Memorandum

MIAMI-DADE COUNTY

Date: March 5, 2012

To: Honorable Chairman Joe A. Martinez
And Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Coconut Grove Playhouse

On February 7, 2012, the Board of County Commissioners approved Resolution R-158-12, asking us to resolve all liens and encumbrances affecting the title of the Coconut Grove Playhouse and to bring to the Board agreements necessary to do so. In addition, during the discussion about the item, members of the Board provided staff with feedback regarding other issues that are important to advancing our work on returning great regional theater to this historic site in Coconut Grove.

As a part of reporting on the work underway in regard to all of these complex issues affecting the Coconut Grove Playhouse, I must respond to the March 2, 2012 memorandum from Commissioner Suarez (attached). In spite of Commissioner Suarez's inaccurate assertions regarding the lack of "something concrete to report," we are in fact aggressively following-up on the Board's requests.

I have begun discussions with City of Miami Mayor Tomás Regalado in the interest of ensuring that the City and the County work together closely on all of the issues essential for the future of theater at the Playhouse. We also have met with representatives of the Playhouse's board and are scheduling meetings with the following:

- Two of the principal property claimants to pursue resolution of their remaining issues (a meeting with the representatives of Aries is scheduled for March 13th and a meeting with Henry Pino is on March 19th);
- The City of Miami staff to address outstanding citations and City judicial actions and to coordinate planning for the project (a meeting with City Manager Johnny Martinez is scheduled for March 13th);
- Educational institutions interested in partnerships for parking, performance and outreach activities, as well as in archiving the historic materials currently in the Playhouse (meetings with a number of these possible partners will begin this week and be completed before the end of this month); and
- State officials to determine the appropriate steps to secure assurances regarding the property's reverter clause (conversations with the Florida Department of Environmental Protection already have been initiated regarding the reverter clause and will continue to secure the required assurances).

All this work will be coordinated closely with the board of the Coconut Grove Playhouse and the Office of the County Attorney. We will report to the Board every thirty days regarding our progress.

The following points are offered to set the record straight in regard to Commissioner Suarez's March 2nd memorandum:

- Security of the property. Although Miami-Dade County is not yet the owner of the Coconut Grove Playhouse, we remain concerned about the security of the property. Consequently, immediately upon learning in January of this year that a group of teenagers had broken into the Playhouse and were apprehended soon thereafter by City of Miami police, we sent staff to the site to assess the

damage and simultaneously, contacted the board of the Playhouse who responded by repairing the doorway, replacing the broken locks and securing the facility. It is to no one's advantage to misstate the facts and dramatize the current situation regarding the Playhouse and its contents. In addition, part of the work that we are undertaking is to cooperate with the Playhouse board on finding an educational repository for materials of public value and interest that remain in the building.

- The Facts. Commissioner Suarez's March 2nd memorandum is filled with misinformation that suggests a lack of familiarity with the details and complexities of the issues facing the Playhouse. It is important to clarify this for the Board so that everyone understands the work that must be accomplished. The following highlight these important clarifications:
  - "All Claims:" Commissioner Suarez incorrectly states that his "negotiations" with two of the Playhouse's claimants constitute settlements with all claimants. The title search completed by the County Attorney's Office confirms that there are multiple claimants. In addition, we are advised by the County Attorney's Office that it is just as important that in advance of the conveyance of the property to the County, we receive assurance from the State of Florida that they will not exercise the property's reverter clause.
  - "Specific Recommendations on a Settlement:" Attached to this memorandum is the February 18, 2012 (sic) memorandum that Commissioner Suarez references in his latest correspondence of March 2nd. I direct your attention to this "February 16th" memorandum specifically as it relates to the "terms" that Commissioner Suarez "negotiated" with Aries Development Group. Not only has he committed to an unsubstantiated cash settlement but he also includes: a "land swap" of unspecified square footage that gives up valuable property on Main Highway and that would likely constitute a violation of the State reverter clause; he mentions a conveyance of development rights to Aries without clear details of what this entails; and he relinquishes control and revenues being generated from the Playhouse parking lot to Aries, not only giving up an unspecified amount of revenue but also pre-selecting an operator in the absence of a competitive process for what would be County property after the conveyance. All of these terms were arrived at without the participation nor the consent of the board of directors of the Coconut Grove Playhouse, the entity which owns the property and which would have to effect this settlement before the property could be conveyed to the County. This is a particularly bad, if not unrealistic, deal, given the Playhouse board's contention that Aries has been in default of its agreement with the Playhouse for more than two years. According to the Playhouse's board, Aries has not honored its business agreement to pay the Playhouse for Aries' serving as operator of the parking lot and this unpaid rent offsets the financial obligation that may be owed by the Playhouse to Aries. This point clearly was made to the County in the letter of November 10, 2011 from the Playhouse board co-addressed to me and Commissioner Suarez. Commissioner Suarez chose to ignore these facts and "negotiate" a settlement that will cost the County hundreds of thousands of dollars. This is not a "paltry sum," as Commissioner Suarez characterizes it.
  - Misstatements of the Facts: In his March 2nd memorandum, Commissioner Suarez refers to the board of directors of the Coconut Grove Playhouse as both "the previous owner-operator of the facility" and "the current lessee-operator;" in fact the Playhouse's board is the owner of the property. In addition, Commissioner Suarez references "our $20 million G.O.B. monies;" in fact the County capital funds secured for the Playhouse are $5 million in Convention Development Tax bonds and $15 million of Building Better Communities/GOB funds. An accurate understanding the roles of the parties involved and the sources of the funding are critical elements to resolving the current issues and moving forward with this important project.
- The City of Miami: Although he does not choose to discuss the City of Miami in his March 2nd memorandum, Commissioner Suarez was quick to assure the Board at its February 7th meeting that the City's building citations and judicial actions were being resolved. In reality, since the time of that Board meeting, the Playhouse's board was served with a summons that identifies the City of Miami as the plaintiff and that demands $143,500 (to the date of the summons) from the Playhouse

