it exactly what we are proposing to do, that
5 is what I would do.

6 MR. BODNAR: But that's not what is being
7 recommended from an expert.

8 MR. OSBOURNE: It's not being recommended by
9 who?

10 MR. HOWES: Well, not recommended, it's a
11 full impact system because of the money situation,
12 but if I didn't worry about money at all, then it
13 has to be brought up to modern codes.

14 MR. BODNAR: Correct.

15 So if you're removing and making a repair,
16 wouldn't you have to bring it up to code or feel
17 safely that you've recommended that they're
18 bringing it up to code and bring it to your condo
19 associations?

20 MR. OSBOURNE: But we are up to code of the --
21 we are up to code currently. I mean, we are not in
22 violation of code.

23 MR. HOWES: Not in violation because it was
24 done before the code was changed.

25 MR. OSBOURNE: But if we were building a new

1 building, then we would have to do something
2 different.

3 MR. BODNAR: Okay. But you recognize that
4 this current reinstallation is not to code?

5 MR. HOWES: That's correct.

6 MR. BODNAR: That's correct.

7 MS. MATHON: Right, but it's the code when the
8 building was built, so the building currently is
9 under existing code.

10 MR. HOWES: I disagree with that because that
11 system was never developed to put panels on it.

12 MS. MATHON: Agreed.

13 MR. HOWES: And as soon as you stick anything
14 to tempered glass, you're now violating every
15 safety code that there ever was.

16 MR. BODNAR: Okay. If we have tempered glass
17 which doesn't meet the current code that -- that
18 the building wants to reinstall and which you feel
19 that they could put a coat on it --

20 MR. HOWES: I'm sorry, I didn't --

21 MR. BODNAR: A frost, put a freely coat?

22 MR. HOWES: It could be done. The problem is
23 that then when you come in to look, and it will
24 look terrible within weeks because frosted glass
25 external picks up every fingerprint, picks up every

1 bit of dirt.

2 MR. BODNAR: Can any white surface be put on
3 that glass?

4 MR. HOWES: Any white surface?

5 I'm sorry, I didn't understand.

6 MR. BODNAR: You want to represent a white
7 horizontal band in that dimension can be applied to
8 that glass and reinstalled?

9 MR. HOWES: Can be done, yes.

10 MR. BODNAR: Thank you.

11 MR. OSBOURNE: But the aesthetics of that --
12 speak to the aesthetics of that.

13 MR. HOWES: Well, they won't last very long.
14 It would be like take every piece of dirt that was
15 stain -- sandblast -- sandblast is terribly
16 stain --

17 MR. BODNAR: I'm not recommending
18 sandblasting, you're recommending that. I'm
19 recommending another coating which is a -- a
20 surface coating which is smooth --

21 MR. MATHON: It's just going to laminate the
22 glass again.

23 MR. BODNAR: -- and even applied.

24 MR. HOWES: Well, you're going to affect the
25 tempered glass again, because if you've got

1 something on it, apart from sandblasting --

2 MR. MATHON: You can't do it.

3 MR. HOWES: -- and apply it like a paint,
4 that's going to hold together until it hits the
5 secondary thing. Tempered glass when detonates, as
6 you can see there, I don't want to put glass all
7 over your floor, but if that glass there, if I push
8 that in my finger, that will drop in lots of
9 pieces. So if I put coating on that and that
10 detonated, it will still fall down in big pieces.
11 You can't apply anything to tempered glass.

12 MR. STEFFENS: So you're saying you can
13 sandblast tempered glass?

14 MR. DIAZ: Or frost it?

15 MR. HOWES: If you change the surface
16 tension --

17 MR. STEFFENS: Isn't sandblasting --

18 MR. HOWES: -- sandblasting change it.

19 I was asked, Can you do it? Yes, you can do
20 it, but there are two things that can happen, is
21 that it will pick up every bit of dirt and it
22 wouldn't look very nice after a couple of weeks,
23 even fingerprints would show up on it.

24 MR. STEFFENS: Can you treat it like a
25 spandrel glass? Can you paint the back of it?

1 MR. HOWES: But again, the problem is with
2 spandrel glass and you paint it, what happens is
3 that paint holds it together. It's like anything,
4 you can sorely see the paint holding it together.
5 So now you're going to still have large chunks
6 falling and they don't break until they hit the
7 secondary thing.

8 MR. BODNAR: What would you recommend if we
9 want to keep that dimension, the white portion at
10 the lower portion of the glass? We all agree the
11 metal is a bad solution.

12 Did SOM remain the architect of record for the
13 entire project?

14 MR. HOWES: I wouldn't --

15 MS. MATHON: No.

16 MR. HOWES: I could not stand here and tell
17 you if you apply a film or a paint -- paint,
18 remember, becomes a film, slightly apply film to
19 glass, it will hold it together. The idea of
20 tempered glass is it breaks into lots of pieces and
21 falls down safely.

22 Now, you're still doing what this is, it's not
23 going to break until it hits somebody. And then
24 that somebody is in pieces and it will go right
25 through the -- the weight of these panels is 60

1 pounds, from that high-rise building that would go
2 straight through a vehicle.

3 So I don't see putting a film or an
4 application of paint is going to hold. If you put
5 the paint on something, it doesn't work, there's no
6 point of putting it on. You -- you know, you're a
7 high-rise, you've got high UV, south Florida,
8 you've got salt, you've got so many things, and the
9 glass spontaneously detonates, and then you've got
10 this big panel that's been painted.

11 MS. DELGADO: Can this metal be attached to
12 the slab instead of the glass?

13 MR. HOWES: Yes, it could be.

14 MS. DELGADO: It would be like a channel that
15 attaches to the outside and just floats in front of
16 the glass?

17 MR. HOWES: I wouldn't want to do that. You
18 run your fingers on this, it's like having razor
19 blades all around. You have children in the
20 building. No, I wouldn't.

21 MS. DELGADO: That wouldn't say, you know,
22 could be a different thickness. I think
23 aesthetically I feel it's important to maintain the
24 original aesthetic, and I'm really not
25 understanding if you are replacing the glass or

1 you're not replacing the glass.

2 MR. HOWES: All they want to do is take these
3 panels off, clean the glass and have clean --
4 everything clean and safe. That is my
5 recommendation.

6 MS. DELGADO: Without replacing the glass,
7 even though you're saying --

8 MR. HOWES: You don't have to --

9 MS. DELGADO: -- anything --

10 MR. HOWES: -- replace the glass, no. The
11 glass was to code several years ago.

12 MS. DELGADO: Even though a projectile hitting
13 the glass would make it shatter --

14 MR. HOWES: Even birds --

15 MS. DELGADO: -- would make it unsafe?

16 MR. HOWES: -- break it. There is a building
17 I was called out to just on the beach, I forget the
18 name of it, the handbag manufacturer, the
19 Italians --

20 MS. MATHON: Fendi.

21 MR. HOWES: -- Fendi, where the top building
22 had glass all around it and it was being detonated
23 and they couldn't understand why. And I stood
24 there for about 20 minutes trying to figure out
25 myself why it was breaking. They installed crappy

1 glass, the birds were hitting it. So the birds at
2 the top were hitting the glass and detonating it.
3 They couldn't see the glass, whereas windows they
4 can see the frame around it, and they couldn't see
5 this glass because it was just open ended. So even
6 birds on railings and things like that can detonate
7 it.

8 MS. DELGADO: So your recommendation is to
9 replace it with impact glass?

10 MR. HOWES: Yes. I mean, that's the only
11 thing that I would tell you if you're going to
12 replace this and get this look, the only way, but
13 it's millions of dollars. That's an awful lot.

14 MR. STEFFENS: And impact glass is constructed
15 with two pieces of glass that are glued together?

16 MR. HOWES: Two pieces of glass that have an
17 interlayer.

18 MR. STEFFENS: And that interlayer has a white
19 pattern on it that would --

20 MR. HOWES: Not separate, an interlayer can't
21 have a separate -- no.

22 MR. STEFFENS: Interlayer could have a color.

23 MR. HOWES: No, the interlayer could have a
24 solid color all over, but you can't get interlayer
25 with a band, goes in an order -- I'm sorry, 386

1 degrees and --

2 MR. BODNAR: But could you frit the exterior?

3 Sorry. Could you put a frit on the exterior
4 of that?

5 MS. MATHON: Not on the railing, not on the
6 railing system itself. You'd have to attach it to
7 the building --

8 MR. BODNAR: On the new glass.

9 MR. HOWES: On impact glass you could, yes.

10 MR. BODNAR: I was curious, I really like the
11 building for personal reasons. I like SOM and I
12 think that they are ionic in the buildings that
13 they do around the world, and, in fact, they are
14 copied everywhere. It's fascinating. In today's
15 New York Times there were three copies of your
16 building shown.

17 MR. HOWES: Yes.

18 MR. BODNAR: I don't know if you had a chance
19 to see it, but it's fascinating, and this building
20 has been replicated all over the world because
21 everyone loves it. It's going to be hard to change
22 it.

23 MR. HOWES: As soon as you change anything
24 with tempered glass, it's no longer under the CPS
25 category safety glass. So I wouldn't recommend

1 that whatsoever. I would recommend the only way to
2 do it, replace it up to today's modern code, and
3 that's the only way that I see it. You certainly
4 can't make tempered glass into impact glass.

5 MR. OSBOURNE: If I could address the design
6 for just a moment. The SOM design which included
7 both towers back in 1998 had a distinct focus on
8 making the two towers separate but different,
9 similar but different, and you can see that in
10 today with the towers of one and the smaller
11 building with a different design on the top as
12 well.

13 However, I don't believe that the horizontal
14 metal panel and the horizontal lines that we had or
15 had in the south tower is in -- is consistent with
16 that north tower which does not have the same
17 similar horizontal lines. So, if anything, all
18 we're doing is taking it back to the original SOM
19 design that had both towers with no horizontal
20 line, and I'm just -- show you that and that's in
21 the exhibit package, so...

22 MS. DELGADO: According to this drawing, it
23 didn't have the horizontal lines, according to this
24 SOM drawings.

25 MS. MATHON: No. You can see the -- it

1 doesn't. If you were able to -- which it's in pdf
2 form so that you can zoom in, that's the bottom of
3 the balcony slab.

4 MS. DELGADO: I'm really -- I'm really looking
5 at the continuity -- the only thing that draws me
6 to the line is the continuity of the horizontal.
7 The minute that you break the line, like in your
8 bottom slide here, in your bottom board, the
9 vertical becomes a prominent, and I think the north
10 tower is about vertical elements coming up, and the
11 horizontal secondary, and your tower it is not.

12 The horizontal is what binds the volume
13 together, and that's why I'm fighting to not lose
14 it because I just -- to me that building is totally
15 different from this one. And so if I look at this
16 drawing, at the lines I do see a continuity of that
17 horizontal line throughout, it doesn't get fat and
18 skinny. So that's really what I'm reacting to.

19 MS. MATHON: The only reason we say that it's
20 similar, too, is because, honestly, the original
21 DRB-approved drawing from SOM is not the building
22 that was permitted and was not -- is not the
23 building that sits there today. That building that
24 you're seeing in that elevation is completely
25 different.

1 MR. DIAZ: That building architecture --

2 MR. BODNAR: If you're familiar the
3 architectural process when you're not going to be
4 the architect of record at the completion of a
5 project, you usually carry it through the design
6 development stage. And the documentation during
7 the design development is nowhere near the
8 documentation that would have been submitted to the
9 board to review.

10 During the design development is when you
11 actually look closely at the building details and
12 how you want the building to look in the end, and
13 the inability to not find the documentation from
14 that period is probably completely excusable, you
15 know.

16 It's perfectly understandable that they didn't
17 have any records, nor were they required to keep
18 any records of that period, but that information
19 could have been passed on to who was going to
20 execute, the final architect of record drawings,
21 and through engineering, value engineering, came up
22 with a solution, which is a terrible one,
23 obviously, but the intent is still there. We just
24 can't prove that it wasn't there, it had to have
25 been passed on, and I believe Skidmore passed it on

1 but didn't execute it, someone else did.

2 MR. DIAZ: Can I just make one observation?
3 What's ironic is that an applicant comes before you
4 wrapping itself in the --

5 UNIDENTIFIED SPEAKER: Please speak on the
6 mic.

7 MR. DIAZ: Victor Diaz.

8 I find it somewhat ironic, and I turn to my
9 neighbors, that you would have your expert tell you
10 that the safest design is to do the right thing and
11 then advocate for not doing the correct thing just
12 simply because it's cheaper.

13 He's told you that it is not only feasible to
14 preserve the original design, but also safer for
15 the community as a whole to replace the existing
16 glass system with an upgraded safety glass system,
17 and now they're fighting that and saying, Well, we
18 have a loophole, we're grandfathered under the old
19 code.

20 So which one was it? Were we here because we
21 wanted to make the space -- the building safe? Is
22 that why we circumvented the DRB process in the
23 first place and pulled an emergency permit, because
24 this was a life safety issue, or are we here about
25 preserving the integrity of the original design?

1 You're absolutely right. Fullerton Diaz
2 drawings were the ultimate reflection of what the
3 manifestation and the continuity of the design was,
4 the building to which iconic importance is attached
5 is one that has the horizontal banding, so both on
6 the safety argument and on the architectural
7 argument they are contradicting themselves.

8 MR. BODNAR: Thank you.

9 MR. OSBOURNE: The process was fairly simple,
10 although Mr. Diaz has been offended by the process,
11 but at the end of the day, we saw a problem and
12 we -- and we saw that life safety was a paramount
13 importance. That's why we started taking off
14 panels, and the panels have been coming off with a
15 slightest of instance. So it was the right move to
16 remove the panels.

17 We then went forward, and with all of the
18 controversy that has been brought up by Mr. Diaz
19 and one or two other vocal members, to go through
20 the full process of coming to you looking for
21 recommendations, going to our building, getting a
22 full vote which came out, again, 92 percent in
23 favor of this, and it is a fact that what we are
24 trying to do is eliminate a bad design.

