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Via E-Mail and Hand Delivery

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Rogelio Madan, Development & Resiliency Officer
Planning Department
Design Review Board
City of Miami Beach
1700 Convention Center Drive, 2d Floor
Miami Beach, Florida 33139

**RE: DRB25-1146, Objections and Protests to Application for Variances and
Proposed Project at One Ocean Drive Property**

Mr. Madan and the Design Review Board:

Please let this letter, with its attachments and enclosures, state and serve as objections and protests to the application at file number DRB25-1146 (“Application”) submitted by the City of Miami Beach (“City”) as property owner and by Boucher Brothers Pier Park, LLC (“Boucher” or “Applicant”) as applicant and developer/operator for review and recommendation by the Design Review Board (“Board”) of variances and a proposed project at the City’s One Ocean Drive Property (“Property”).

Summary. The Board should deny recommendation of the Application’s proposed variances and project because they abjectly fail the required criteria. This is a classic bait-and-switch. By Commission Resolution and public contract, Boucher is required to implement an adaptive re-use of the site’s current improvements. In brazen violation, the Application now proposes a complete demolition of the existing structures and construction of entirely new improvements, with *inter alia* increased FAR, increased footprint, larger operational square footage, emplacement of under-grade parking, and relocation of all site activations, all of which are additionally prohibited by the City’s Comprehensive Plan. The Application claims setback variances are required to allow street-frontage public parking, beach-fronted improvements, and public sidewalk access, all as contemplated by City procurement requests. That is remarkably false. The site’s current and permitted (“grandfathered”) non-conforming uses and improvements allow all three, which the Applicant could continue. The Application seeks variances only because Boucher and the City decided to scrap the design, uses, and project they are legally obligated to undertake, and construct an entirely new project. The Applicant created this problem for itself. If it wants a new project

(which in of itself violates the law), like everyone else, it must conform its development to all current zoning and design requirements.

Lobbyist Registration. Our firm represents Penrod Brothers Inc. (“Penrod”), with an address at 1 Ocean Drive, Miami Beach, Florida 33139. We have completed registration pursuant to City of Miami Beach Code (“Code”) Sec. 2-482.

Interested Party. Penrod is located within the 375 feet radius of the external boundaries of the proposed project in the subject Application, as confirmed by the Applicant’s ownership list, map, and mailing labels, certified by Diana Rio of RDR Miami, submitted as part of the Application. Penrod presently is and has been providing world-renowned luxury operations from this flagship location for nearly 40 years. Penrod is thus a party in interest and proper intervenor/objector with respect to the Application. *See Save Calusa, Inc. v. Miami-Dade Cnty.*, 355 So. 3d 534, 540 & n.5 (Fla. 3d DCA 2023) (proximity to proposed activity creates legally recognized interest for intervenor/objector standing; may be evidenced by entitlement to receive notice); *Citizens Growth Management Coal. of W. Palm Beach, Inc. v. City of W. Palm Beach*, 450 So. 2d 204, 206 (Fla. 1984). Furthermore, because the Application constitutes a qualifying impact to residents’ quality of life under Code Sec. 2-17 (which the City acknowledges, designing the Application as a “Residents Right to Know” matter), Penrod is afforded heightened notice and standing to object. In addition, Penrod at all relevant times: stood and stands ready, willing and able to participate in a lawful competitive solicitation for operation, management and/or development of the Property; participated, including by submitting a proposal, in the City’s 2023 request for proposals (Request for Proposals 2023-479-KB, “RFP”) for the Property; and is a City resident injured by the subject conduct. Penrod thus has standing to protest and assert claims for the subject violations of the Code, RFP, and Florida law. *See* Code Sec. 2-371 (providing right to protest and sue on procurement law decisions); *Broward Cnty. v. Fla. Carry, Inc.*, 313 So. 3d 635, 641 (Fla. 4th DCA 2021) (standing conferred by ordinance creating private right of action); *Matheson v. Miami-Dade Cnty.*, 258 So. 3d 516, 520 (Fla. 3d DCA 2018) (standing for party ready, willing and able to determine and advance right to competitively bid); *Advoc. Ctr. for Persons With Disabilities, Inc. v. State, D.C.F.*, 721 So. 2d 753, 755-56 (Fla. 1st DCA 1998) (standing for potential bidder to challenge procurement activity); *Wester v. Belote*, 138 So. 721, 726-27 (Fla. 1931) (taxpayer standing to challenge unlawful procurement contract); *Glatstein v. City of Miami*, 399 So. 2d 1005, 1008 (Fla. 3d DCA 1981) (same).

