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VIA HAND DELIVERY AND EMAIL

City of Miami City Commission
3500 Pan American Drive
Miami, Florida 33133

**Re: Appeal of City of Miami Historic and Environmental
Preservation Board Resolution R-17-023 approving Certificate
of Appropriateness for the Coconut Grove Playhouse**

Honorable Chairman Hardemon and City Commissioners:

Miami-Dade County (the "County") respectfully seeks permission to appear as a party in the above-referenced matter and hereby submits this response to the Appeal Letter for Coconut Grove Playhouse Resolution HEPB R-17-023, dated April 19, 2017, filed by Appellants Barbara Lange and Katrina Morris ("Appellants").¹

By way of background, in October 2005, the City of Miami Historic and Environmental Preservation Board ("HEPB") adopted Resolution HEPB-2005-60 (the "2005 Resolution"), designating the Coconut Grove Playhouse, located at 3500 Main Highway, Miami, Florida (the "Playhouse") as a historic site. The 2005 Resolution did not specifically designate the interior space of the Playhouse. This Commission upheld the 2005 Resolution on appeal.

¹ As the applicant for the Certificate of Appropriateness at issue, the tenant on the Coconut Grove Playhouse Property, and an interested party here, the County has a due process interest in this appeal and should be permitted to participate as a party as a matter of right. *Cf.* § 7.1.4.3, Miami 21 ("Applicant shall mean ... any person with a legal or equitable interest in the property for which an application or appeal thereof has been made and which is subject to quasi-judicial proceedings," and "Party shall mean the Applicant, the city staff, and any person recognized by the Decision-making body as a qualified Intervenor.").

This current appeal arises from the HEPB's approval, issued on April 4, 2017 and executed on April 7, 2017, of the County's request for a Certificate of Appropriateness ("COA") for the masterplan of the Playhouse. In accordance with a conceptual masterplan prepared by the architectural firm Arquitectonica International Corp. ("Arquitectonica"), the COA approved by the HEPB facilitates the preservation and restoration of the original Kiehnel and Elliott structure by restoring the entire front building, including the south and east facades specifically referenced in the 2005 designation report as being architecturally significant. Furthermore, the COA requires the County to bring final plans to the HEPB prior to the issuance of any demolition permit.

Appellants have appealed the issuance of the COA to this Commission, but lack standing to do so.² Nevertheless, the County will respond to the merits of Appellants' appeal herein, without waiving the right to challenge their standing in the event of subsequent judicial review.

Appellants advance four arguments in support of their appeal: (1) that the HEPB should have re-evaluated whether to designate the building's interior, and the State Division of Historical Resources should have been given an opportunity to provide comments, prior to approval of the COA; (2) that the HEPB relied upon insufficient and flawed evidence in approving the COA; (3) that the HEPB should not have approved the conceptual masterplan without reference to the aesthetics and compatibility of the project in relation to the site and neighborhood; and (4) that the approval was contrary to the City of Miami Code in that it allows for demolition on the site while the County continues to finalize details and plans for the project. The County responds to each argument in turn below.

² Appellants contend that they are "aggrieved parties" under the City's Historic Preservation Code with standing to appeal the decision below. The County disagrees. Appellants have not demonstrated more than a general interest in historic preservation matters in Coconut Grove, which is insufficient to make them "aggrieved parties" with standing to seek review of the COA. While the City's Historic Preservation Code does not define "aggrieved party," see §§ 23-2, 23-6.2(e), Florida courts interpreting similar terms have held that being "aggrieved" or "adversely affected" requires the party to show a specific injury, such as a direct impact to the party's property, and not just a "general interest" in the issue that is no greater than that of other residents. See *O'Connell v. Florida Dept. of Cmty. Affairs*, 874 So. 2d 673, 675 (Fla. 4th DCA 2004) ("a mere interest in a problem, no matter how longstanding the interest" is insufficient to render an appealing party "adversely affected or aggrieved") (internal citations omitted); *Renard v. Dade Cnty.*, 261 So. 2d 832, 837 (Fla. 1972). The fact that taxpayer dollars will be invested in the Playhouse project does not change the analysis because Appellants fail to show a special injury distinct from that of other taxpayers. See *Dep't. of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981) ("a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district"); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997).