board for allegedly not addressing graffiti that was found on the building in May 2010. This summons notifies the Playhouse of the City's intent to foreclose on the lien which would result in the public sale of the property. This kind of harassment is particularly egregious given that the Playhouse board had taken actions in cooperation with the City to address this issue. As mentioned, we are meeting with the City to address these time-sensitive matters.

- Concern Over Representations: In his March 2nd memorandum, Commissioner Suarez expresses some concern about my comment to him that area schools may have an interest in cooperating with us on the Coconut Grove Playhouse project. You may recall that we received input from the Board urging us to pursue such partnerships (details below). I am concerned over representations that continue to be made by Commissioner Suarez without substantiation that there are "potential donors ...considering major gifts, in connection with naming rights" for the Playhouse. It is important that we are made aware of the specifics of such offers as soon as possible in order to confirm the reality and possible terms of such representations and to ensure that actions that we take may be supportive of such potential gifts.

In spite of the obstacles that Commissioner Suarez has created and/or neglected to address, we are committed to working though our professional staff to complete the due diligence that is essential to develop sound and responsible recommendations for the Board's consideration. In fact, this work is underway.

The following are updates on the actions that we are taking to follow-up on all of the Board's issues.

Issues Affecting the Title of the Coconut Grove Playhouse
Since the Board meeting, the Office of the County Attorney has updated the title report for the Playhouse property. As reported to the Board, the following updates and summarizes the known quantifiable encumbrances, estimated to total $2 million:

- Mortgage with an original principal amount of $1.5 million;
- $350,000 lawsuit, including enforcement of a sales agreement for the property;
- $54,000 in judgments;
- $30,000 in unpaid taxes; and
- City liens to be determined (the Playhouse recently has received a summons in regard to a $143,500 City lien based on daily fines related to graffiti on the building, with the City seeking to foreclose on the lien).

Also, there is a lease for the property with Paradise Parking that must be terminated.

In addition to resolving these issues, it is essential to receive written confirmation from the State of Florida of the extension of the reverter provision in the property's deed that constitutes a restrictive covenant requiring that the Playhouse property only be utilized for theater and related uses. We have been in touch with Department of Environmental Protection, Bureau of Public Land Administration, Division of State Lands to request this assurance that the State will extend, and not exercise, the reverter clause if the property is conveyed to the County for the intended purpose of reactivating great regional theater.

It is important to underscore the following:

- Resolving these issues will require meetings, negotiations and possibly, agreements and resources; we are committed to fair and reasonable solutions that constitute sound business decisions that

would require no new commitment of resources, and would be legally eligible uses of existing revenues committed for the Playhouse, as may be needed;

- Developing solutions to address these issues will need to take into account the interests of the board of directors of the Coconut Grove Playhouse and must have their participation and consent, in order to finalize their conveyance of the property to the County; and
- Any recommendations necessary to eliminate these encumbrances will be brought to the Board for its review and approval.