Jurisdiction. We request denial or deferral of the Application to the extent of the Board’s jurisdiction pursuant to City of Miami Beach Resiliency Code Sec. 2.1.3.1. However, the Board lacks jurisdiction pursuant to Resiliency Code Sec. 2.8.1, which provides that “[t]he jurisdiction of [the] board shall not attach unless and until the board has before it a written opinion from the city attorney that the subject matter of the request is properly before the board.” The public record for this matter does not contain such letter.

The Board further lacks jurisdiction to consider or approve the Application, for several other reasons. Most salient, the Circuit Court of the Eleventh Judicial Circuit in and for Miami Dade County, Florida, in Case No. 2023-016657-CA-01, is seized of jurisdiction to adjudicate, *inter alia*, the City’s non-compliance with procurement laws in connection with the Application’s

planned use and development of the Property. Further, Code Sec. 2-371 provides a right to protest and a direct cause of action to parties aggrieved in connection with the RFP, as a City formal bid or solicitation, which encompasses the Application's material deviations from the RFP requirements, Boucher's RFP proposal ("Proposal"), the Contract, and the Conceptual Designs. *See State, Dept. of Lottery v. Gtech Corp.*, 816 So. 2d 648, 653 (Fla. 1st DCA 2001) (material alteration of project from bidder submission prohibited); *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007) (same); *Glatstein v. City of Miami*, 399 So. 2d 1005, 1008 (Fla. 3d DCA 1981) (same). Those considerations are prior to and trump the Board's purview over the Application and the issues addressed here. Penrod expressly reserves all related rights, interests and claims and appears here only to the extent the Board asserts jurisdiction.

Violation of Required Substantial Conformity with Conceptual Designs. The plans and specifications for use and development of the Property requested in the Application do not substantially conform with the Conceptual Designs proposed by Boucher and awarded by the City. To the contrary. This is a bait-and-switch—Boucher promised and is legally required to undertake an adaptive re-use of the existing structure, and now asks to demolish same and construct entirely new, but non-conforming, improvements. This requires denial of the Application, both independently and as the ultimate reason the Application fails to meet the mandatory variance and design criteria.

City Commission Resolution No. 2023-32825 and its incorporated attachments, adopted October 20, 2023 ("Resolution"), control the development of this City Property, and as such, are among the City's "land development regulations." *See* Resiliency Code Sec. 1.2.1 (defining "land development regulations" to include "any other regulations controlling the development of land"). More specifically, the Resolution controls the development of land by mandating that renovations to the building, outdoor areas, and parking at the Property "substantially conform" with defined Conceptual Designs, and further refers approval of such planned renovations to this Board. *See* Resolution p. 4 ¶ 6, Exh. A ("Contract") § 7.1.1, 7.1.2.

As recited in the Application, Boucher was awarded the opportunity to develop and operate the Property, pursuant to the City's RFP and ensuing Resolution and Contract. The City issued the RFP in June 2023 to solicit proposals to manage and operate the Property. The RFP directed responding parties to provide project design information, including "conceptual architectural diagrams of floor plans, elevations, and renderings of the proposed project," and identification of "how the disruption and diminution of parking during construction/development will be mitigated." RFP Sec. 0300, subsection 4, Tab 4. The RFP warned that "the current use of the Property is non-conforming" and that intense alterations to the improvements would require "amendment(s) to the city's comprehensive plan and/or land development regulations [] to maintain the current use." RFP Appx. A Sec. A2.2. Boucher submitted a proposal ("Proposal") which included detailed conceptual design depictions and statements and a project construction timeline. Proposal Tab 4 at 4.1, 4.3 and 4.4. The Proposal's conceptual design presented an adaptive re-use of the existing structure—a "plan [to] include the permanence of the existing structure," promising that Boucher would "reutilize[e] the existing site and architectural building components" and "maintain[] the existing site structure"—and depicted a completed project that maintained the entirety of the existing 23,000 square foot operational structure at its current location, renovating only its interior, and adding small ancillary structures for pool,

wellness, and beach concession operations. *Id.* During the City’s evaluation of the Proposal, Boucher reaffirmed that it was “not proposing [] any tear down and rebuild from scratch” but instead would “take the existing building and rehab and rebuild it.” Boucher Presentation at 34, 28. The Proposal further promised to maintain the existing parking format and placement, modifying only the paving material and adding landscaping, and stated explicitly that “[a]t no point during the construction process will the city have less than the required 72 available parking spaces available for use.” Proposal Tab 4 at 4.4.

