

City of Miami, Florida

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FOR IMMEDIATE REVIEW
COMES BEFORE YOU JUNE 3, 2010

May 25, 2010

Re: Coconut Grove Playhouse

Dear Honorable Mayor Alvarez and the Honorable County Commission:

On behalf of the Mayor and the Commission Chair for the City of Miami, we ask that you allow the State to exercise its reverter and reconvey the Playhouse to a trusted State of Florida of University/College partner.

On June 3, 2010, the Committee and/or the Miami-Dade Commission will consider a course of action for the reconstruction, management, and operation of the Coconut Grove Playhouse.

As you know, the City has resolved that the Playhouse be transferred to a State University, free of the influence of its present Board of Directors which failed in its fiduciary duties in overseeing the financial operation of the Playhouse. This Board lacks the credibility to fundraise or move this matter forward to a successful and sustainable conclusion. The past is the best predictor of the future.

I. The History of this Board

The past demonstrates this present Board oversaw the Playhouse debt grow from \$860,000 in 2001 to \$4.5 Million in 2006.¹ To compound their

¹ 2001 <\$860,000>; 2002 <\$1,710,24>; 2003 <\$2,055,415>; 2004 <\$2,507,069>; 2005 audited financials were not provided; 2006 <\$4.5 Million>. See statement of Peg McCue, former Administrative Assistant for the Playhouse and its Administration.

failure, not all the accounts of the Playhouse were audited. In fact, the Playhouse National Tour, "Tuesday with Maurie," maintained a separate unaudited account, utilizing the funds from this account to pay expenses and staff, in cash. To compound matters even further, this present Board of Directors attempted to interfere with the auditors by rejecting warnings that the Playhouse was not being operated as a viable enterprise, demanding the auditor remove all warnings. In fact, in the closing days, just prior to the collapse of the Playhouse, the minutes reflect the Board stating in March 2006, "*When you look at the big picture, things are positive.*"

Post Collapse, this Board has used other People's Money to Act as a Band-aid for its Failures.

Even after the Playhouse collapse, this very Board allowed a Default Judgment to be taken against it (in New York City), resulting in the garnishment of its Coconut Grove Bank account in the amount of \$52,000.

Once again, this Board – post closure and "flush" with Miami-Dade County funds, put on a charrette, conducted by the University of Miami for two days at Ransom Everglades School, which cost \$80,000. The general public never learned of this expense.

Despite closing, but flush with the cash provided by the County, the Playhouse hired AMS Planning & Research {"AMS"} as consultants to determine the future viability of the Playhouse by determining the optimum size of the new facility {the total costs paid to AMS is \$300,000}, AMS recommended a 600-seat theater tied to a University/College partner (the present theater seats 1,100).

Today the Board of Directors is recommending a 300 seat theater intended to be operated by a production company that has never generated a performance with 300 patrons, let alone consistently seated upwards of 100 patrons. AMS' recommendation that the Playhouse partner with a college or university is equally not a part of this Board's plans. However, in August 2007, and in accordance with AMS' conclusions, the Chair of the Board of Directors announced the Playhouse was seeking to partner with a university or college. Is this a recipe for success? The only consistency with this Board is its inconsistency and willingness to waste tax dollars.

Since the closure of the Playhouse, it has been the benefactor of \$526,000² in governmental monies. Post closure, the Playhouse's Board has spent the money as follows:

The Board allowed 1.) a \$350,000 Judgment for mortgage foreclosure on the "Bike Shop" parcel³; 2.) the \$52,000 Judgment/Garnishment taken by Equity One; 3.) \$125,000 reimbursement for the misappropriated State grant⁴ to maintain the structure. This Board has received \$526,000 in governmental transfer payments and paid out \$527,000.

In August 2007, Aries Development loaned the Playhouse Board \$470,000, subsequently adding another \$180,000. Aries and its partners received in return for its bailout of the Playhouse, two valuable rights: 1.) the right to operate the parking lot; and 2.) the right to develop the theater and its intended retail component. Unfortunately, and not surprisingly, development agreements are simply not part of the public record.

