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Via E-Mail and Hand Delivery

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Deborah Tackett, Planning & Design Officer
Planning Department
Planning Board
City of Miami Beach
1700 Convention Center Drive, 2d Floor
Miami Beach, Florida 33139

**RE: PB25-0792, Objections and Protests to Application for Proposed Private Use
in GU Zoning District for One Ocean Drive Property**

Ms. Tackett and the Planning Board:

Please let this letter, with its attachments and enclosures, state and serve as objections and protests to the application at file number PB25-0792 ("Application") submitted by the City of Miami Beach ("City") as property owner and by Boucher Brothers Pier Park, LLC ("Boucher") as applicant and developer/operator for review and recommendation by the Planning Board ("Board") of a proposed private or joint government/private use in the GU Zoning District for the City's One Ocean Drive Property ("Property").

Summary. The Board should deny recommendation of the Application's proposed use and development because it violates the City's land development regulations mandating "substantial conformity" between "Conceptual Designs," proposed by Boucher and awarded by the City, and the plans requested in this Application. Rather than substantial conformity, the Application requests use and development radically different from the Conceptual Designs. Those include the Application's proposals for: complete demolition of the existing structures and construction of entirely new improvements at a different location, increased footprint, and dramatically larger operational square footage, while the Conceptual Designs promised strict maintenance, with only interior renovation, of the historic structure; and complete demolition of the parking areas, removal of parking availability during construction, and emplacement of under-grade parking, while the Conceptual Designs promised to maintain all parking during construction and to maintain the existing parking format. Independently, the Application proposes uses that violate the City's Comprehensive Plan. Because there is no competent evidence of the Application's conformance with all of those requirements, the Board should deny (or defer consideration of) this classic bait-and-switch.

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 redevelopment and use 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 Code Sec. 118-51(5), (6) and Resiliency Code Sec. 7.2.16.2(e), 7.2.16.3(f). City Commission Resolution No. 2023-32825 and its incorporated attachments, adopted October 20, 2023 (“Resolution”), control the development of land within the City, 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.* This Board is charged by Sec. 118-51(5), (6) and Resiliency Code Sec. 7.2.16.2(e), 7.2.16.3(f) with consideration of matters pertaining to land use referred by the Commission and with review of any use of GU property (including the

subject Property) to ensure “conform[ance with] all development regulations,” placing denial of the Application within the Board’s remit.

However, the Board properly lacks jurisdiction to even consider much less approve the Application, for several 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.

Failure to Demonstrate Substantial Conformity with Conceptual Designs. The plans and specifications for use and development of the Property requested in the Application do not substantially confirm with the Conceptual Designs proposed by Boucher and awarded by the City. This requires denial of the Application.

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. 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 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 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 understorey 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—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.

Proposal	Application
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.

Increase in Construction Timeline. In addition, the Application’s request for a complete demolition and reconstruction, versus the Proposal’s promised renovation, will likely increase the promised construction timeline by one to two years. The Applicant’s Proposal and Contract promise a 13-month construction timeline. 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.

Non-Conformance with Comprehensive Plan. Independently, the Application requests uses and development inconsistent with the City’s Comprehensive Plan. The Board should deny the Application for this additional reason.

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, and prohibits the intensity of development and use a floor area ratio of 0.5. Florida statute (at Chapter 163) prohibits development inconsistent with a comprehensive plan without amendment to same. The Board is the local planning agency pursuant to Florida law responsible for, e.g., consistency with and amendment to the Comprehensive Plan. Section 7.2.16.3 of the City’s Resiliency Code specifies that no GU property may be used in a manner inconsistent with the City’s Comprehensive Plan.

As affirmed by the City’s own Staff Report & Recommendation to the Board, the Application violates, and would require amendment to, the Comprehensive Plan. The Application requests uses that are largely commercial in nature, and the Application proposes a greater intensity of development and use. Those violations independently require the Board’s denial of the Application.

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.

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 it violates the Resolution's requirement for substantial conformity with the authorized Proposal, and because it is inconsistent with the City's Comprehensive Plan.

Respectfully submitted,

/s/ Andrew E. Stearns