25 What we're trying to justify is that the

1 design that remains when we're done is consistent
2 with the neighborhood, it's consistent to a point
3 with the north tower, and is -- does not represent
4 an eyesore or a significant deterioration of the
5 neighborhood and of our building overall.

6 MR. BODNAR: Any other comments? Any other
7 comments from the board? More comments?
8 Questions?

9 MR. HATCHER: Can I --

10 I work with Steve also. What -- I think the
11 circle is happening is --

12 MR. BODNAR: Can you state your name for the
13 record.

14 MR. HATCHER: Matt Hatcher.

15 Steve is recommending the complete replacement
16 of the tempered glass system which was the as-built
17 system to a current system. What you guys are
18 discussing is every building that was built with
19 system is no longer safe.

20 MR. BODNAR: I don't think we're addressing
21 the entire city and, for that matter, the region of
22 Miami-Dade County. We're talking about one
23 project --

24 MR. HATCHER: Right.

25 MR. BODNAR: -- we're talking about from a

1 design review point, and there is an aesthetic
2 issue about this building. One issue that we are
3 talking about here, and it's the horizontal band.
4 The technical issue we're not focused on or
5 economic issue is not out primary focus, it's the
6 aesthetic issue.

7 MR. MURPHY: This is not an unsafe structure
8 board, this is design review board. And at the
9 root of this application is the removal of the
10 horizontal banding, which is integral in staff's
11 opinion, and sounds as though getting the board to
12 agree in integral to the verticality of this
13 building to break up to massing.

14 MR. STEFFENS: And I think you find out the
15 design intent as transferred to the architect of
16 record, John Fullerton, is alive and well and
17 living in Coral Gables. I can give you his phone
18 number and you can call him up and ask him how his
19 drawings here interpreted SOM intent.

20 MR. OSBOURNE: I'm sorry, I just need to
21 clarify one thing. If the -- and I read the staff
22 report strongly urging to deny our application. If
23 what we're saying is that we want to adhere to the
24 SOM design, that's the SOM design, we've shown you
25 the SOM design, you might interpret that the SOM

1 design needs to have a horizontal band, but that's
2 not what the SOM design as has been presented and
3 was approved at the time.

4 Now, when the subsequent engineer -- the
5 subsequent architect -- let me just finish. When
6 the subsequent architect took over the project and
7 they designed a more horizontal, obvious band, but
8 if you look at the design of the two buildings that
9 SOM did, they both basically had a sign that says
10 railings, banded railings, and it's an identical --
11 it was identical style. It didn't say a railing
12 with a different side or a different structure, it
13 said two railings. So that's all the same.

14 So now we're talking about if we're going to
15 be hoisted under the -- of SOM, then let's deal
16 with whatever SOM is saying. If you're saying,
17 Well, we don't really like the SOM design, we like
18 the modification that Fullerton did, then that is a
19 different story, but that's not what the -- that's
20 not what the staff wrote and what the basis on
21 which, I think, is the major reason for them
22 strongly urging to reject this.

23 That's all.

24 MR. BODNAR: Any other comments? Board?
25 Motion? The motion is deniable or denied?

1 UNIDENTIFIED SPEAKER: Did I hear a motion or
2 did I -- I thought I heard something, but maybe we
3 were off mic.

4 Oh, okay.

5 MR. STEFFENS: Well, do you want to come back
6 with other options?

7 MR. MURPHY: I have -- I have a suggestion
8 regardless of the dealings with the -- number in
9 attendance today, assuming we have a full board,
10 which is seven members, you would need four members
11 to vote in affirmative; therefore, by a simple
12 numbers game, if three of these sitting members are
13 not inclined to vote in favor, you wouldn't get the
14 approval.

15 MS. MATHON: And how long would -- what would
16 be the time frame to be able to meet with the other
17 board members?

18 MR. MURPHY: Well, right now we only have six
19 members and there's no -- I cannot predict when the
20 seventh will be appointed. So I would further say
21 if all four members are not inclined to vote
22 favorably, a continuance is really not necessary
23 since you will never get the votes.

24 So maybe a stronghold would be in order,
25 Chair?

1 MR. BODNAR: May I ask your opinion not on the
2 record?

3 MR. MURPHY: So noting that all four members
4 would not be supportive of the application --

5 MR. DIAZ: Make a motion to accept staff
6 recommendation.

7 MR. MURPHY: We can continue it or you can
8 deny the application.

9 MR. BODNAR: You can continue it if you want
10 to come back with alternatives that you feel would
11 be acceptable or we can deny the application.

12 MR. OSBOURNE: Well, I don't understand the
13 difference between coming back with another
14 alternative or simply other doing another
15 application, there's no difference, correct?

16 MR. STEFFENS: Well, then you would have to go
17 through the whole application process then.

18 UNIDENTIFIED SPEAKER: Right, for a need
19 application, you would need to -- you would need to
20 pay all the applicable fees, and the hearing would
21 need to be renoticed.

22 MR. DIAZ: May I say something to my
23 neighbors?

24 (Indiscernible; multiple speakers.)

25 MR. DIAZ: I want to offer my help and guide

1 them how to do this properly.

2 MR. BODNAR: Please take your seat and let
3 them deliberate amongst themselves.

4 MR. DIAZ: I'm sorry.

5 MR. OSBOURNE: We would like a vote today,
6 please.

7 UNIDENTIFIED SPEAKER: So is there a motion?

8 MR. STEFFENS: I make a motion DRB 18-0226 to
9 deny the application.

10 MR. MURPHY: There is a motion to deny by
11 Mr. Steffens.

12 Is there a second?

13 MS. DELGADO: Second.

14 MR. MURPHY: Second by Annabel.

15 All in support of denial of the application
16 say aye.

17 THE BOARD: Aye.

18 MR. BODNAR: Universally denied 4-0.

19 MR. FRANKEL: Thank you.

20 (Thereupon, the board meeting was concluded.)
21
22
23
24
25

C E R T I F I C A T E

State of Florida
County of Miami-Dade

I, LAURIE YANNACCONE, FPR, do hereby certify that
I was authorized to and did report the foregoing
proceedings, and that the transcript, pages 1 through 50
is a true and correct record of my stenographic notes.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
relative or employee of such attorney or counsel, nor
financially interested in the foregoing action.

Dated this 19th day of June, 2018, Miami-Dade
County, Florida.

A handwritten signature in cursive script that reads "Laurie Yannaccone". The signature is written in black ink and is positioned above a horizontal line.

LAURIE YANNACCONE, FPR

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EXHIBIT K

DESIGN REVIEW BOARD AGENDA
1700 CONVENTION CENTER DRIVE 3RD FL.

Tuesday, June 5, 2018, 8:30 AM | City Commission Chambers

- I. ATTENDANCE
- II. APPROVAL OF MINUTES
- III. CITY ATTORNEY UPDATES
- IV. SWEARING IN OF PUBLIC
- V. REQUESTS FOR CONTINUANCES/WITHDRAWALS
- VI. REQUESTS FOR EXTENSIONS OF TIME
- VII. DISCUSSION ITEMS
- VIII. PROGRESS REPORT
- IX. MODIFICATION OF PREVIOUSLY APPROVED BOARD ORDER
- X. CONTINUED ITEMS
- XI. OPEN AND CONTINUED ITEMS
- XII. NEW APPLICATIONS
- XIII. APPEALS (BOA ONLY)
- XIV. OTHER BUSINESS
- XV. ADJOURNMENT

AGENDA ITEMS

ATTENDANCE

APPROVAL OF MINUTES

- 1. After Action Report -May 1, 2018

APPROVED

Motion to Approve
Moved By: Elizabeth Camargo
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

REQUESTS FOR CONTINUANCES/WITHDRAWALS

CONTINUED ITEMS

- 2. DRB17-0191, Citywide Distributed Antenna System (DAS) Nodes
Mobilitie LLC

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

3. DRB18-0228, Citywide Distributed Antenna System (DAS) Nodes
Mobilitie LLC

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

4. DRB18-0234, Citywide Distributed Antenna System (DAS) Nodes
Mobilitie LLC

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

5. DRB18-0235, Citywide Distributed Antenna System (DAS) Nodes
Mobilitie LLC

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

NEW APPLICATIONS

6. DRB18-0237, 500 Alton Road [Note: This item has been deferred by the applicant. It will not be heard at the June 5, 2018 meeting. It will be fully re-noticed for a future date.]
500 Alton Road Ventures, LLC

7. DRB18-0236, 7140 Collins Avenue

VARIANCES #1, #4 WITHDRAWN

Motion to Other
Moved By:
Supported By:

MOTION Other

VARIANCES #2, #3 WITHDRAWN W/OUT PREJUDICE

Motion to Withdraw
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Withdrawn

DRB APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

8. DRB18-0251, 959 West Avenue -TESLA
TESLA

CONTINUED TO 07/03/2018

Motion to Continue
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

9. DRB18-0243, 1674 Meridian Avenue
IVY MBT Property LLC C/O IVY Realty

APPROVED W/CONDITIONS

Motion to Approve w/ Conditions
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

10. DRB18-0240, 4144 Chase Avenue -Temple Beth Sholom
Temple Beth Sholom Inc

CONTINUED TO 07/03/2018

Motion to Continue
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

11. DRB18--0238, 6946 Rue Vendome
Damarys Zarling

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Admin, Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

12. DRB18-0247, 1331 West Avenue (DAS Nodes)
Mobilite LLC

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

13. DRB18-0248, 1204 14th Court (DAS Nodes)
Mobilitie LLC

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

14. DRB18-0226, 100 South pointe Drive
The Continuum Condominium Association

DENIED

Motion to Deny
Moved By: Michael Steffens
Supported By: Annabel Delgado

Ayes: Bodnar, Delgado, Steffens, Weinstein

Absent: Camargo, Phang

MOTION Passed

15. DRB18-0241, 6089 Alton Road
Holem Realty Group LLC

APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Annabel Delgado

Ayes: Bodnar, Camargo, Delgado, Steffens
Nays: Weinstein
Absent: Phang

MOTION Passed

16. DRB18-0242 (aka DRB File No. 23089), 22 Star Island Drive
Twenty-Two Star Island LLC

VARIANCE APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

DRB APPROVED

Motion to Approve
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

17. DRB18-0244 (aka DRB File No. 23165), 122 West DiLido Drive
Travel Charter Business LTD

APPROVED

Motion to Approve
Moved By: Annabel Delgado
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Weinstein
Nays: Steffens

Absent: Phang

MOTION Passed

18. DRB18-0246 (aka DRB16-0073), 802 West DiLido Drive
802 W Dilido LLC

APPROVED

Motion to Approve

Moved By: Michael Steffens

Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

19. DRB18-0209, 55 E San Marino Drive
Benco Brasil LTD C/O Fidelity Corp Services LTD (Paula Shayene Araujo)

APPROVED

Motion to Approve

Moved By: Michael Steffens

Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Steffens, Weinstein

Absent: Phang

MOTION Passed

ADJOURNMENT

Applications listed herein have been filed with the Planning Department for review by the Design Review Board, pursuant Section 118-252, and 118-71 of the City's Land Development Regulations. All persons are invited to attend this meeting or be represented by an agent, or to express their views in writing addressed to the Design Review Board c/o the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Applications for items listed herein are available for public inspection at the following link: or during normal business hours at the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Inquiries may be directed to the Department at (305) 673-7550.

Any items listed in this agenda may be continued. Under such circumstances, additional legal notice would not be provided. Please contact the Planning Department at (305) 673-7550 for information on the status of continued items.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: Appeals of any decision made by this Board with respect to any matter considered at its meeting or hearing, such person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-business day notice is required), information on access for persons with disabilities, and accommodation to review any document or participate in any city-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

EXHIBIT L

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 05, 2018

FILE NO: DRB18-0226

PROPERTY: **100 South Pointe Drive—Continuum South Tower**

APPLICANT: Continuum Condominium Association

LEGAL: Continuum on South Beach Condo, the South Tower, a portion of "OCEAN PARCEL", as said "OCEAN PARCEL" is described in Official Records Book 1805 at Pages 0580 through 0586, as recorded in the Public Records of Miami-Dade County, Florida.

IN RE: The Application for 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.

ORDER

The City of Miami Beach Design Review Board makes the following FINDING OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

Based on the plans and documents submitted with the application, testimony and information provided by the applicant; the reasons set forth in the Planning Department Staff Report; and the reasons set forth at the June 05, 2018 Design Review Board meeting, the project as submitted is inconsistent with Design Review Criteria 4 and 6 in Section 118-251 of the Miami Beach Code.

IT IS HEREBY ORDERED, based upon the foregoing finding of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendation, that the Application is **DENIED** for the above-referenced project.

Dated this 15th day of June, 2018.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA



BY: 

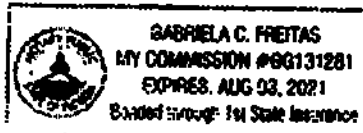
JAMES G. MURPHY
CHIEF OF URBAN DESIGN
FOR THE CHAIR

STATE OF FLORIDA)

)SS

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 4th day of June 2018 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.