1) Deferring consideration of the COA to allow for re-evaluation of the interior of the building is improper and unnecessary.

It is not appropriate to use the County's application for a COA based on the current designation to revisit whether the interior spaces of the Playhouse should also have been designated, not least because it has been more than 10 years since the HEPB designated the building's exterior and, in that proceeding, considered and rejected designation of the interior.

The City's Historic Preservation Code provides that interior spaces of a historic site are not generally subject to designation unless particularly described in the designation report. See § 23-4(c)(2)(c) of the Code. Here, the 2005 designation report for the Playhouse notes throughout that the interior spaces were significantly altered during Alfred Browning Parker's 1955 renovation of the property, and the report concludes that "[o]nly the south and east facades possess architectural significance." Designation Report at 14. As such, the Playhouse's interiors were specifically excluded from the 2005 designation.

While a designation may be amended "by following the same procedures" set forth in the ordinance (*i.e.*, proposal and preliminary evaluation of a proposed site, preparation of a designation report, public notice, and a public hearing on the proposed designation), the Code does not provide for amending a designation during consideration of a COA, as Appellants seem to request here. Compare § 23-4(c)(8) with § 23-6.2.

In addition, if the HEPB had considered the scope of the designation to be inadequate, it should have addressed and modified it in 2005. It did not do so. Now, more than a decade has passed since the designation, without any amendments to include the interior spaces. The County was therefore entitled to rely on the 2005 designation in expending resources to redevelop the site. The County hired a team of experts to research the history and significance of the site and provide recommendations that would be respectful of the historic nature of the site. Similar to the 2005 designation report, the results of the extensive research conducted by preservation architect and professor Jorge L. Hernandez and his team concluded that the most significant extant portion of the site is the iconic corner building that has served as the southern gateway to the Coconut Grove community. The conceptual masterplan presented to, and approved by, the HEPB provides a vision that will revitalize that iconic building.

Moreover, the County prepared that conceptual master plan at the suggestion of, and in coordination with, the City's Historic Preservation staff. The County also accepted Historic Preservation staff's recommendations: to provide an informational session on the project to the HEPB, which the County did on February 7, 2017; to apply for a COA for the conceptual master plan, which it did on March 6, 2017; and to submit a second and final COA application once the project's details are more fully developed, which the County has committed to doing at the appropriate time. This process was purposefully designed to establish a collaborative relationship with the HEPB, providing early formal opportunities for board review and input on the masterplan.

Having expended significant time and public resources utilizing the 2005 designation and relying on the COA process as recommended by City Historic Preservation staff, the County has acquired a vested right to proceed in accordance with the 2005 designation. It would be improper and inequitable to now change course and amend the parameters of the designation more than 10 years after the building was originally designated. Doing so would require, quite literally, going back to the drawing board, and the financial resources, time, and effort expended on this project to date would have been all for naught.

Aside from the legal reasons for not revisiting the original designation through this proceeding, there is really no practical reason to do so either. The County has committed on the record that it intends to preserve and incorporate original portions of the Kiehnel and Elliott interior in the renovation project. At the April 4, 2017 HEPB meeting, the County and its historic preservation consultant, Jorge L. Hernandez, testified that the interior of the theater would be investigated thoroughly, and that any existing elements from the 1927 building would be further evaluated for preservation and incorporation in the new design for the theater. In addition, in its COA application, the County committed to “[s]urvey, document and incorporate the remaining, historic architectural elements (e.g., the proscenium arch, Solomonic columns and other features that will be investigated in the subsequent design phases being undertaken) into the design of a new state-of-the-art theater and [to] orient the theater on axis with the original theater and its corner entrance through the historic front building.” 3/21/2017 County Letter of Intent at 3. So, in fact, the County wants to see as much of the original design preserved as possible, and has committed to ensuring that the key features of the original building – including interior features – are incorporated in the renovation and preserved for posterity. Appellants’ argument to the contrary is therefore misplaced.