In September and October 2023, the City evaluated Boucher’s Proposal, awarded the RFP to Boucher, and awarded Boucher the Contract to implement the Proposal. The October 2023 Resolution, which attached and incorporated the Contract, explicitly obligated Boucher to submit all required plans and specifications (including site, architectural, and landscape plans and exhibits) for proposed renovations and improvements “which shall substantially conform to the conceptual designs presented by [Boucher] with its RFP submission” (“Conceptual Designs”). Resolution p. 4 ¶ 6, Contract § 7.1.1. The Resolution and Contract obligated the City Manager to ensure this substantial conformity before submission of Boucher’s plans and specifications for development to the City’s Planning and Design Boards. Contract § 7.1.2. There is no evidence with the Application demonstrating such a review and determination by the City Manager.

The plans and specifications requested in the Application—by abandoning the required adaptive re-use and instead seeking complete demolition and new construction—do not substantially conform to, but rather, radically deviate from, Boucher’s Conceptual Design promised in its Proposal, including:

Proposal	Application
Maintain entire existing, historic structure.	Demolition of entire existing, historic structure. Construction of entirely new main building.
Maintain current parking format and location.	Relocation of most parking to understory beneath new structure; complete redesign of parking format and location. Estimated increase in gross construction area of over 55,000 square feet.
Maintain main building footprint.	Construction of new building increasing building footprint by over 7,745 square feet.
Maintain main building location within site.	Relocation of main building, decreasing parking area and increasing outdoor operations.
Total beach club operational square footage of 73,600.	Construction of new building with increased beach club operational square footage of 84,297, resulting in a net increase of 10,697 square feet of beach club operational use.
Maintain current lot coverage of 13%.	Significant increase in lot coverage to 62,726 square feet and 40.8%, with a net increase of 42,195 square feet or 27.3%
Modest impact on impervious surfacing.	Balance of pervious (permeable) and impervious (non-permeable) areas has shifted markedly—

Proposal	Application
	increasing impervious areas by 18.8%—with substantial sustainability and environmental impacts.
Reduce construction waste by maintaining existing structures.	Demolition of existing structures significantly increasing construction waste, with environmental and logistical implications, and over 141,000 square feet of demolition.
No alteration to building height.	Revised development increases proposed building height to 65 feet.
No alteration to setbacks.	Increase to overall impact by increasing construction along south setback.
Floorplan for first level with a single restaurant opening to a pool.	Complete redesign of first level with multiple restaurants and club, detached from pool. Increase in seating capacity.
Location of pool and other amenities alongside restaurant activation.	Relocation of pools and addition of multiple water features, which modifies site circulation, visual design, and potentially increases water consumption, maintenance, safety needs.
Resiliency features including solar panels.	Elimination of solar panel electric generation.
No reduction in parking availability during construction.	Complete demolition and closure of parking site during construction.
Substantial tree canopy with “jungle” landscaping for parking area.	Change in landscape architect, and reduced tree canopy at outdoor parking area.
Projected traffic flow consistent with permanence of existing structure.	Four-fold increase in traffic.
Construction timeline of 13 months.	Given the expanded scope of work in the revised proposal, the construction duration would be substantially increased. Based on the revised scope, a conservative estimate for the construction duration would be approximately 24 to 30 months.

Failure to Meet Variance Criteria. The Application requests prohibited variances that contradict the City’s land development regulations and fail all required criteria. The Board should deny the request.

The Application requests three variances from the Resiliency Code’s setback requirements of 2.5 feet along the north, west and south elevations. As the Application recites: setbacks for the Property, zoned GU, are governed by Resiliency Code Sec. 7.2.16.3, which impose development regulations of the average of the requirements contained in the surrounding zoning districts; average of the abutting C-PS1 and R-PS4 setback requirements is 2.5 feet. The Application requests variances of between roughly 10 and 17 feet on the south elevation, 15 feet on the north elevation, and 118 feet on the west and front-facing elevation.