NOTARY PUBLIC
Miami-Dade County, Florida

My commission expires: 8-3-21

Approved As To Form:
City Attorney's Office:

Nick Kallagis (6/13/2018)

Filed with the Clerk of the Design Review Board on Jenna G. [Signature] (6/14/18)

EXHIBIT M



Akerman LLP
Three Brickell City Centre
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131

T: 305 374 5600
F: 305 374 5095

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 5th 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 5th 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*.¹

¹ 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

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 5th 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

EXHIBIT N

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:

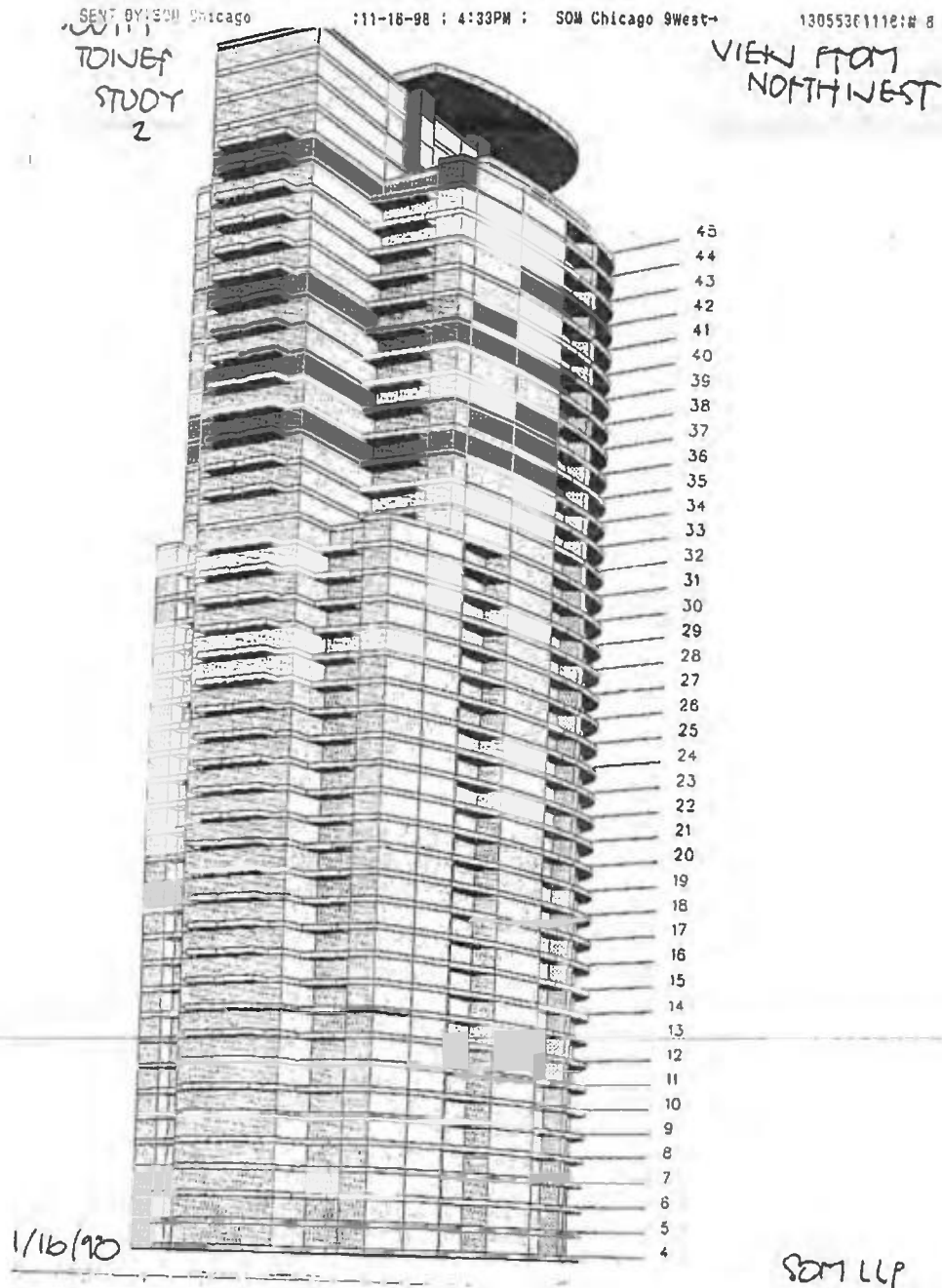
Item 1. Uncontroverted expert testimony demonstrates that the metal panels are extremely dangerous and cannot be replicated safely through other means. (Pg. 2 of the re-hearing petition).

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

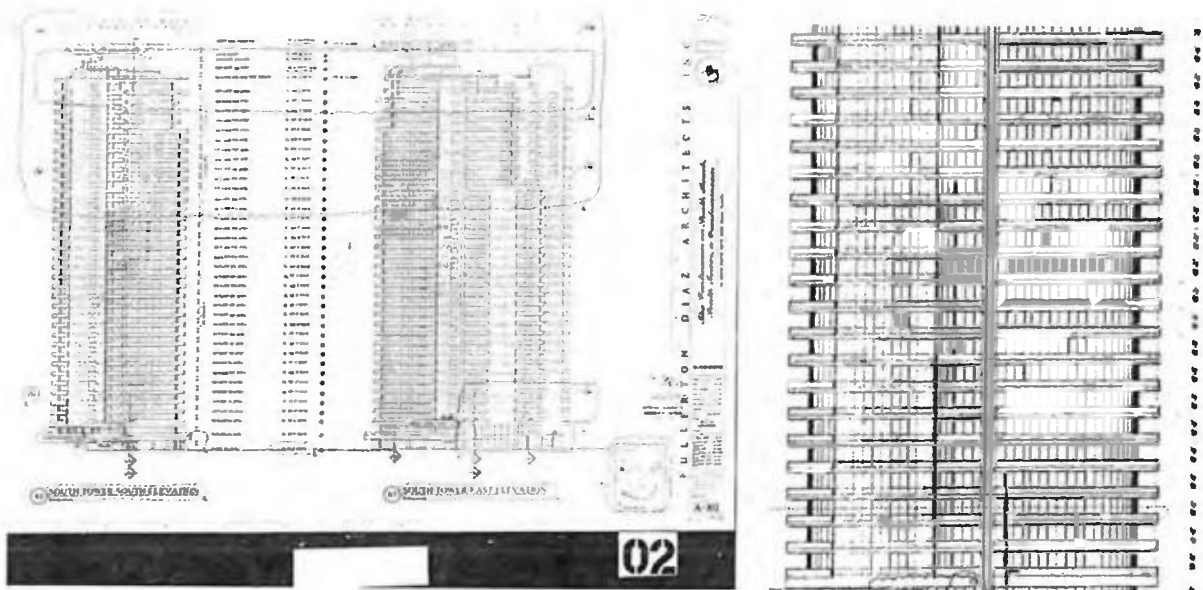
Item 3. The DRB did not approve the defective balcony panels and cannot now force them to remain. (Pg. 4 of the re-hearing petition).

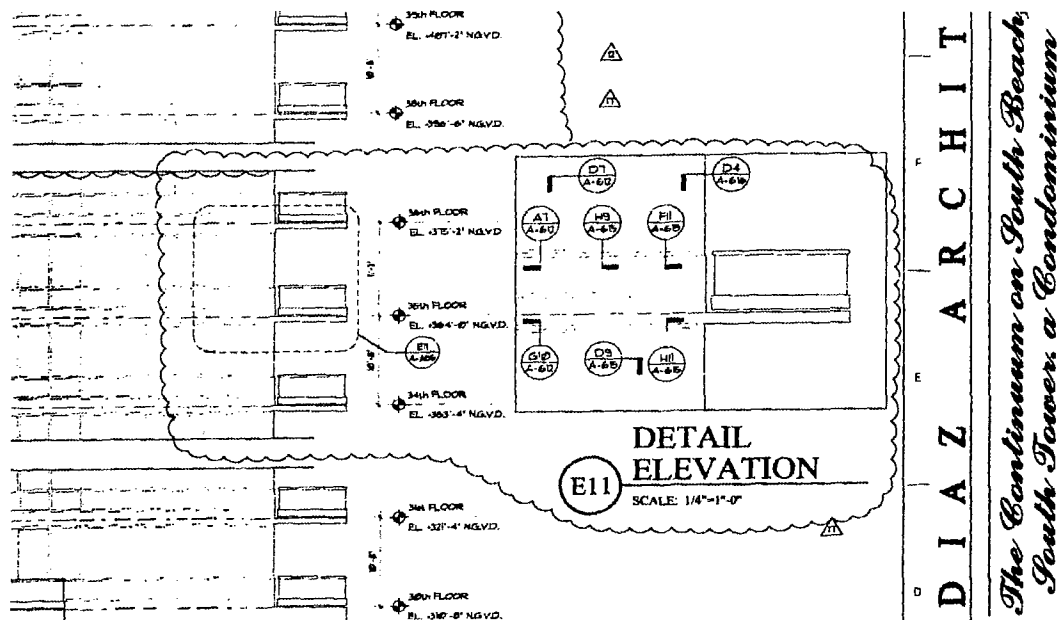
The Design Review Board approved a building design, at a design development stage that depicted thickened balcony slab edges to match the horizontal stucco banding that runs along all elevations of the building. The inclusion of the panels at the time of permit, to

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



RENDERING FROM THE OFFICE OF SOM





PERMIT PAGES B0000103_BMS0001687

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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EXHIBIT O



MEMORANDUM

To: Kristofer Machado – Akerman LLP
From: Federico Balestrazzi, PE – Fuse Consulting Engineers LLC
CC: Erin Fabian – Continuum South Tower Condominium Association
Date: October 1st, 2018
Re: **Glass Balcony Railings at Continuum on South Beach South Tower Condominium, 100 South Pointe Drive, Miami Beach, Florida 33139**

1. OVERVIEW

Continuum on South Beach, The South Tower Condominium Association, Inc. (CST) requested a condition assessment of the existing balcony railings at the CST property and an evaluation of solutions available to mitigate potential hazards to the public and address the Miami Beach Design Review Board's architectural concerns. This memorandum provides our professional assessment and recommendations.

2. BACKGROUND

The CST building is a residential tower located directly in the southern extremity of the City of Miami Beach, overlooking Government Cut. The tower is over 470 feet in height and has approximately 40 floors. With the exception of some areas at the podium's lower floors, almost every balcony has tempered glass railings installed at the perimeter. The existing glass railing system has been in service for over 15 years.

Plans on file with the City of Miami Beach suggest that the final design of the railing system was intended to include two interlocked extrusions at the bottom rail to provide a white band as part of the architectural language of the building. However, the existing balcony railing system, possibly the result of a value engineering exercise, instead of containing two interlocked aluminum extrusions at the bottom rail, as contemplated, contains 10-inch-high aluminum panels adhered directly to the face of the tempered glass on surface #1 and surface #2 (Figure 1) with acrylic foam tape.

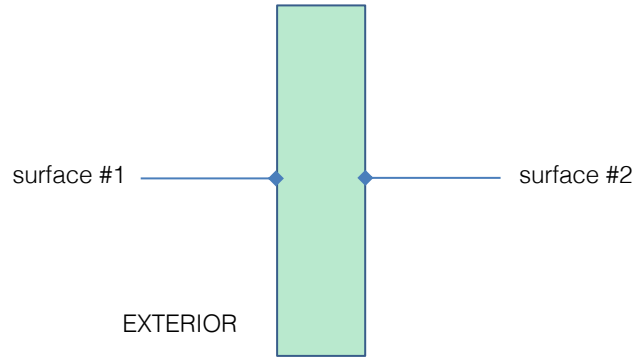


Figure 1 – Diagram of monolithic glass surfaces

The typical aluminum panel size is approximately 45.5 inches by 10 inches by 0.065 inches in thickness. The panels are painted white on the exposed side and mill finish on the side adhered to the glass, and appear intended to mimic the effect of the band contemplated by the original design. The existing railing system's design, as installed, is not documented anywhere in the available permitting documents.

CST's records show that at least 126 metal panels have detached from the railings and fallen several stories to the ground below, posing a significant safety hazard. Further, other experts retained by CST have documented that there is no safe, proper, and economical 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 and fall on the ground in small pieces, and available alternatives would inhibit the glass from shattering properly upon impact.

CST has petitioned the Miami Beach Design Review Board for approval to remove the defective panels and clean the existing tempered glass. At a hearing on June 5, 2018, the Design Review Board inquired about potential alternative means of replicating the white band if the panels are removed, and ultimately denied CST's request to remove the existing panels. CST has since petitioned the Design Review Board for a rehearing.

In anticipation of a new hearing, we were asked to study and render our professional opinion as to potential solutions available to mitigate hazards to the public and address the Miami Beach Design Review Board's architectural concerns.

3. EVALUATION AND ANALYSIS

We provide the following commentary regarding the available alternatives:

- I. **Removing the existing metal panels and applying paint to the existing tempered glass to give the effect of a horizontal band.** This solution is not viable for several reasons. First, the paint would have to be applied in the field, when it should be industrially applied. The quality of the application would be questionable at best and the product would not carry any warranty. Further, the

paint would hold the glass together in case of breakage, preventing the glass from shattering into small pieces safely upon impact as it is designed to do. The paint would create a bond between the glass shards, causing large chunks of glass to fall down the side of the tower. This would create a significant public safety hazard and could cause serious injury to persons and property on the ground below.

- II. **Replacing the existing tempered glass with laminated hurricane-resistant glass with a frosted interlayer that gives the effect of a horizontal band.** This solution poses a series of challenges. First, there is no industry-accepted method of frosting only a portion of the interlayer to give the effect of a horizontal band. The only accepted method requires frosting the entire interlayer, which would not give the effect of a horizontal band. We understand that Novavetro, an Italian manufacturer, recently developed a method of frosting only a portion of the interlayer, but that method is very new to the industry and has not been tested, nor has it been exposed to the extreme heat, rain, wind, sand, and humidity prevalent along the South Florida coast. We would not recommend its use without at least 10 to 15 years of industry exposure and refinement. Further, replacing the existing tempered glass with laminated (impact) glass would require modifications to the existing railing system to ensure its safety and prevent the glass from delaminating; namely, introducing new gaskets, weep holes, and replacing extrusions if any are damaged during replacement. The retrofit process would require a thorough review of the original testing and calculations for the existing railings, which, to our knowledge, are not available. This solution is also very expensive (Exhibit 1) as it requires replacing all of the glass in the existing railings, and it would require extensive analytical work, destructive testing, and laboratory testing prior to replacing the glass.
- III. **Replacing the existing tempered glass with monolithic glass featuring a white ceramic frit band on surface #2 (Figure 1).** White ceramic paint would here be exposed to the extreme heat, sand, salt, wind, and rain of the South Florida coast and would be especially susceptible to peeling off and accumulating at the bottom of the glass from exposure to the elements. In fact, many manufacturers, including Viracon, recommend against exposing ceramic frit to the elements and does not warrant the product when exposed to the weather. Ceramic paint is also prone to scratching and accumulating dirt and grime, and so the effect of the band would not be expected to endure. In addition, ceramic frit spandrel glass does not look perfectly even when exposed to light sources passing through both sides of the glass. Furthermore, in the event of glass breakage, the ceramic frit would create a bond between glass shards, causing large chunks of glass to fall down the side of the tower, which would create a significant public safety hazard, as with Alternative I above. This option is also very expensive as it requires replacing all of the glass in the existing railings.
- IV. **Replacing the existing monolithic tempered glass with monolithic glass featuring a sandblasted band on surface #2.** Sandblasting the glass would not create a pronounced white band, but rather an opaque band that would be faint from afar. In addition, as with Alternative III above, the exposed sandblasted surface would be prone to staining and dirt collection, which would further compromise the desired appearance of the white band. This option is also very expensive as it requires replacing all of the glass in the existing railings.