Appellants’ related argument that the HEPB was required to defer consideration of the County’s COA application until the State Division of Historical Resources (the “Division”) provides comments is likewise mistaken. First, no such requirement exists in either the lease between the State, as owner of the Playhouse and the property upon which it sits, and the County and Florida International University, as co-lessees of the property, nor in any state statute or regulation. Second, throughout the planning process, the County has maintained regular contact with the State, both with its Department of Environmental Protection as manager of the lease agreement, as well as with the Division. Representatives from both State offices have participated in informational meetings regarding the development of the masterplan and have been notified of all milestone events and regulatory hearings. In addition, Division staff completed a site inspection of the Playhouse in November 2016, and received the County’s COA application in advance of the April 4, 2017 HEPB meeting. The Division has expressed to the County that it typically reviews projects at the 90 percent construction document phase and that the preponderance of the reviews should occur at the local level. Appellants thus advocate for a process that is contrary to the one followed by the State.

2) The HEPB's decision approving the COA was based on substantial, thoroughly-researched, and well-supported evidence.

Appellants incorrectly assert that the evidence before the HEPB was flawed, inadequate, and insufficient.³ Rather, the County submitted a complete COA application for the conceptual masterplan, and presented competent substantial evidence in support of that application at the HEPB hearing.

Although this Commission's review is *de novo*, see § 23-6.2(e) of the Code, Appellants have raised the sufficiency and adequacy of the evidence below as a basis for their appeal. As such, it is appropriate for this Commission to consider whether the evidence presented below was substantial and competent. *Cf. Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198-99 (Fla. 2003). "Competent substantial evidence" means evidence "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Village of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 128 So. 3d 19, 25 (Fla. 3d DCA 2012).

The Code provides that "[t]he applicant [for a COA] shall submit to the preservation officer an application together with supporting exhibits, other materials, and any applicable fees," and that "[n]o application shall be deemed complete until all supporting materials required have been provided[.]" § 23-6.2(b)(2). Here, the County submitted a complete application with a letter of intent regarding the restoration project, a historic report on the Playhouse, and a proposal with drawings for the restoration by Arquitectonica. Those materials satisfied the Code requirements and were accepted, and deemed complete, by City staff.

At the HEPB hearing itself, City staff made a presentation on the County's application and recommended approval. The analysis presented by City Historic Preservation staff itself constitutes competent substantial evidence. *See City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003). In addition, Michael Spring, Director of the County's Department of Cultural Affairs, provided an introduction to the project, and the County's consultants offered testimony and evidence in support of the COA application. Specifically, historic preservation architect Jorge L. Hernandez presented historic research and recommendations for the project, and principal design architect Bernardo Fort-Brescia presented the conceptual masterplan prepared by Arquitectonica.

The abovementioned materials and testimony together constituted evidence "sufficiently relevant and material that a reasonable mind would accept it as adequate to support" approval of the County's application. *See Palmer Trinity Private Sch.*, 128 So. 3d at 25; *see also Miami-Dade Charter Found., Inc.*, 857 So. 2d at 204 (competent substantial evidence includes "relevant fact-based statements, whether expert or not," as well as documents, maps, plans, and other materials in the record).

³ To the extent that this argument rests on the belief that the interior features should have been designated as historic, that argument has been addressed and refuted above.

That other architects offered testimony in opposition to the project, and some members of the public spoke against it, does not mean that the evidence presented by the County, the County's architects, and City preservation staff was flawed, inadequate, or insufficient. To the contrary, the board was free to credit the County's evidence and the recommendation of its professional staff, and approve the application, as it did here. *See Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) ("[a]s long as the record contains competent substantial evidence to support the [board's] decision, the decision is presumed lawful"; contrary evidence "is irrelevant to the lawfulness of the decision").

As such, Appellants' argument that the HEPB relied upon flawed, inadequate, and insufficient evidence is incorrect and not a basis to disturb the HEPB's decision below.