The Application contends that those setback variances are required to accommodate frontage public parking, a beachfront (as opposed to street-fronting) building, and north/south facing sidewalks, all contemplated by the City's RFP. The Property currently hosts all three of those existing conditions and uses—it has frontage public parking, it has a beach club structure 200 feet behind the required front setback, and it has public sidewalks with beach access on/alongside its north and south elevations.

Because the Property is City-owned, the Applicant can maintain all existing non-conforming uses and non-conforming buildings regardless of the magnitude of adaptive modification and reconstruction. Sections 2.12.7 and 2.12.8 of the Resiliency Code govern the repair or rehabilitation of non-conforming uses and buildings. Both generally require adherence to current land development regulations and requirements where reconstruction exceeds 50% of the building value. But, both provide an explicit exception for City-owned property and for buildings/structures on City-owned property. The subject Property is City-owned. Therefore, if redeveloped and renovated, the current site and structures could maintain all current non-conformance.

Accordingly, the Application's central and dispositive basis for its requested variances fails. The site can accommodate all three uses by maintaining the existing non-conforming use and improvements, as Boucher and the City promised and are required to do under the Resolution and Contract.

Requested Variances Are Prohibited. The Board must deny the Application because, as an initial matter, the Application requests variances to permit uses prohibited by the City's Comprehensive Plan, and further prohibited by the City's other land development regulations.

Section 2.8.2(a) of the Resiliency Code specifies that “[u]nder no circumstances shall a land use board grant a variance to permit a use not permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of these land development regulations.” Section 1.3.2 of the Resiliency Code ensures that all City LDRs are consistent with the Comprehensive Plan.

Compliant with relevant Florida statute, the City adopted its 2040 Miami Beach Comprehensive Plan, a state-mandated blueprint for the City's land use. Policy RLU 1.1 of the Comprehensive Plan adopts future land use categories. The Comprehensive Plan designated the Property's future land use category as Recreation and Open Space (ROS). Policy RLU 1.1.19 of the Comprehensive Plan limits permitted uses in ROS-classified areas to recreation and open space facilities. Florida statute (at Chapter 163) prohibits development inconsistent with a comprehensive plan without amendment to same.

As affirmed by the City's own Staff Report & Recommendation to the Planning Board (but, oddly, ignored by staff reporting to this Board), the Application violates, and would require amendment to, the Comprehensive Plan. That is because the Application requests uses that are largely commercial in nature—prohibited in ROS. Accordingly, the requested variances are prohibited.

Independently, the Application requests variances in order to allow Boucher and the City to violate the Resolution and Contract—to abandon adaptive re-use of the current structure as required and instead to construct an entirely new project. The City's Resolution, which is among the City's land development regulations, along with longstanding Florida law, forbid abusing procurement procedures

to promise and require one project and then deliver a radically different project. This Application asks the Board to approve, and be complicit in, this rank bait-and-switch.

No Practical Difficulty. Because the Applicant can maintain all current non-conforming uses and structures if it renovated the existing improvements, rather than demolishing, erecting new construction, and pursuing a new project, there is zero practical difficulty in satisfying the required (grandfathered) setbacks.

The Applicant contends that it cannot as a practical matter provide public parking, operate a beachfront club, nor maintain south/north side sidewalks, without setback variances. That is patently untrue. The Applicant can achieve all three of those goals if it maintained the current structure and project—if it undertook the substantial renovations its promised—because the LDRs allow those nonconforming and current uses and structures to continue.

Failure to Meet Hardship Criteria. Neither can the Applicant satisfy the hardship criteria required by Resiliency Code Sec. 2.8.3(a), further precluding authorization of the requested variances.

As an initial matter, “Florida courts have held that a legal hardship will be found to exist only in those cases where the property is virtually unusable or incapable of yielding a reasonable return when used pursuant to the applicable zoning regulation,” i.e., where it is “virtually impossible to develop the property in accordance with existing regulations.” *Maturo v. City of Coral Gables*, 619 So. 2d 455, 456 (Fla. 3d DCA 1993); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006) (hardship only where “no reasonable use could be made of the property without” requested variance).