- V. **Replacing the existing painted aluminum panels with new panels adhered to the glass.** This solution is expensive and not recommended by the adhesive manufacturer. The current detail shows the existing panels as being attached with acrylic foam tape to the face of the glass. We contacted 3M's division of architectural tapes and we spoke with Steve Sherman, President of Project Vision Dynamics, a 3M partner responsible for design review and application of 3M tapes when utilized within building envelopes in the United States. Mr. Sherman, following his review of the railing system detail, issued a letter in which he recommends against the use of 3M tapes within the existing system as it "does not meet the basic requirements for application" (Exhibit 2). Furthermore, we removed a panel from the existing railing and sent it to a local laboratory for testing. The results of the test show how very little force is needed, less than 255 lbs uniformly applied, to detach the panel from the surface of the glass (Exhibit 3). Finally, adhering the panels with a stronger adhesive, such as structured silicone, would compromise the ability of the glass to shatter safely into small pieces upon impact, as intended.
- VI. **Removing the existing metal panels adhered to the glass and replacing them with painted metal panels detached from the railings.** This solution is very expensive, impractical, and potentially unsafe. Many of the balconies have floor tiles installed, and attaching a structure supporting the panels on top of the slab will require removal of portions of the tiled areas and extensive study of the post-tensioned tendon locations prior to drilling on the surface, including through the use of Ground Penetrating Radar (GPR), to ensure that the slab is not compromised. It would be a major endeavor and would pose its own safety hazards.
- VII. **Removing the painted aluminum metal panels adhered to the glass and replacing them with painted metal panels attached to the railing posts.** The retrofit process would require reviewing the original testing and calculations for the existing railings, but these materials are currently not available. This exercise would also require extensive analytical work, destructive testing, and laboratory testing prior to replacing the glass.
- VIII. **Replacing the existing tempered glass with laminated hurricane glass using a white ceramic frit on surface #2 or surface #3.**

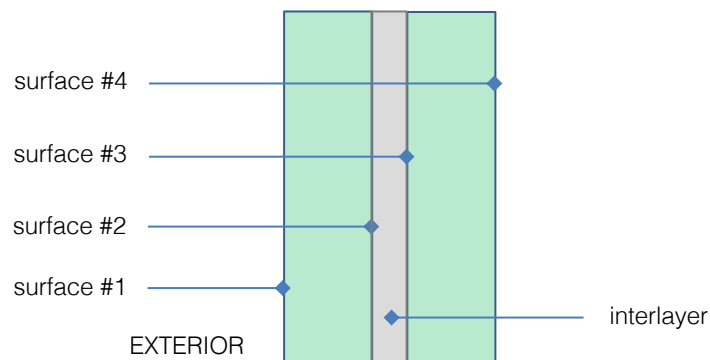


Figure 2 – Diagram of laminated glass surfaces

Similarly to Alternative II above, this solution would present significant challenges from an engineering perspective. It would also involve a product that likely would not carry any warranty against delamination once installed. The risk of delamination for this type of product is high and we would not recommend using it. The reduction in glass-interlayer-glass bond within the frame can have a significant impact on the performance of the frame to retain the glass during hurricanes, sustained high-winds, and if impacted by a flying object.

- IX. **Adhering a new white film to the back of the existing tempered glass.** Similarly to Alternative III above, in the event of glass breakage, the film would create a bond between glass shards and it would cause them to fall down in larger pieces, creating a public safety hazard. Further, once exposed to the elements, the film could lose contact and bonding, could yellow, and could leave a stain on the glass. The film would also be very easy to remove from the interior, even by children. The effect of the band would not long endure.
- X. **Removing and replacing the entire railing system.** This is the most invasive and expensive solution. Though replacing the entire railing system would provide higher value in terms of safety, aesthetics, and warranty, we are not aware of any deficiencies inherent in the existing railing system itself that would require or justify full replacement at this time. Only the existing metal panels are known to be unsafe.

4. CONCLUSIONS AND RECOMMENDATIONS

Our review of the current conditions indicates that, if the existing white metal panels installed on the face of the glass are removed and the glass is properly cleaned, the railing system will provide continued fall protection and, if properly maintained, could last in place for another 10-15 years.

The alternatives we evaluated above would risk compromising the safety feature of the existing tempered glass to shatter into small pieces upon impact; would require using products that are not warrantable; would require extensive, expensive, and invasive analyses to implement a retrofit solution that would not add any value to the current system; or would require replacing the entire railing system, which has not proven to be defective, to correct a condition that can be properly remedied in isolation. We do not consider these options to be viable alternatives.

It is our professional recommendation that CST should remove the existing metal panels, properly clean the glass following detailed protocols provided by a Florida licensed engineer, and continue monitoring the system to address other maintenance needs, for example, checking architectural finishes against chalking and fading or verifying stability of the system by applying specific loads and measuring deflection. Once the railing system has reached the end of its useful life, we would recommend replacing it with a new system that meets the building code in effect at the time of replacement and that includes the architectural features approved by the Miami Beach Design Review Board.

EXHIBIT 1

Friday, September 28, 2018

Akerman LLP

98 Southeast Seventh Street, Suite 1100
Miami, FL 33131

Att: Kristofer D. Machado

Project: Continuum
Location: South Beach
Reference: Railing replacement/restoring

Dear Mr. Machado,

GM&P, Inc. is pleased to offer its services in replacing or restoring the railing at the above mentioned condominium in South Beach. Quantity approx. 17,100 Inft

As per our conversation we have few possible scenarios.

All the pricing below is including:

- Shop Drawings
- Installation of All Material Furnished
- Applicable Taxes
- Mockup of any kind
- Field Measure
- Blue film on the interior/exterior of the glass

Project: Continuum
Location: South Beach
Reference: Railing replacement/restoring

This Proposal Excludes:

- Attic stock
- Final Cleaning
- Bond (please add 2%)
- Protection of installed materials
- Permit Fee

Solutions, Quantity and Pricing

Replacement of the glass only, with Laminated glass with ceramic frit on face #4

New Material=\$923,000.00

Installation=\$432,000.00

Removal and disposal of the old railing= \$170,000.00

Replacement of the glass only, with Laminated glass with ceramic frit on face #2

New Material=\$1,737,000.00

Installation=\$432,000.00

Removal and disposal of the old railing= \$110,000.00

Replacement of the glass only, with Laminated glass with White sgp band

New Material=\$1,839,000.00

Installation=\$432,000.00

Removal and disposal of the old railing= \$110,000.00

Project:	Continuum
Location:	South Beach
Reference:	Railing replacement/restoring

Thanks again for the opportunity to bid this project. If you have any question or should you need additional information, please do not hesitate to contact us. This proposal it is valid for 30 days

Sincerely,



Giovanni Monti
GM&P Inc.
3550 NW 49th Street
Miami, FL 33131

EXHIBIT 2

September 25, 2018

To: Federico Balestrazzi, PE
fuse consulting engineers

Re: Continuum on South Beach
South Tower Condominium
100 South Pointe Drive
Miami Beach, FL 33139

Thank you for requesting a 3MTM review of the handrail on Continuum on South Beach.

Project Vision Dynamics is a 3MTM Partner responsible for design review and application of 3M tapes when utilized within the building envelope in the US.

After reviewing Sheet 3 of 41 for the referenced project, we do not recommend the use of 3MTM tapes within the existing system as it doesn't meet the basic requirements for application.

Please call with questions.

Regards,



Steve Sherman
President

Cc: File

EXHIBIT 3



Quality Accuracy Assurance

Fenestration Testing Laboratory, Inc.

8148 N.W. 74th Avenue Medley, Florida 33166 Phone: (305) 885-3328 Fax: (305) 885-3329 Toll Free: (844) FTL-TEST (385-8378)
E-mail: clientservices@ftl-inc.com Web: www.ftl-inc.com

Report Date: 9/26/2018
Completion Date: 9/24/2018
Expiration Date: 9/26/2019
Page Number: Page 1 of 2
Lab Number: 10376
Project Number: 18-8344

OFFICIAL TEST REPORT

MANUFACTURER: The Continuum on South Beach, **PROJECT:** Client Use
The South Tower Association
ADDRESS: 100 South Pointe Drive
Miami Beach, Florida 33139

SCOPE: Fenestration Testing Laboratory Inc was contracted by The Continuum on South Beach, The South Tower Association to perform an adhesive pull test on an aluminum cladding panel which was adhered to a piece of glass using a 1/2" wide self-adhesive double side foam tape. The tape is located on all four sides and approximately 3/4" from the edge of the aluminum panel.

Section of Glass Size: 45 1/2" by 38" by 3/8" thick
Aluminum Cladding Size: 45 1/2" by 10" by 0.065" thick

The assembly was exposed to weather conditions of heating and cooling for four days prior to the test. The panel was removed from the weather chamber after four days and allowed to condition in the laboratory ambient air for twenty four hours. See picture below for test set up.

Revision	Description	Author of Report	Effective Date
0	Initial Release	Jose Sanchez	9/26/2018

REMARKS

Fenestration Testing Laboratory Inc., does not have, nor does it intend to acquire or will acquire, a financial interest in any company manufacturing or distributing products tested or labeled by the Fenestration Testing Laboratory Inc. Fenestration Testing Laboratory Inc., is not owned, operated or controlled by any company manufacturing or distributing products it tests or labels.

Test results obtained represent the actual value of the tested specimens and do not constitute opinion, endorsement or certification by this laboratory.

This test report is considered the exclusive property of the client named herein and is applicable to the sample tested. This report may not be reproduced without the approval of Fenestration Testing Laboratory, Inc.

Test report will be retained by Fenestration Testing Laboratory for a period of one year from the original test date.

Testing was conducted as per instructions received from your company representative.



Quality Accuracy Assurance

Fenestration Testing Laboratory, Inc.

8148 N.W. 74th Avenue Medley, Florida 33166 Phone: (305) 885-3328 Fax: (305) 885-3329 Toll Free: (844) FTL-TEST (385-8378)
E-mail: clientservices@ftl-inc.com Web: www.ftl-inc.com

Report Date: 9/26/2018
Completion Date: 9/24/2018
Expiration Date: 9/26/2019
Page Number: Page 2 of 2
Lab Number: 10376
Project Number: 18-8344

OFFICIAL TEST REPORT

Test Results		
Sample	Ultimate Load	Failure Type
A-1	255 lbf	Cladding disengaged from the glass



Fenestration Testing Laboratory Inc., recommends that this aluminum cladding not be exterior applied to a balcony railing that is installed on a high rise building.

Witnessed by:
Idalmis Ortega, P.E.
FL License No. 76905

Technicians:
Mr. Jose Sanchez
Mr. Joel Delgado

FENESTRATION TESTING LABORATORY, INC.

Jose Sanchez
Mr. Jose Sanchez
Director

EXHIBIT P

Impact Glass Services

3520 SW 20th STREET PEMBROKE PARK FL, 33023

Phone (786) 245-4595 Fax (786) 245-7506

www.impactglassmiami.com

Customer:

CONTINUUM SOUTH TOWER ASSOCIATION
100 SOUTH POINTE DR MIAMI BEACH FL, 3313
Ph: (305) 938-4240 **Fax:**
Contact: CRISTINA CAMARGO *****

Job Site:

CONTINUUM ON SOUTH BEACH - SOUTH TOWE
100 SOUTH POINTE DR MIAMI BEACH FL, 3313
Unit:

Quote: 108475

Quote Date: 08/24/18

Expire Date: 09/23/18

Sales Person

Randy Brito

Payment Terms

50% DEPOSIT / 50% AT END

Building Unit	Description	Part Unit	Qty	Unit Price	Subtotal
	RAILING ALUM/GLASS 7/16" CLEAR LAMINATED W/SGP .035	FEET	****. **		
	SERVICE - RENT SWING STAGE INITIAL INSTALLATION	EACH	1.00		
	SERVICE - RENT SWING STAGE 28 DAYS RENTAL SINGLE LINE + DELI	EACH	15.00		
	SERVICE - RENT SWING STAGE (12FT) RELOCATION	EACH	30.00		
	SERVICE - RENT SWING STAGE (12FT) DISMANTLE	EACH	1.00		
	SERVICE - PERMIT ENGINEERING	EACH	1.00		
Subtotal					\$8,835,025.00

+ Tax 6.0% \$ 530,101.50

Total \$9,365,126.50

SCOPE OF WORK

THIS JOB IS TO PERFORM COMPLETE REMOVAL AND REPLACEMENT OF EXISTING RAILING SYSTEM AT ABOVE REFERENCED PROPERTY. NEW SYSTEM TO BE MIAMI DADE COUNTY APPROVED. ALL PROCEDURES WILL TAKE PLACE FOLLOWING INDUSTRY STANDARDS IN ACCORDANCE TO NOA's. SURROUNDING FINISHES, TILE REPAIRS, STUCCO AND PAINT ARE EXCLUDED.