To ensure this Board maintained control of the Playhouse, in May 23, 2008, it called for an emergency meeting to vote to amend its bylaws so that each current officer could remain 4 years from the time of appointment (until a new member is elected), as a result of the pending termination of each officer's term.

This Board Consistently Litigates Whoever it Contracts With.

For more than one year, Aries and the Board are both in default under their development agreement and parking agreement. Each has threatened the other with filing suit. State Representative and Board Member Carlos

²	\$	150,000 grant from Miami-Dade County;
	\$	300,000 budgeted from Miami-Dade County;
	\$	<u>76,000</u> from the City of Miami's Offstreet Parking
	\$	526,000

³ The only piece of property owned by the Coconut Grove Playhouse, Inc., a for profit Florida corporation that owns the 1,500 square feet building, not subject to the State's Reverter Clause. The \$500,000 was money loaned from prior Board members to stave off collapse.

⁴ This grant was used as a pledge to secure a line of credit to pay salaries to Playhouse staff (including its Director, Arnold Mittelman). According to Mittelman's statement (found in Miami-Dade County's own files), he was instructed to pledge the \$125,000 by the head of the Legal Committee and Board Member, Jorge Lopez. Mr. Lopez, in an interview with the Miami herald, did not deny the instruction, but believed Mittelman misinterpreted his words. The Miami Herald article is equally attached to the history.

Lopez Cantera has on numerous occasions, attempted to resolve these differences to no avail. Aries was funding the defense on behalf of the Board in a separate lawsuit in a matter known as Strategic Properties Partners Group Inc.⁵ v. Coconut Grove Playhouse, LLC, filed in Miami-Dade County, 11th Judicial Circuit, Case No. 07-09611 CA 09, where its principal, Henry Pino, alleges he paid the Playhouse \$350,000 in 2005, as a refundable deposit for the development rights to the Playhouse land (the very same rights it allegedly sold in 2008 to Aries). As you can see, the Playhouse did not grant Pino the rights to build, and more importantly, failed to return his refundable deposit, instead, facing a huge debt, the Board operated on the \$350,000 deposit, not unlike this Board's use of the \$125,000 State Grant.

On April 8, 2010, the former Chair, now Treasurer (2004-present), and the Chair were deposed by the law firm of Josephs Jack (Coconut Grove litigation firm). The testimony of the Treasurer and Chair will demonstrate the utter failure of the Board to know its finances or take actions to prevent its demise.

As a result of their pending litigation, the Aries Group and its partners, will no longer fund the Playhouse's defense.

This Board has persistently acted with secrecy, refusing to create an open and transparent process, so the public could learn how it is spending Miami-Dade tax dollars. Instead of openly providing its minutes and records, it chose to use its resources to litigate with the Miami Herald over whether it is even subject to a public records request, resulting only in the disclosure of select corporate minutes.

The City of Miami has equally requested the books and records of the Playhouse, however, this Board, operating on fumes, chose to use its resources to hire counsel to oppose this disclosure⁶.

The Appearance of the Playhouse Today

Most exacerbatng and frustrating to the City is the Playhouse's refusal to be a good citizen and maintain its property. A picture speaks a

⁵ A Wholly owned corporation of Henry Pino.

⁶ On November 19th, 2009, the City made a Fla. Statute §199 et seq. request to the Playhouse, and, despite assuring the City that it would provide the books and records, responded by hiring counsel, who refused to honor the request. As a former Board member on behalf of the City of Miami, we were visually allowed to inspect the books, without the ability to make copies or retain notes, leaving the City's representative to rely solely upon memory.

thousand words, attached is a photograph taken by the City of Miami on May 24, 2010, demonstrating a vagrant living in the electrical room of the Playhouse. Fire Chief Meizoso (Fire Marshall) has attempted to make entry to determine the fire safety issues (thus far, to no avail), for months, despite the obvious corrosion on the power pack and wires, which supplies power to the Playhouse.

In fact, instead of compliance or the use of any of its County tax payer funds, the Playhouse has fought the City of Miami for the following citations:

1. Illegal dumping and littering. CE2010003891;
2. Failure to maintain quality of life. CE2009017813;
3. Failure to have a Certificate Use or an Occupational License. CE2008021653;
4. Failure to maintain the exterior of a commercial building. CE200801345;
5. Graffiti on property. CE200702813;
6. Failure to maintain the exterior of a commercial property. CE200893495; CE2007002278.