3) Evidence of neighborhood compatibility, traffic impacts, and similar zoning considerations is irrelevant to the COA.

Appellants wrongly contend that the HEPB should have reviewed neighborhood compatibility, traffic impacts, impacts on surrounding residences and businesses, and similar considerations prior to approving the COA for the masterplan.

In so arguing, Appellants appear to invoke classic zoning-type considerations that have nothing to do with historic preservation. Compatibility, traffic impacts, and like matters are appropriately dealt with at a later time, during the zoning phase of the project, as the HEPB's approval expressly recognizes. Res. HEPB-R-17-023, Ex. A at ¶ 8 ("This [COA] is subject to approval by zoning, building, and all other required city and county departments."); *see also Metro. Dade Cty. v. Section 11 Prop. Corp.*, 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998) (compatibility is a proper zoning consideration).

By contrast, the HEPB's consideration of a request for COA is governed by specific provisions of the Historic Preservation Code. The Code instructs that work proposed in an application for a COA:

shall not adversely affect the historic, architectural, or aesthetic character of the subject structure or the relationship and congruity between the subject structure and its neighboring structures and surroundings, including but not limited to form, spacing, height, yards, materials, color, or rhythm and pattern of window and door openings in building facades; nor shall the proposed work adversely affect the special character or special historic, architectural or aesthetic interest or value of the overall historic site or historic district.

Sec. 23-6.2(h). These criteria relate to the architectural features of the structure, not to impacts of the use of the property. The County gave proper consideration to the correct standards when formulating the conceptual masterplan for the project, and the HEPB

likewise applied the correct standards in approving the COA. To consider an alternate set of criteria not called for by the City Code would be improper and unwarranted.

That said, even if Appellants' alternative criteria were relevant here, the COA would nevertheless pass muster. The County's conceptual masterplan for a 300-seat theater and supporting structures is of a far more appropriate scale and context in relation to the surrounding area than the existing 1,150-seat theater, or even a 700-seat theater advocated by some opponents of the County's plan. The masterplan clearly identifies the uses of the new buildings, the overall composition on the site, and its context within the neighborhood. The parking garage is depicted on the site of the existing surface parking, closest to the adjacent commercial areas, lower than the adjacent permitted new mixed-use development to the north, and deliberately separated from the historic front building.

Further, the architectural team revisited the location of both driveways and support spaces at the rear of the site in response to concerns regarding the scale and relationship of the project to the adjacent residential neighborhood. The architectural drawings presented at the HEPB hearing showed measures to screen the service driveway off of Charles Avenue, extensive landscaping utilized to develop a landscape buffer between the project and the residential neighborhood, and the strategic location of lower level support buildings nearest to the residential neighborhood, to maintain an appropriate relationship in terms of scale. Also, the stage house volume – the tallest element of the theater – is proposed to be closer to the center of the site in comparison with the existing stage house location. This is a deliberate gesture, to shield the view of tallest portion of the project from the surrounding properties. The conceptual masterplan also contemplates uses that are in keeping with the site's original uses: theater, retail/restaurant, office, and residential.

Contrary to Appellants' argument, then, the proposed masterplan thus contemplates development that is in keeping with the current historical scale and context of the neighborhood.

4) The COA will not result in the demolition of any portion of the site until the HEPB reviews and approves final plans.

Appellants incorrectly argue that the HEPB's approval violates the Code by allowing for demolition of the Playhouse while the County continues to finalize details and plans for the project.

To the contrary, the COA plainly states that the approval is "in concept only," that the HEPB will have to review the final details of the project at a later date, and that "[n]o demolition permit will be issued until the [final] plan comes back to the HEPB and is approved." Res. HEPB-R-17-023, Ex. A at ¶¶ 11-13. In the interim, the Playhouse shall remain intact, and no alteration or demotion may, or will, occur.

In conclusion, Appellants' grounds for appeal are mistaken and without merit. The County therefore respectfully requests that the City Commission deny this appeal, uphold the HEPB's decision below, and allow the County to continue with its vision to restore the Playhouse for the entire community to enjoy.

Respectfully submitted,

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