TERMS: All prices are subject to change without notice after 45 days. Estimated prices are locked in with customer signature. There is no refund, all sales are final. Failure by customer/owner to pay for goods resulting in collection by (IGS) shall subject the customer/owner of the goods and services to pay attorney's fees, costs and interest. Customer/owner must be present at all times during the duration of the service and shall provide a reasonable work area clear of furniture and /or object that may interfere with the performance of the repair. If Customer/Owner does not comply with the above, IGS will not be responsible for lost or damaged property and/or unfinished work or services. If need be, cancellations of service appointments must be made no later than the day before, during regular business hours. If not, a \$50 penalty fee will be charge toward the remaining balance. This is a legal document and by signing below the customer agrees the terms and conditions.

WARRANTY: The service is guaranteed to be free from defects in workmanship and parts for a period of 6 months from the date of service. Defects that occur within this warranty period, under normal use and care, will be repaired or replaced at our discretion, solely at our option with no charge for parts or labor. Electrostatic Paint has a 3 year warranty. On work related to electrostatic paint, IGS will not be responsible for damages on adjacent conditions such as walls, paint, tile and or window film. Hardware components not installed by IGS will not be covered under warranty

To accept this quotation, sign here and return: _____

THANK FOR YOUR BUSINESS!

EXHIBIT Q

Subject:

Fwd: SOFNA Passes Resolution on DRB18-0226, 100 South Pointe Drive

From: Ronald Starkman <rpstarkman@gmail.com>**Date:** October 1, 2018 at 1:00:53 PM EDT**To:** James Bodnar <jbodnar-drb@jbodnar.com>, Katie Phang <kphang@bergersingerman.com>, Annabel Delgado <annabeldh.drb@gmail.com>, Elizabeth Camargo <ecamargoDRB@gmail.com>, Deena Bell <deenabellllewellyn@gmail.com>, Michael Steffens <mike@nevillesteffens.com>, Marvin Weinstein <MWeinstein@attorneysmiamibeach.com>**Cc:** Thomas <thomasmooney@miamibeachfl.gov>, Clare McCord <claremccord@earthlink.net>, Frank Del Vecchio <fdelvecchio@atlanticbb.net>, Dawn McCall <dmccall190@aol.com>, Michael DiFilippi <mikedyourrealtor@gmail.com>, Patrick Groenendaal <pkfgdesign@gmail.com>, Pamela <PamelaBrumer@allstate.com>**Subject:** Fwd: SOFNA Passes Resolution on DRB18-0226, 100 South Pointe Drive

Design Review Board Members,

We understand that there will be a re-hearing tomorrow of the application by 100 South Pointe Drive. Please see below the South of Fifth Neighborhood Association (SOFNA) resolution sent to you prior to the original hearing on this matter which supports the request to remove the metal panels from the balconies. SOFNA still stands behind this resolution and encourages the DRB to reconsider its last ruling. As neighbors, we arrived at this recommendation because we believe this is a safe solution and does not create an unattractive, or even noticeable, change in the appearance of the building.

Ronald Starkman -- President
South of Fifth Neighborhood Association (SOFNA)

----- Forwarded message -----

From: Ronald Starkman <rpstarkman@gmail.com>**Date:** Thu, May 31, 2018 at 7:26 PM**Subject:** SOFNA Passes Resolution on DRB18-0226, 100 South Pointe Drive**To:** James Bodnar <jbodnar-drb@jbodnar.com>, Katie Phang <kphang@bergersingerman.com>, Annabel Delgado <annabeldh.drb@gmail.com>, Elizabeth Camargo <ecamargoDRB@gmail.com>, Deena Bell <deenabellllewellyn@gmail.com>, Michael Steffens <mike@nevillesteffens.com>, Marvin Weinstein <MWeinstein@attorneysmiamibeach.com>**Cc:** Mooney, Thomas <thomasmooney@miamibeachfl.gov>, Clare McCord <claremccord@earthlink.net>, Frank Del Vecchio <fdelvecchio@atlanticbb.net>, Dawn McCall <dmccall190@aol.com>, Michael DiFilippi <mikedyourrealtor@gmail.com>, Patrick Groenendaal <pkfgdesign@gmail.com>, Pamela <PamelaBrumer@allstate.com>

Dear Members of the Design Review Board:

The Board of the South of Fifth Neighborhood Association (SOFNA) fully supports the application by the Continuum Condominium Association to remove the metal panels along the balcony railings and retain all clear glass railings.

South of Fifth Neighborhood Association Board of Directors:

Ronald Starkman, President
Clare McCord, Vice President
Patrick Groenendaal, Treasurer
Dawn McCall, Secretary
Pamela Brumer
Frank Del Vecchio
Michael DiFilippi



Virus-free. www.avg.com

EXHIBIT R

1 MIAMI BEACH LAND USE BOARDS
2 DESIGN REVIEW BOARD AGENDA
3 DRB18-035
4 100 SOUTH POINTE DRIVE
5 THE CONTINUUM CONDOMINIUM ASSOCIATION
6
7 DESIGN REVIEW BOARD MEETING
8 DATE TAKEN: OCTOBER 2, 2018
9 TIME: 02:48 P.M. - 03:40 P.M.
10 PLACE: 1700 CONVENTION DRIVE CENTER
11 3RD FLOOR
12 MIAMI BEACH, FLORIDA 33139
13 TAKEN BEFORE: MARIE JUNIE DAVIS, FPR
14 AND NOTARY PUBLIC
15 *****
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES:

2
3 NEISEN O. KASKIN, ESQUIRE
4 AKERMAN, LLP
5 98 SOUTHEAST 7TH STREET, SUITE 1100
6 MIAMI, FLORIDA 33131
7 ON BEHALF OF THE CONTINUUM CONDO ASSOCIATION

8 KRISTOFER MACHADO, ESQUIRE
9 AKERMAN, LLP
10 98 SOUTHEAST 7TH STREET, SUITE 1100
11 MIAMI, FLORIDA 33131
12 ON BEHALF OF THE CONTINUUM CONDO ASSOCIATION

13 ALSO PRESENT:

14 FEDERICO BALESTRAZZI

15
16 C-O-N-T-E-N-T-S

17 CERTIFICATE OF REPORTER

36

P-R-O-C-E-E-D-I-N-G-S

MS. BOUTSIS: Rehearing request for DRB file 18-035, 100 South Pointe Drive, the Continuum South Tower, the Continuum Condo Association.

This is found on page 170. And I'm just -- if you don't mind, I'm going to take a few minutes to go over the process for this because it is something that we don't do very often. I think the last time I had a re-hearing -- well, in my four years here, I think maybe we've had one rehearing before any of my boards.

So, a rehearing is basically a request by an applicant that if made timely, which this one was, that there was either newly discovered evidence, which is relevant to your decision-making process of this board, or that you as a board overlooked or failed to consider something that renders the decision that you originally made wrong, erroneous. Now, you have their pleadings before you, and you can hear a little argument on whether there should be a rehearing or not.

You have the choice of saying yes to a rehearing, no to a rehearing. And basically, if you do decide to allow a rehearing, it's basically reopening the entire matter. You take new testimony. You can take different testimony. And you can issue a new decision. You can also reverse or modify your prior decision. So, you have a lot of

1 discretion. But before you actually get into the merits
2 of the matter, you would have to decide based upon the
3 arguments of Mr. Kasdin and your staff on whether it is
4 warranted to have the rehearing.

5 Are there any questions?

6 Now, like in any other matter, if you've had any
7 ex-parte communications from anyone, this is the time to
8 do the disclosure. There's a court reporter present, so I
9 guess everybody is taking it seriously. And it seems like
10 there could even be an appeal to -- in this case, it would
11 be an appeal to the City Commission of the design.

12 So seeing no disclosures, James?

13 MR. MURPHY: This is DRB File 18-035, which is linked
14 to DRB 18-0226, 100 South Pointe Drive, the Continuum
15 South Tower.

16 The applicant has requested a rehearing of a previous
17 decision of the Design Review Board wherein the Board
18 denied the exterior design modifications to the facade of
19 an existing 41-story building to remove existing metal
20 panels along the glass balcony railings on all elevations
21 of the building, and retain all clear glass railings. It
22 should be noted that if a request for rehearing is
23 granted, the matter may be heard immediately.

24 On June 5, 2018, the application to remove the
25 existing panels was heard by the Board and denied with a

1 vote of 4-0. For the record, one hour of deliberations
2 occurred. Those members present were Mike Steffens,
3 Annabel Delgado, Marvin Weinstein, and Jim Bodnar. On
4 June 28 -- pardon.

5 On June 29, 2018, the applicant filed the request for
6 the rehearing of his application today. Also, it should
7 be noted that on July 5th, 2018, the applicant filed an
8 appeal of the original decision of the DRB to the City
9 Commission pending outcome of this rehearing. Staff is
10 not supportive of the rehearing request, maintains that
11 there is not new evidence that has been presented to the
12 staff or to the Board.

13 MR. KASDIN: Mr. Chair, if you're ready for me to
14 proceed, I think I may need about 15 minutes, if that's
15 okay.

16 In any event, Neisen Kasdin and Kris Machado of
17 Akerman, LLP on behalf of the South Tower Condominium
18 Association and Continuum of South Beach. With me here
19 today as well is Alan Fishman, president, and Aaron
20 Fabian, property manager of Continuum, and our expert,
21 Federico Balestrazzi of Fuse Consulting, who's standing to
22 my left.

23 We're seeking a rehearing of the Association's
24 application for design approval to remove certain
25 defective and dangerous metal panels that were taped with

1 3M acrylic foam tape on the South Tower's tempered glass
2 balcony railings after the building's construction. Due
3 to their crude and unsafe design, the panels have begun to
4 detach from the building's glass railings and fall as much
5 as 41 stories below, posing grave life safety concerns and
6 requiring their immediate and permanent removal. We're
7 not here to dispute that the horizontal bands were part of
8 the original design and intent of these buildings.

9 However, the existing metal panels were not part of the
10 South Tower's original design, were not shown on the DRB
11 approved plans, and were not required by the DRB's order.

12 In fact, to our knowledge, the panels are not shown
13 on any of the available permit documents. As Mr. Steffens
14 himself noted in the previous hearing, the existing panels
15 are believed to have been installed as a value engineering
16 substitute for the original railing system. Had the
17 railing system been constructed as designed, the
18 Association would not have inherited this critical
19 life-safety problem.

20 The Association has gone to great lengths at
21 significant expense to find an adequate and reasonable
22 remedy for the unsafe panels. The Association has no
23 stake in the outcome other than ensuring that the
24 building's railing system is safe and the unit owners are
25 not exposed to unwarranted liability.

1 The Association simply cannot accept the liability of
2 keeping the panels in place when they've been shown to be
3 unstable and dangerous to residents, visitors, neighbors
4 and tourists.

5 We would also note that the request to remove the
6 defective panels permanently and rectify the unsafe
7 conditions enjoys broad support throughout the
8 neighborhood, the South of Fifth Neighborhood Association,
9 SOFNA, the Continuum Master Association, and the Continuum
10 North Tower Condominium Association all support the
11 removal of the panels. And the South Towers -- and
12 residents and unit owners also overwhelming in support.
13 At a recent South Tower owners meeting, 92 percent voted
14 in favor of removing the exiting panels permanently.

15 The City Attorney has explained to you the criteria
16 for rehearing: Either newly discovered evidence that's
17 likely to be relevant to the decision of the Board, or
18 when the Board has overlooked or failed to consider
19 something that renders the decision issued erroneous. We
20 feel there are several reasons why a rehearing is
21 justified. First of all, there is new evidence of
22 alternative solutions.

23 First, at the June 5th hearing, the members present
24 were generally in agreement the existing panels are a bad
25 solution. The Chair himself observed that we all agreed

1 the metal is a bad solution. The Board -- and actually,
2 the Chair in particular was concerned with whether there
3 were viable replacement alternatives that preserve the
4 horizontal band. Other interested parties expressed a
5 similar sentiment. I believe the Chair wanted to elicit
6 if there was that evidence that could be put on the record
7 before the Board considered it.

8 At the time, a detailed alternatives analysis was not
9 available. We have since retained Mr. Federico
10 Balestrazzi, a licensed professional engineer with Fuse
11 Consulting Engineers, previously with Thornton Tomasetti,
12 to analyze several potential alternatives and provide his
13 professional recommendations. We also have obtained cost
14 estimates for several of the most relevant alternatives.
15 These estimates were not available at the original
16 hearing. They range from a few million to several million
17 dollars, depending on complexity and scope.

18 This new evidence and the feasibility of any of these
19 fixes is relevant to the Board's decision as it bears
20 directly on the viability and reasonableness of the
21 alternatives. We will submit these estimates into
22 evidence.

23 Third, we've obtained a letter from Project Vision
24 Dynamics, a 3M partner responsible for design review and
25 application of 3M tapes when utilized within building

1 envelopes in the United States. The 3M letter confirms
2 that 3M acrylic foam tape, the type used to attach the
3 existing panels to the tempered glass railings, should not
4 be used to adhere metal panels to tempered glass railings,
5 because acrylic foam tape does not meet the basic
6 requirements for application.

7 Fourth. We commissioned independent laboratory
8 testing of the existing metal panels to analyze how much
9 force is required for the panels to detach from the
10 tempered glass railings. An official test report from
11 Fenestration Testing Laboratory, Inc. shows that the
12 panels detach from the glass with only a 255-pound force
13 load. That means the panels easily detach by hand and are
14 especially susceptible to detaching with wind pressure.
15 For these reasons, the laboratory's report recommends
16 against using the panels in the exterior balcony railings
17 on high-rise towers.

18 Fifth. Aside from these four key pieces of new
19 evidence, rehearing is justified because there was a lack
20 of consideration of key evidence and testimony on safety,
21 the most significant element that the DRB must consider in
22 evaluating an application for design review. The City's
23 Design Review criteria require the DRB to ensure the
24 safety of the project in relation to the site, the
25 adjacent structures, and the surrounding community.