The Board chose to fight these actions by challenging the Code Enforcement's Board on March 2, 2009, Final Order of Enforcement for the failure to maintain the property. The Playhouse, once again, using County resources, hired the Coral Gables Law Firm of Rascoe, Klock, Reininger, Perez, Esquenazi, Vigil and Nieto, to appeal the Order.

Copies of the Playhouse's Initial Brief to the Circuit Court's Appellate Division, the Order of the Appellate Division, the City's Petition for Certiorari, filed in the Third District Court of Appeals, the Playhouse's Response, the City of Miami's Reply and the Order of the Third DCA are attached. This Board simply uses its resources to litigate versus being a good corporate, not-for-profit citizen in the most important land mass in the Grove, and simply maintain the esthetics.

The building is a wayside for vagrants, it is a stencil for graffiti artists and it is a fire waiting to happen.

There is no justification for this Board's involvement on more day.

The above history of the Playhouse is only the tip of the iceberg, this Board could not operate the Playhouse as far back as 2000. In fact, the best evidence of this Board's failure is the check written by the Playhouse, prior to closing its doors, for the Directors and Officers (D & O) insurance.

II. *The Future of the Playhouse*

In concert with our State Representative for the City, there has been meeting with the State's Department of Environmental and Protection [DEP] in Tallahassee, as well as in Miami; it is equally copied with this correspondence. DEP has been asked to revert the Playhouse back to the State and re-convey it to a reliable State University/College to work in concert with the new Board of Trustees that would include influential business and community leaders who are willing to fundraise to provide an endowment and ensure there is adequate capital to create a component of the Playhouse to throw off reliable recurring revenues to the theater. We all know this Playhouse cannot operate on ticket sales alone, resulting in the Playhouse's future to be a multi-use facility, creating a campus for other valuable and extremely viable Grove entities, such as the Coconut Grove Arts Festival. The concept of phasing the Playhouse by building the theater first, will ensure the \$20 Million grant by the County will not be sufficient to create that self sustaining revenue stream, defraying the cost of its operation.

Portions of the Playhouse façade should be preserved where possible, but the entire footprint must be master planned and coordinated to ensure the rents or royalties from the built uses provide a sustainable Playhouse. The City has met with both FIU President Mark Rosenberg and Miami-Dade College President, Dr. Eduardo Padron, each have expressed an interest in a community partnership to establish a graduate program in theater with a multi-use facility. Neither has an interest in working with the present Board with its financial mess.

The private sector has expressed a profound interest in helping the Playhouse get back on its feet, however, they also have expressed that they will have nothing to do with the present Board of Directors.

If the plan includes this Board remaining in place, the private sector (and most of the public sector) will see this as maintaining the same Board of Directors that watched it collapse under its stewardship, determine its future.

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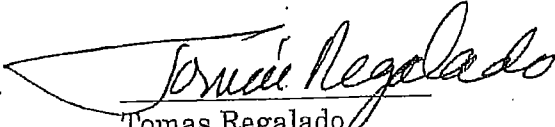
The Cultural Director of Miami-Dade is a well intended individual. In this circumstance, he is wrong to prolong this Board's involvement, now standing at 4-years post closure.

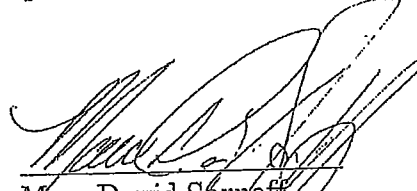
Please realize, this once admired landmark in the Grove, one of its three economic engines, must be moved forward with a sustainable future, one not tied to government and the vagaries of its shrinking budgets.

Conclusion

We ask that the County support this City's resolution asking the Playhouse be reverted back to the State, which in turn will re-convey to a State or Private University/College to operate a multi-use facility.

Respectfully,


Tomas Regalado
Mayor
City of Miami


Marc David Sarnoff
Commissioner - District 2
City of Miami

Mds:tf

Enclosure(s): As stated.

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