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

The Application contends that “[t]he Property is uniquely located abutting the beach, and encompasses public sidewalks to the south and north within its boundaries.” Those conditions are not unique. Many properties in Miami Beach abut the beach. Even more properties in Miami Beach have public sidewalks alongside their boundaries. Regardless, those conditions do not necessitate the requested setback variances—because the Applicant could achieve the parking, beach club, and sidewalks it notes without the variances, if (as it is legal required) it maintained and renovated the current non-conforming uses and structures.

2. The special conditions and circumstances do not result from the action of the applicant.

These circumstances result entirely from the Applicant’s own actions. Boucher and the City could, as they promised they would, renovate and engage in all intended uses of the site, without needing any variance. The requested variances are needed only because of the Applicant’s desire to modify the design to permit entirely new construction, relocation of the main structure, increased FAR, increased footprint, increased height, and increased operational space.

Highlighting just one example: Variance 3 (for the north elevation) seeks extended setback to allow for circulation and ingress/egress to the newly-proposed under-story garage. But that use and

construction is prohibited—because Boucher promised not to demolish the existing parking during construction and promised to maintain the same parking configuration as present.

4. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant.

To the contrary, literal interpretation of the LDRs allow the Applicant to make full use of the Property—with frontage parking, beach-adjacent operations, and beach-accessing sidewalks—simply by renovating and continuing the current non-conforming uses (as Boucher and the City are legally required to do).

5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

No variance is required to afford the Applicant the land uses it states. Instead, the Applicant could renovate, rather than build a radically different new construction, and continue the current non-conforming uses.

7. The granting of this request is consistent with the comprehensive plan.

To the contrary, the project contradicts the Comprehensive Plan. As detailed above, the Property is designated ROS, permitting only recreation and open space facilities uses; but the Application seeks intensive commercial use.

Failure to Meet Design Criteria. The requested project is legally barred many times over (for violation of the Resolution, violation of the Comprehensive Plan, and failure to attain the requested variances). So consideration of design criteria is premature, at best. We nevertheless note that, for the same reasons described above, the project cannot satisfy those criteria, either.

Mot salient, Resiliency Code Sec. 2.5.3.1(e) provides: “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 article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board, and all pertinent master plans.” As detailed above, the Application’s proposed project violates, rather than confirms to, the applicable ordinance—namely, the October 2023 Resolution and incorporated Contract obligating adaptive renovation and re-use of the current structure and “substantial conformity” with the proposed and approved conceptual designs.

City Attorney Conflict of Interest. Because the City appears here as the property owner, lockstep with the Applicant, the City Attorney and City Manager are conflicted from providing independent and neutral advice to the Board concerning the Application’s conformance with land development regulations.

Evidence. In support of its positions and in opposition to the Application, we respectfully submit (enclosing and attaching here including where appropriate in electronic format) the following additional evidence (in addition to the Application and its supporting documents, the January 2, 2026 Staff Report, and all statements and items presented before the Board):

- City of Miami Beach Request for Proposals 2023-479-KB for Management and Operation of a High-End Beach Establishment, June 14, 2023 (with all later addenda).
- Boucher Brothers Miami Beach, LLC Option 1 Proposal for RFP, August 31, 2023.
- Boucher Brothers Management Inc. Presentation to RFP Evaluation Committee, September 11, 2023 (video and transcript).
- City of Miami Beach Resolution No. 2023-32783, September 27, 2023.
- Comparison Report of Arturo Griego, AIA, FGBC, CGC, Principal Architect and General Contractor at G3AEC Design/Build, January 6, 2026.
- Comments Regarding Variance Requests of Arturo Griego, AIA, FGBC, CGC, Principal Architect and General Contractor at G3AEC Design/Build, January 7, 2026.

Incorporation. Penrod expressly incorporates and adopts any and all argument and evidence consistent with its position presented by any person objecting to the Application.

Conclusion. The Board should deny the Application because the variances and project violate City land development regulations and fail to meet the required criteria. At bottom, Boucher and the City ask for variances needed only because they want to violate the law—to build an entirely new project despite legal requirements to substantially conform their development to the project approved by Commission in 2023. Boucher and the City should either keep their promises of adaptive re-use of the existing improvements, which would not require variances or exceptions; or (if legally permitted by procedures outside the remit of this Board), request the larger, more intensive, and completely reconfigured project they now want, but design it in compliance with all zoning and design requirements.

Respectfully submitted,

/s/ Andrew E. Stearns