1 That's Section 118251-A of the City's code.

2 In denying the application, there was a failure to
3 consider uncontroverted expert testimony and also
4 supported by the neighborhood associations and the master
5 condo association, uncontradicted testimony that the metal
6 panels are dangerous and in fact life threatening. By
7 denying the application as defective and unsafe, the
8 system will remain in place. The record shows
9 unequivocally that the defective metal panels are
10 dangerous and must be removed. We have the transcript to
11 establish that.

12 The metal panels detach very easily from the
13 building's tempered glass balcony railings and fall
14 several stories below, becoming a "helicopter blade,
15 guillotine or another lethal weapon" on the way down and
16 could decapitate somebody. The existing balcony railings
17 are not designed to support the additional weight of the
18 defective metal panels. Applying a film, paint or other
19 coating to the existing glass would keep large chunks of
20 glass intact upon breakage and cause grave injury or death
21 to persons below. Rehearing is justified to allow the DRB
22 to accord these compelling safety concerns their due
23 weight, particularly in light of the new evidence.

24 Finally, the rehearing is also justified because only
25 four of the seven DRB members were present at the June 5th

1 hearing. We believe, in all fairness to the applicant and
2 other interested parties, the full board should be allowed
3 to evaluate the project and consider the evidence.

4 Now, I would like to take a moment to introduce
5 Mr. Federico Balestrazzi to detail the facts that had not
6 been presented to you.

7 Mr. Balestrazzi is a civil engineer who specializes
8 in the design and construction of planning systems in
9 complex facades for a variety of different building type
10 of structures. He has more than 15 years of experience in
11 building enclosures and products, with an extensive
12 background in design, testing, manufacture, estimation and
13 installation.

14 Mr. Balestrazzi obtained a Bachelor of Science in
15 industrial design from the Politecnico University in Milan,
16 a Master of Civil Engineering from Lamar University, a
17 Master of Business Administration from Babson College.
18 He's a licensed professional engineer in the state of
19 Florida, and is also licensed in Georgia and Maine. He
20 previously served as a visiting critic at Northeastern
21 University and at the Harvard Graduate School of Design.
22 Mr. Balestrazzi has provided engineering, investigative
23 and forensic services for many significant projects
24 throughout the world, locally. These projects include the
25 Miami Beach Edition, the W Hotel South Beach, the Espirito

1 Santo building, the Hard Rock Stadium. We have
2 distributed Mr. Balestrazzi's resume for your review.
3 I'll now ask Mr. Balestrazzi --

4 MS. BOUTSIS: I'm sorry. Just one second.

5 That's actually going to the merits of the rehearing.
6 So I think we should pause for a moment, unless you have
7 any other arguments, to see if they would like to have the
8 rehearing, and then you can introduce the new testimony
9 and do your presentation. Or is it sufficient for you at
10 this point that a rehearing is necessary or not?

11 MR. KASDIN: Madam Attorney, I'd like to proffer his
12 testimony, because candidly the Board doesn't know what it
13 doesn't know. And I think if they hear from
14 Mr. Balestrazzi, they will understand that. They can then
15 either, you know --

16 MS. BOUTSIS: Would you like to do your proffer?

17 MR. KASDIN: Yes, and I'd like Mr. Balestrazzi to
18 make his -- to proffer his testimony.

19 MS. BOUTSIS: I'm sorry. I thought you were going to
20 make a proffer that he was going to do X, Y, and Z, or
21 five things he was going to do, and not actually have ten
22 minutes of testimony.

23 MR. KASDIN: Well, I think it would be more effective
24 if he would be able to proffer what his testimony is.

25 MS. BOUTSIS: So how would the Board like to handle

1 it? I think you've heard the arguments, the summary of
2 the arguments, and you have the report written by
3 Mr. Kasdin and his team. You have the decision of the
4 planning staff. Would you like to hear further testimony
5 at this time? Do you think that's sufficient? Would you
6 like to have a full-blown presentation?

7 MR. BODNAR: I have the minutes in my hand. I mean,
8 all I want to hear is anything new that are not already in
9 those minutes for this Board to -- whether or not we
10 should have a rehearing.

11 MR. KASDIN: Mr. Chair, that's exactly why I'd like
12 Mr. Balestrazzi to be able to testify. You give it
13 whatever consideration this Board desires.

14 MR. BODNAR: But he's read these, right? Anything
15 that's already in here should not be represented.

16 MR. KASDIN: It will not be. This is new information
17 that is being presented to you.

18 MS. BOUTSIS: So would you like to hear his testimony
19 at this point?

20 MR. BODNAR: Yes, I think there's five minutes left,
21 five and a half, six minutes.

22 MR. BALESTRAZZI: Good afternoon. I'll try to rush
23 through everything that --

24 MR. KASDIN: Mr. Chair, with due respect, we need a
25 couple -- three or more minutes.

1 MR. BODNAR: Well, I said you can take the remaining
2 amount, share the amount. I don't care how --

3 MR. KASDIN: I'm finished, Mr. Chair.

4 MR. BALESTRAZZI: So, I'll try to be as fast and
5 precise as I can. I understand you guys have been here
6 all day.

7 My analysis stems from previous conversations and
8 options that were brought to the table during the repair
9 phase. So you guys were evaluating and asking the Board
10 and their expert, you know, what can be done to replicate
11 this original band. And I'm not going to argue whether it
12 was part of the original design, whether it was lost or
13 part of the value engineering process.

14 So in all fairness, the options available on the
15 table to reproduce this band, this white band at the
16 bottom of the rail are about ten. And I'll go no more
17 with the following analysis.

18 The first option would be removing the existing
19 panels and apply paint to the existing tempered glass to
20 give the effect of the original band. So you take the
21 existing railing, and you go from the inside, you mask it
22 and provide a band with a non-industrial process. It will
23 be applied in the field by a certified applicator.

24 Well, this solution would actually bring some of the
25 same issues that we talked about before, the fact that

1 when the glass breaks, because it's a monolithic tempered
2 glass, it will break in larger chunks, you know, causing
3 some of the issues we potentially already discussed.

4 The second option would be replacing the existing
5 tempered glass with laminated hurricane-resistant glass,
6 with a frosted interlayer that gives it the effect of a
7 horizontal band, which is probably the most esthetically
8 appealing solution that there is out there. And based on
9 previous discussions, this is what you guys were looking
10 at.

11 Unfortunately, the issue with this technology is
12 that -- and this was not presented before. There's only
13 one company that is willing to do a partial banding of the
14 glass, and the company is in Italy. There is not a
15 potential for warranty on the entire system once this
16 railing is installed. There is no calculation available
17 for existing railing for the retrofitting of the system.
18 In addition to that, the technology has not been tested
19 and installed successfully in Florida or in this
20 environment for more than -- at least five to ten years,
21 which is what I would recommend before adopting the
22 technology.

23 The second -- the third option will be replacing the
24 existing tempered glass with monolithic glass featuring a
25 white ceramic film on band -- on surface number two. So

1 this would be an industrial process. We take a new piece
2 of glass and we apply an industrial coating to it, comes
3 back to the site and install it.

4 Well, most of the manufacturers don't recommend
5 installing a ceramic film to an exposed surface that can
6 be touched, because it can be easily scratched, it can be
7 accumulating dirt. In addition to that, when you look at
8 it from -- when you have light exposure from both sides of
9 the glass, the imperfections show up a lot more than
10 normally would.

11 The fourth option would be replacing the existing
12 monolithic tempered glass with monolithic glass featuring
13 a sandblasted band on surface number two. This was also
14 discussed before.

15 One of the issues will be the esthetic, just like the
16 ceramic and the regular paint would be easily stained, it
17 could present imperfection only a couple of days after
18 being installed.

19 The fifth option would be replacing the existing
20 painted aluminum panels with new panels adhered to the
21 glass.

22 Mr. Kasdin has already anticipated my discussion, by
23 stating that we went to -- we called the manufacturer to
24 ask them would you recommend using the same type of
25 technology in way of adhering the panels to the current

1 glass. In their letter, they all stated absolutely not,
2 this is not something we would recommend. This would be
3 probably the easiest option to retrofit the current
4 panels. It's not recommended because of the exposure to
5 the elements. And in addition to that, it will cause some
6 of the issues that were previously discussed, the fact
7 that the glass will break in larger chunks, so stripes of
8 glass will come together, it will come down together in
9 the event of breakage.

10 The sixth option will be removing the existing metal
11 panel adhered to the glass and replacing it with painted
12 metal panels detached from the railings.

13 Well, unfortunately on the outside we don't have the
14 luxury of attaching a metal panel offset from the railing.
15 And if we have to do it on the inside, in most balconies,
16 we would have to remove some of the existing tiles, we
17 would have to GPR or scan the slab to make sure that we
18 don't actually attach the incorrect system into one of the
19 current post pockets -- tenon pockets, sorry, and possibly
20 damage the integrity of the structure.

21 Needless to say, this would be a costly exercise and
22 the esthetic effect of it would probably not be so
23 appealing to have an offset panel inside your unit in the
24 balcony.

25 The seventh option would be removing the painted

1 aluminum metal panels adhered to the glass and replace it
2 with painted metal panels attached to railing posts.

3 Well, this goes back to the original documentation
4 available. We don't have any calculation available.
5 Although it's probably safe to assume that the system is
6 tested with proper engineer, we don't have the backup.
7 And it would require extensive destructive testing,
8 engineering, and it would cause the engineer that will
9 provide the calculations to buy into a lot of liability
10 for an existing system that we don't know how it was put
11 together. We only know that right now it conforms as it
12 is.

13 The eighth option would be replacing the existing
14 tempered glass with laminated hurricane glass using a
15 white ceramic film on surface number two or three. So,
16 you take two pieces of glass, you have an interlayer, and
17 you produce an industrial coating either on the surface
18 attached to the front or to the back of the glass so it
19 will not be exposed to the elements.

20 Well, this is a potential issue because the glass
21 manufacturers generally don't tend to provide a warranty
22 for this type of product, particularly if it's exposed to
23 the elements.

24 Ninth option would be adhering a new white film to
25 the back of the existing tempered glass.

1 Well, this would probably go back to the initial
2 option, which would be -- the effect probably will be
3 undesirable after a few days because anybody could scratch
4 the coating, peel off the film, and it would not be a
5 viable option long term.

6 The tenth option would be removing or replacing the
7 entire railing system and finally come up with a solution
8 that makes everybody happy, both the Design Board and the
9 condo association.

10 It is my opinion that the railing system, as it is,
11 is in working condition. And to my client, and to you, I
12 would recommend maintaining through the end of its useful
13 life cycle. And when the time comes, the technology
14 available today that's not been tested and warrantyable
15 {as spoken} should be available, and should provide the
16 solution for the condo association to give a product that
17 will make everybody happy.

18 Thank you. I couldn't have gone any faster.

19 MR. KASDIN: We would like to submit this, which is
20 Mr. Balestrazzi's report, as well as the 3M letter that I
21 referred to, as well as the testing report.

22 MS. BOUTSIS: The only thing I want to address, a lot
23 of the testimony that you've given now by your expert was
24 not included. You just had a general explanation in your
25 memo. No real report was provided at that time, or any of

1 the information. So I'm just pointing that out only
2 because I know that the Chair has asked me, you know,
3 staff has not had the time to review any of this. And
4 ordinarily for a public hearing, there's a time frame for
5 producing any of the expert reports. I know you weren't
6 granted the right to a rehearing yet, but -- so it's a
7 catch-22.

8 So I'm just bringing it to your attention that the
9 concern has been raised, and a continuance may be
10 requested by -- may be recommended by this Board for
11 review.

12 MR. KASDIN: If I may, Mr. Chair.

13 We'll be comfortable with that. Look, this is
14 significant new information. And I think it is along the
15 lines of the information that the Board itself was
16 seeking. As we've learned from watching the judiciary
17 hearings in Washington, there should be no limit on the
18 amount of information that is presented. And then the
19 Board can consider it and make its decision accordingly.
20 So, we understand that we've given you -- that there's a
21 lot of additional information, and new information and new
22 analysis. So, you know, whatever the Board would like to
23 do, we're comfortable.

24 MS. BOUTSIS: I actually just have one question,
25 which might help this Board in going through determining

1 whether a reconsideration is appropriate or not. If none
2 of these measures work and you can't do this design
3 element, if that is a true statement, why didn't you just
4 come for modification instead? Because then, if you came
5 in for modification without design element, you're using
6 the same information, you've getting to the same place,
7 but just using a different mechanism.

8 MR. KASDIN: Well, we might, but -- yes. If you also
9 listened to Mr. Balestrazzi's conclusions as well, the
10 existing railing system and glass all have limited life,
11 and at some point would have to be replaced anyway. And
12 so that's something that should be -- should be
13 considered, we think, by this Board as well.

14 MR. BODNAR: I agree it's a dangerous situation, from
15 our minutes, the last meeting. And I agree that at some
16 point the railings have to be replaced. But I'm going to
17 recommend that we deny the rehearing.

18 MR. KASDIN: Mr. Chair, I would request at least that
19 the Board take the information that it received and
20 consider it, and that we come back in 30 days or so. I
21 think this is enlightening information. I think you
22 always have the ability to deny the rehearing. And even
23 if the rehearing is granted, to deny the relief that is
24 sought. But nothing can be lost from providing you with
25 more information and knowledge on which to base your

1 decision, and we believe we have done that today.

2 MR. BODNAR: And I appreciate the new information.
3 You've been very thorough and professional. And it
4 probably would have been helpful at some point in the
5 past. But I'm going to deny the rehearing at this time
6 and recommend that you come back with alternative design
7 that addresses the issue with that building.

8 MR. MURPHY: We make a motion that you should move
9 the gavel to the vice chair to then make the motion.

10 MR. WEINSTEIN: Mr. Chair, have we ruled on this or
11 does everybody get to vote on this?

12 MS. BOUTSIS: No, no, that's his motion. He's not
13 ruling for you.

14 MR. BODNAR: I'm making the recommendation for a
15 motion.

16 MR. WEINSTEIN: Okay.

17 MS. PHANG: So I'm taking over as vice chair. So the
18 motion that's been put forth by Mr. Bodnar is that based
19 upon the standard -- if I may hijack it for a second.

20 Based upon the standard that needs to be applied for
21 purposes of the Board to do a rehearing of the
22 application, Mr. Bodnar is moving to deny a rehearing on
23 the basis that there's no newly discovered evidence that
24 was not already considered at the prior meeting. So
25 that's the motion that's currently present -- presented by

1 Mr. Bodnar.

2 Is there a second for that motion?

3 MR. MURPHY: Second by Mr. Steffens.

4 MS. PHANG: Those in favor of denying -- excuse me.
5 Those in favor of not moving forward with the rehearing at
6 this time?

7 MR. MURPHY: Marsh?

8 MR. KRIPLEN: To clarify, what are the applicant's
9 options when we choose not to rehear this?

10 MS. BOUTSIS: Well, they have an appeal pending to
11 the City Commission already, so they can continue with
12 their appeal to the City Commission, or they can file a
13 modification. They're not denied from a different plan.
14 They can come in with a new set of plans or modification.

15 MR. KRIPLEN: And the applicant would prefer not to
16 do that because?

17 MR. KASDIN: Well, we think that this is the best
18 forum to have a full airing of the issues and all aspects
19 of it. Certain Board members were not here. Certain
20 information, which I think the Board wanted, was not
21 actually presented before the Board. And no harm can come
22 from getting that information. You still have the full
23 range of options as the Board. You can deny the
24 rehearing, grant the rehearing and deny it anyway. But
25 now you're being presented with substantial information

1 and new information, and we feel it is sensible to
2 actually hear this out.

3 MR. BODNAR: A ten-second history here. For those
4 who were not here, we carried out a lengthy discussion,
5 presentation or discussion, about the nature of the
6 exterior design of this building. And we came to the
7 conclusion, we, the people that were on the Board at that
8 time, that the horizontal -- the emphasis on this building
9 is critical to its design esthetic. And the
10 recommendation that they were making at the time was to
11 remove that, not put anything back in its place, but
12 completely remove it, so we said no.

13 MR. WEINSTEIN: I think also -- I really can't recall
14 exactly why was it denied originally. But the part I
15 noticed here is that they were given the option at the
16 time not to have a vote. And I think, if I recall
17 correctly, I kind of urged him to come back and not to
18 decide the case at that time. Am I correct? You remember
19 that?

20 MR. MURPHY: Yes, that's actually why I put that
21 portion in the rehearing.

22 MR. WEINSTEIN: Thank you. For some reason, I think,
23 you know, sometimes we speak too quickly. The applicant
24 just said no, we want --

25 MR. KASDIN: Mr. Weinstein, I was not counsel at the

1 time. And I don't think that the counsel at the time was
2 experienced in dealing in matters of this type.

3 MR. WEINSTEIN: Yes. You know, I don't know if we
4 should be bound by -- I, for one -- look, you know, if
5 we're talking about a danger to the community where people
6 can be injured by these -- by these --

7 MS. BOUTSIS: Mr. Steffens, if there's an issue --
8 I'm sorry. Not Mr. Steffens.

9 MR. WEINSTEIN: I don't think we should -- I think no
10 stone should go unturned. I'm just inclined to say I can
11 spend a little more time to listen again. That would cut
12 off all of the other appeals and everything should we
13 change.

14 MS. BOUTSIS: Not necessarily. They could probably
15 still go on appeal because they have reserved their right
16 to that appeal and have already filed it, if they still
17 don't like your decision.

18 That being said, I just want -- the safety issue. To
19 be clear, if the building official, because she's been
20 intimately involved with this on a need-to-know basis,
21 because it's a year before he got involved in this matter.
22 The city building official would have had the building
23 basically condemned if it was a danger, that dangerous and
24 causing a threat to life and safety. Those portions that
25 had been considered dangerous were red tagged, taken care

1 of, and removed. It does not mean that every single panel
2 out there needs to come off yesterday.

3 MR. KASDIN: But they can --

4 MS. BOUTSIS: I'm saying that for the record because
5 we have -- you know, it is public forum. I don't want
6 people scared. I certainly don't want them to think that
7 we're not doing our jobs.

8 MR. KASDIN: But they continue to deteriorate, and
9 the adhesive 3M affiliate won't even allow it to be used
10 anymore.

11 MS. DELGADO: From my recollection -- excuse me if
12 I'm incorrect. Wasn't the panels -- weren't they
13 dangerous because it was tempered glass that was in the
14 railing and eventually that needed to be replaced anyway?

15 MR. BALESTRAZZI: No, there was a couple of issues.
16 And I'm speaking because I watched the video, and I can
17 answer to that.

18 The initial issue was that the glass was tempered
19 with an old process, so there was an option for
20 spontaneous breakage, which after 16, 18 years it would
21 have occurred in many panels if there was a lot of nickel
22 sulfide in the glass itself. The second discussion was in
23 the event of breakage --

24 MR. BODNAR: I'm sorry to interrupt, but we're going
25 over some of the information we've already heard, I

1 believe.

2 I wanted to summarize the denial of the rehearing is
3 based upon the esthetics. It's based upon our decision
4 that the horizontal lines of the building are critical to
5 its design, and that hasn't been challenged. No new
6 information came out today. That's the issue.

7 MR. KASDIN: If I may, Mr. -- to the Acting Chair,
8 Mr. Chair. I think what you are hearing is new
9 information which may bear on an ultimate decision. For
10 instance, one thing that has come out is that the tempered
11 glass has a limited life. It's going to have to be
12 replaced. So we're not necessarily looking at a situation
13 that we were looking at before of either it stays on
14 forever or it gets removed immediately. So what I'm
15 saying is, no harm can be done. Only good can be done
16 from getting all this information, digesting it.

17 Candidly, yes, we can take this to the City
18 Commission. We have an appeal pending. But this Board
19 has, I think, expertise. We have the ability to engage in
20 a dialogue with the members of this Board, that I think
21 could lead to a constructive resolution. And that's why I
22 think it was important to have a rehearing.

23 MR. WEINSTEIN: And wouldn't the decision of the
24 Board be somewhat presumptuous if you go to appeal
25 afterward? They presume that our decision usually is

1 correct. So our decision here, I think, is very
2 important. The initial -- I'm used to courts. Courts,
3 you know, 5 percent of decisions in the lower courts are
4 overturned because -- so, in any event, I'm always for
5 giving people the full opportunity. So even if they lose,
6 they feel they had a full and fair hearing. So I'm
7 inclined to --

8 MS. BOUTSIS: Well, if there's a motion to second --
9 we heard from Mr. Bodnar, we heard from Mr. Weinstein.
10 Would anybody like any further discussion or would you
11 like to take a vote?

12 Okay. So all in favor of the motion to deny
13 rehearing, say aye.

14 MR. BODNAR: Aye.

15 MR. MURPHY: I need you to verbalize. I'm sorry.
16 Plus we have a court reporter.

17 MS. DELGADO: I have a question. I'm sorry. Should
18 this be pending -- I have not changed my mind from the
19 original.

20 MS. BOUTSIS: Okay. So then you support Mr. Bodnar?

21 MS. DELGADO: I'm just trying to think of people that
22 hadn't heard it, if they have a different opinion, if that
23 would alter in any way.

24 MS. CAMARGO: To understand it correctly, we have
25 denied their application before because they want to

1 remove the white panels and put nothing down, and we feel
2 like esthetically it's important to replace it with
3 something. And they haven't produced anything else as to
4 that something, and you still did not produce anything
5 today. Correct? Because I was not here before. I just
6 want to make sure I'm understanding the situation
7 properly.

8 MR. KASDIN: Fair question, but it was not -- what we
9 are saying is that safety considerations are within the
10 code, and that's something that you have to pay particular
11 attention to as well. That -- one of the questions that
12 was asked by the Board itself was: Well, have you
13 analyzed the alternatives? Well, here is the analysis of
14 the alternatives. And one of the new facts that is on the
15 table as well is that this tempered glass has a limited
16 life anyway. So we already have new factors that have
17 entered into play that may result in some different
18 decision or course of conduct.

19 MR. WEINSTEIN: Can I make another observation then?
20 You know, board members and members of any judicial panel
21 sometimes change their minds. You may feel one way. But
22 since we only had four members, the other members that
23 weren't here could say something at the hearing or express
24 something that might change your mind. I hope we all have
25 open minds about what other panel members are saying, for

1 example.

2 MS. PHANG: But I think what's problematic is the
3 following -- and I wasn't here in June, so I wasn't a part
4 of the vote. But I did read the minutes from the June
5 meeting. And the ultimate disposition was that the design
6 as presented to the Design Review Board was rejected. It
7 wasn't that the Design Review Board wanted people to have
8 life safety issues if they live there, it's because the
9 Design Review Board did not approve the design as
10 presented.

11 Right now, it's not that I'm insensitive to a
12 professional engineer and Mr. Kasdin's presentation of
13 what is, I think, important information, but I think
14 what's problematic is we are not being presented with
15 anything new in terms of a design issue. And I think
16 that's the reason why the motion is currently as pending,
17 that's the reason why. It's not that people are trying to
18 be insensitive to, again, safety issues. And perhaps what
19 the Board needs to do is hear an application that includes
20 design modification that incorporates Mr. Balestrazzi's
21 professional engineering concept into a new design that's
22 presented to the Board. But right now, there's no new
23 design being presented to the Board. That's my
24 understanding.

25 MR. KRIPLEN: But I also think this doesn't restrict

1 them from doing anything in regard to safety. If the City
2 comes out and tells them you need to remove all those
3 panels from the north side of the building or the west
4 side of the whole building, then they're going to remove
5 them from the building.

6 MS. BOUTSIS: That is correct.

7 MR. MURPHY: And the replacement of the railings with
8 a system that mimics what's existing today, as we stated
9 from the beginning, wouldn't even be before this Board.

10 MR. KASDIN: If I may address your point.

11 I think what we're saying here, though, is yes, it is
12 possible to go file a new application. Obviously we have
13 the appeal out there as well. But if we turn back the
14 clock a little bit, what could have happened is this Board
15 could have said, as it does innumerable times with
16 applications say, here's where we're thinking, can you
17 come back.

18 MS. PHANG: But that opportunity was given. And by
19 the way, Mr. Kasdin, if I may, my editorialization, they
20 probably should have had you from the beginning. Right?
21 That's what I'd like to say to the universe. But my
22 reading -- and this is cold, because this is all I get the
23 benefit of. My reading of the transcript from June 5th
24 indicates that that option was provided to come back, and
25 it was rejected by the applicant.

1 MR. BODNAR: We were looking to give them an
2 extension.

3 MS. PHANG: And the applicant said no, and they said
4 they wanted a decision that day on June 5th, ergo the
5 reason you got a 4-0 vote against the change. So I
6 guess --

7 MR. KASDIN: I understand and recognize all of that.
8 That's why I mentioned, I mean, I was not counsel at the
9 time. I think that this Board clearly expressed a
10 willingness to explore alternatives. And I want to say
11 can we reopen that to look at the alternatives.

12 MR. BODNAR: I'm saying that we're going to deny
13 that. Then you can make an application to address the
14 design issue we raised at that meeting. Because I don't
15 think the design issue is challenged. The new information
16 didn't come out that says we made the wrong decision,
17 Board. We still believe in that. The four of us do, and
18 I think others will agree with us too. Again, we're going
19 to deny rehearing that decision.

20 MR. KASDIN: But Mr. Chair, why don't we --

21 MR. BODNAR: You can reapply to address the design
22 issue.

23 MR. KASDIN: Mr. Chair, one other thing. And you
24 yourself said it, was was there an -- would you bring us
25 an analysis of the alternatives. You didn't have that

1 before you. You now have it from an expert. And that, we
2 believe, might change the way the Board considers the
3 matter.

4 MR. BODNAR: The analysis did not address the design
5 issue. It addressed technical issues. And I don't think
6 he's a designer. No offense. But I think he addressed
7 technical issues, and I think this -- the Design Review
8 Board has to see a presentation of a new design approach.

9 MR. KASDIN: Well, I think that fundamental to the
10 understanding of this issue is if design solutions are not
11 technologically feasible or are cost prohibitive, it is
12 important information for the Board to know, as well as
13 the applicant, and then maybe from that base of
14 information we can arrive at something. Or maybe not.

15 MS. BOUTSIS: Madam Vice Chair, we have a motion, we
16 have a second. Should we take the vote?

17 MS. PHANG: I mean, yeah, Robert's Rules would
18 require that a vote happens no matter what, so, yeah, I'd
19 like to take a vote.

20 MS. BOUTSIS: All in favor of the denial of the
21 rehearing, please raise your hand and say aye so I can
22 like actually do a visual.

23 THE BOARD: Aye.

24 MS. BOUTSIS: One, two, three, four, five. Katie,
25 are you --

1 MS. PHANG: Am I allowed to vote?

2 MS. BOUTSIS: Yeah.

3 MS. PHANG: I got a little confused.

4 MR. BODNAR: So that's six to one for denial of
5 rehearing.

6 MR. KASDIN: Thank you.

7 MS. BOUTSIS: With Mr. Weinstein, were you the one
8 who did not raise your hand?

9 MR. WEINSTEIN: As usual, yes.

10 MR. KASDIN: The appellate lawyer here.

11 MS. BOUTSIS: But I think what I've -- at least from
12 what I've heard is they're willing to entertain a design
13 even if it's, let's say a design without the panels and
14 introduce it at a new meeting with a new application, and
15 give all those bases there.

16 MR. WEINSTEIN: I did appreciate Katie's analysis to
17 the extent of what we focused on.

18 MS. PHANG: I'm stuck between a rock and a hard
19 place. We had this -- before you were on our Board, we
20 had this issue on West Avenue for -- I think it was the
21 Mirador or something like that, where there was a serious
22 issue vis-a-vis the balconies. And the concern obviously
23 from the residents and other people were that there was a
24 safety issue, but we were very clear that the confines of
25 our criteria that we apply as members of the DRB -- again,

1 it's not because we're insensitive to the safety of the
2 community members of Miami Beach City, it's just that's
3 not within the purview of what we deal with. We deal with
4 pure design issues within the criteria, the 14 criteria
5 that are set forth in the ordinance.

6 MR. KASDIN: Safety being one of them. Thank you.

7 MR. MURPHY: Friendly reminder that the next Design
8 Review Board meeting is November 6. I understand that
9 Mr. Weinstein, I appreciate you letting me know that you
10 will not be in attendance.

11 And with that, may I have a motion to adjourn?

12 MR. STEFFENS: Second.

13 MR. BODNAR: Motion by Mr. Steffens, second by Katie.

14 (Thereupon, the Board Meeting concluded.)
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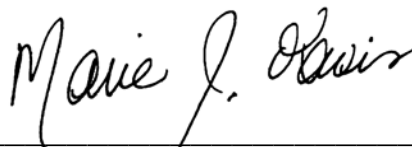
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF DADE)

I, Marie Junie Davis, FPR, and Notary Public do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings, and that the foregoing
transcript, pages 1 through 36, is a true and correct
record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties's
attorneys or counsel connected with the action, nor am I
financially interested in the action.

Dated this 19th Day of October 2018.



Marie Junie Davis, Court Reporter
Notary Public - State of Florida

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EXHIBIT S

DESIGN REVIEW BOARD MINUTES
1700 CONVENTION CENTER DRIVE 3RD FL.

Tuesday, October 2, 2018, 8:30 AM | City Commission Chambers

- I. ATTENDANCE
 - II. APPROVAL OF MINUTES
 - III. CITY ATTORNEY UPDATES
 - IV. SWEARING IN OF PUBLIC
 - V. REQUESTS FOR CONTINUANCES/WITHDRAWALS
 - VI. REQUESTS FOR EXTENSIONS OF TIME
 - VII. DISCUSSION ITEMS
 - VIII. PROGRESS REPORT
 - IX. MODIFICATION OF PREVIOUSLY APPROVED BOARD ORDER
 - X. CONTINUED ITEMS
 - XI. OPEN AND CONTINUED ITEMS
 - XII. NEW APPLICATIONS
 - XIII. APPEALS (BOA ONLY)
 - XIV. OTHER BUSINESS
 - XV. ADJOURNMENT
-

AGENDA ITEMS

ATTENDANCE

APPROVAL OF MINUTES

1. After Action Report - September 4, 2018

APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Phang , Steffens, Weinstein

Absent: Kriplen
MOTION Passed

REQUESTS FOR CONTINUANCES/WITHDRAWALS

REQUESTS FOR EXTENSIONS OF TIME

2. DRB18-0311, 8127 Crespi Boulevard
Brickland 1 LLC

APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

CONTINUED ITEMS

3. DRB18-0289, 122 West Di Lido Drive
Travel Charter Business, LTD

CONTINUED TO 11/06/18

Motion to Continue
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Phang , Steffens, Weinstein

Absent: Kriplen

MOTION Passed

4. DRB18-0270, Bus Shelters: Various locations in the public right of way, city-wide.
City of Miami Beach

APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

NEW APPLICATIONS

5. DRB18-0273, 5470 La Gorce Drive
Guy Bush

DRB APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

6. DRB18-0278, 3136 Prairie Avenue

Guy Bush

APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Marsh Kriplen

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Weinstein
Nays: Steffens

MOTION Passed

7. DRB18-0282, 1920 West Avenue -PUBLIX
Publix Supermarkets Inc

DRB APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

VARIANCE APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

8. DRB18-0283, 8100 Hawthorne Avenue -City Surface Parking Lot
City of Miami Beach

CONTINUED TO 11/06/18

Motion to Continue
Moved By: Katie Phang
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

9. DRB18-0293, 4430 Nautilus Drive
VIRTUS Developments LLC

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Michael Steffens
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Kriplen , Steffens, Weinstein

Absent: Phang

MOTION Passed

10. DRB18-0295, 114 4th San Marino Terrace
O + O San Marino Development LLC

DRB APPROVED

Motion to Approve
Moved By: Katie Phang
Supported By: Elizabeth Camargo

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

11. DRB18-0301, 121 4th San Marino Terrace
Maria Verneza Trujillo and Fabrizzio Yannuzelli Vernaza

CONTINUED TO 12/04/18

Motion to Continue
Moved By: Katie Phang
Supported By: Marsh Kriplen

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens, Weinstein

MOTION Passed

12. DRB18-0306, Citywide Distributed Antenna System (DAS) Nodes -130 1st Street
Crown Castle NG East LLC

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Katie Phang
Supported By: Marsh Kriplen

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens
Nays: Weinstein

MOTION Passed

13. DRB18-0307, Citywide Distributed Antenna System (DAS) Nodes -2400 Pine Tree Drive.
Crown Castle NG East LLC

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Katie Phang
Supported By: Marsh Kriplen

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens
Nays: Weinstein

MOTION Passed

14. DRB18-0313, 1670 Lincoln Court Right-of-way — City Pedestrian Bridge
City of Miami Beach

APPROVED W/ CONDITIONS

Motion to Approve w/ Conditions
Moved By: Katie Phang
Supported By: Elizabeth Camargo

Ayes: Camargo, Delgado, Kriplen , Phang , Steffens
Nays: Bodnar, Weinstein

MOTION Passed

OTHER BUSINESS

15. RE-HEARING: DRB18-0305, 100 South Pointe Drive -the Continuum South Tower
the Continuum Condominium Association

DENIED

Motion to Deny
Moved By: Katie Phang
Supported By: Michael Steffens

Ayes: Bodnar, Camargo, Delgado, Kriplen , Phang , Steffens
Nays: Weinstein

MOTION Passed

ADJOURNMENT

Applications listed herein have been filed with the Planning Department for review by the Design Review Board, pursuant Section 118-252, and 118-71 of the City's Land Development Regulations. All persons are invited to attend this meeting or be represented by an agent, or to express their views in writing addressed to the Design Review Board c/o the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Applications for items listed herein are available for public inspection at the following link: or during normal business hours at the Planning Department, 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139. Inquiries may be directed to the Department at (305) 673-7550.

Any items listed in this agenda may be continued. Under such circumstances, additional legal notice would not be provided. Please contact the Planning Department at (305) 673-7550 for information on the status of continued items.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: Appeals of any decision made by this Board with respect to any matter considered at its meeting or hearing, such person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be

based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-business day notice is required), information on access for persons with disabilities, and accommodation to review any document or participate in any city-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

EXHIBIT T

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 02, 2018

FILE NO: DRB18-0305 (DRB18-0226)

PROPERTY: 100 South Pointe Drive—Continuum South Tower

APPLICANT: Continuum Condominium Association

LEGAL: Continuum on South Beach Condo, the South Tower, a portion of "OCEAN PARCEL", as said "OCEAN PARCEL" is described in Official Records Book 1805 at Pages 0580 through 0586, as recorded in the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Board approval for 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

ORDER

The City of Miami Beach Design Review Board makes the following FINDING OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, and discussion at the October 02, 2018 Design Review Board meeting, the petition as submitted fails to demonstrate to the Board that there is newly discovered evidence which will probably change the result if a rehearing is granted and that the Board has overlooked or failed to consider something which renders the decision issued erroneous.

IT IS HEREBY ORDERED, based upon the foregoing finding of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendation, that the Application is **DENIED** for the above-referenced project.

Dated this 4th day of October, 2018.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

-BY-

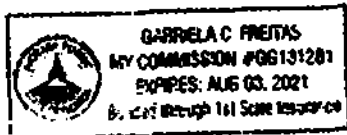
JAMES G. MURPHY

[Handwritten signature]

CHIEF OF URBAN DESIGN
 FOR THE CHAIR

STATE OF FLORIDA)
)SS
 COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 4th day of October 2018 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



[Signature]
 NOTARY PUBLIC
 Miami-Dade County, Florida
 My commission expires: 8-3-21

Approved As To Form: [Signature] (10/4/18)
 City Attorney's Office: [Signature]
 Filed with the Clerk of the Design Review Board on Jessica Guebelly (10/4/18)

[Signature]

EXHIBIT U



Kristofer D. Machado

Akerman LLP
Three Brickell City Centre
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,

A handwritten signature in black ink, appearing to read "K-D. Machado", with a long horizontal flourish extending to the right.

Kristofer D. Machado

Enclosures



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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**

Dear Mr. Granado:

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"). The Association hereby appeals the Design Review Board's (the "DRB") denial of 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 DRB 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 5th hearing (the "Transcript"). The Association, as the original applicant, has standing to appeal, and this appeal is timely submitted. *Sec. 118-9(c)(3), Miami Beach City Code.*

On June 29, 2018, the Association petitioned the DRB for rehearing. We expect that the DRB will consider the petition in the coming weeks. A copy of the rehearing petition is enclosed with this letter. The Association submits this appeal in reliance on the Chief Deputy City Attorney's

position that an appeal must be submitted at this time, even though the rehearing application is pending, to preserve the Association's appellate remedies should the DRB decline to rehear the application. We would ask, however, that the City Commission stay consideration of this appeal until the DRB rules on the rehearing petition. In addition, the Association reserves the right to amend this appeal prior to the City Commission's consideration of the matter.

Justification

Reversal is justified because the DRB, in denying the Association's application, failed to observe the essential requirements of law and failed to base its decision upon substantial competent evidence. *Sec. 118-9(c)(4), Miami Beach City Code.*

- 1. The DRB overlooked its express regulatory obligation to ensure the safety of the project and its surroundings by disregarding uncontroverted expert testimony that the metal panels are extremely dangerous and must be removed.**

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.*¹

¹ Mr. Howes supplemented his testimony in an opinion letter to the DRB, 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 potential danger to people and property around the vicinity of this building, i.e. panels

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*. More specifically, design review criterion seven provides expressly that "particular attention shall be given to safety [and the project's] impact on contiguous and adjacent buildings and lands." *Sec. 118-251(a)(7), Miami Beach City Code*. In evaluating an application for design approval, the DRB must give each design review criterion due weight and consideration. The DRB simply cannot prioritize aesthetic 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 application, the DRB overlooked this express regulatory obligation and focused instead on the project's aesthetic implications, 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. The DRB's decision must be reversed (or, at the very least, vacated and remanded) because the DRB's order failed to observe the essential requirements of law by failing to ensure the safety of the South Tower and its surroundings, as required by the City Code.

2. The DRB's decision relies on conjecture and on an erroneous staff report, and is unsupported by substantial competent evidence.

The DRB rejected the Association's application 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 substantial competent evidence and must be overturned.

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 Fullerton Diaz Architects Inc. inherited the project from SOM that a horizontal banding aesthetic was added to the balconies. *Transcript*, p. 28. The defective metal panels, in turn, were never a part of the South Tower's original design, were not shown on the DRB-approved plans, and were not

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[.]"

required by the board's final order.² The panels are believed to have been installed sometime after the South Tower obtained DRB approval as a decorative substitute for the railing system proposed by Fullerton Diaz. Had the developer or contractor installed the Fullerton Diaz railing system as designed, the Association would not now be faced with this critical life-safety problem. Further, adhering to the Fullerton Diaz design is infeasible, as it would require replacing all of the balcony railings on every floor at a cost of several million dollars, posing an immense hardship to the Association, one that the Association did not create. *Transcript*, p. 29. More importantly, 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.

Despite the record evidence, the DRB presumed, without supporting proof, that the Fullerton Diaz plans implement SOM's design intent for the project and that the defective metal panels must remain to fulfil that intent. *Transcript*, pp. 41-43.³ These presumptions lack a factual basis and, therefore, do not substantiate the DRB's decision. *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1995) (evidence is substantially competent only if it is "fact-based."); *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003) ("Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred.") (internal citations omitted).

Similarly, the staff report's insistence that the South Tower's original DRB approval requires horizontal banding is erroneous and does not constitute substantial competent evidence. 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 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

² As Mr. Howes stated on the record, the existing balcony railing system "was never developed to put panels on it." *Transcript*, p. 32.

³ Mr. Bodnar, for example, when told that the SOM drawings do not show horizontal banding or paneling, reasoned that "that information could have been passed on to who was going to execute the final architect of record drawings, and through engineering, value engineering, came up with a solution, which is a terrible one, obviously, but the intent is still there. We just can't prove that it wasn't there, it had to have been passed on, and I believe [SOM] passed it on but didn't execute it, someone else did." *Transcript*, p. 42. The record contains no substantiating evidence for why the horizontal banding, an element not shown on the SOM plans, "had to have been passed on" from SOM to Fullerton Diaz. Similarly, Ms. Delgado acknowledged that the South Tower "didn't have the horizontal lines, according to [the] SOM drawings," yet she concluded that "The horizontal is what binds the volume together, and that's why I'm fighting not to lose it." *Transcript*, pp. 40-41.

incorporate horizontal elements, but their conclusions on this point are not supported by the record and are not 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.”). Accordingly, the DRB should not have relied on the staff report as a valid refutation of the Association’s testimony.

Request

For these reasons, and for others that we may bring to your attention, the City Commission should reverse the DRB’s decision or, at the very least, vacate the order and remand the matter for further proceedings consistent with the City Code. We would ask, however, that the City Commission stay consideration of this appeal until the DRB rules on the rehearing petition. We also reserve the right to amend this appeal prior to the City Commission’s consideration of the matter.

At the appropriate time, in accordance with Section 118-9(c)(3)(C)(v) of the City Code, we will provide a written statement identifying those specific portions of the Transcript upon which the Association will rely for purposes of this appeal.

Sincerely,



Neisen O. Kasdin



Joni Armstrong Coffey

Enclosure

cc: Thomas R. Mooney, Planning Director
Eve A. Boutsis, Chief Deputy City Attorney
James G. Murphy, Chief of Urban Design
Kristofer D. Machado, Akerman LLP