Partnerships with Educational Institutions

Some of the most promising opportunities associated with reactivating great regional theater at the Coconut Grove Playhouse are the partnerships that can be established with community educational institutions. Preliminary interest from possible educational partners has been expressed regarding such opportunities as developing a parking garage and/or ancillary facilities on the site in order to serve the needs of students for education and outreach programs, ranging from field trips to theater training programs and internships. We are committed to pursuing these potential partnerships in order to achieve the highest public benefit for the use of this property.

In addition, there has been interest expressed in the contents of the Playhouse, with the objective of archiving and making historic materials currently housed in the facility available for exhibition and research. We are committed to working with the Playhouse's board to pursue our shared interest in ensuring that the appropriate "home" be found for these important items.

Planning for the Operations of the New Playhouse

Central to our plan for returning great regional theater to the Playhouse property is to finalize the work initiated by the Playhouse board to enter into a management agreement with GableStage, one of the most celebrated and established theater companies in the Southeastern United States. GableStage understands that it would be responsible for managing, programming and fundraising specifically to support its operation of the theater, in order for this project to be successful. GableStage historically has received County grant support through the competitive grants programs of the Department of Cultural Affairs and it is our intention, and GableStage's understanding, that this is the only County operational support that is anticipated to be available. To ensure that GableStage is ready to assume this responsibility, our Department of Cultural Affairs, with the expert assistance of AMS Planning & Research, will work with this outstanding non-profit cultural organization on operational forecasts of expenses and revenues for programming the new Playhouse as well as on a transition and implementation plan to ensure GableStage's readiness to grow as a major regional theater and deliver outstanding public programs year-round in Coconut Grove. AMS is one of the nation's leading arts management firms with a strong track record for helping governments and non-profit organizations plan and successfully execute operational plans for theaters. We will present an update to the Board on this work in conjunction with recommendations to advance the conveyance of the property.

Attachments

c: Mayor Tomás Regalado, City of Miami
R.A. Cuevas, Jr., County Attorney
Shelly Spivack, Chairman, Coconut Grove Playhouse Board of Directors
Johnny Martinez, City Manager, City of Miami

Senior Advisor to the Mayor

MEMORANDUM
COMMISSIONER XAVIER L. SUAREZ

111 NW First Street, Suite 220 Miami, Florida 33128 Tel. (305) 375-5680 Fax (305) 372-6103

TO:	Carlos Gimenez Mayor	DATE:	February 16, 2012
CC:	Genaro "Chip" Iglesias Deputy Mayor	RE:	Coconut Grove Playhouse
	Robert A. Cuevas, Jr. County Attorney		
FROM:	Xavier Suarez Commissioner District 7		

In accordance with the resolution passed by the Board of County Commissioners on February 7, 2012 to obtain clear title to the Coconut Grove Playhouse property, we would like to proceed negotiations along the following lines.

From our discussions with the two known stakeholders having claims on the Coconut Grove Playhouse property, I believe the following settlements are achievable:

Proposed settlement with Aries Development Group

1) Aries agrees to a land swap equal to the area it owns on Charles Street for an equal area on Main Highway.
2) Aries shall receive 25,000 square feet of its allowed FAR to Parcel C, if otherwise in compliance with the Miami 21 Zoning Ordinance.
3) Aries shall agree to receive the sum of $250,000.*
4) Aries shall maintain parking rights on the Coconut Grove Playhouse property until such time ground is broken for a new playhouse or until the date it is determined that a playhouse project or development is not feasible, whichever comes first. In accordance with this right, Aries agrees to maintain and safeguard this property.

Proposed settlement with Henry Pino (Strategic Properties Group)

1) Mr. Pino will agree to receive the sum of $275,000* in exchange for a general release of his claim to develop on the property of Coconut Grove Playhouse.

Should you need additional information, please contact myself or have Chip Iglesias contact my Chief of Staff, Ricardo Gonzalez.

Xavier L. Suarez

*Treated as land acquisition costs which presumably allows the use of GOB funds.

MEMORANDUM
COMMISSIONER XAVIER L. SUAREZ

111 NW First Street, Suite 220 Miami, Florida 33128 Tel. (305) 375-5680 Fax (305) 372-6103

TO: Carlos A. Gimenez
Mayor

DATE: March 2, 2012

CC: Chairman Joe Martinez
Board of County Commissioners

RE: Coconut Grove Playhouse

FROM: Xavier Suarez
Commissioner
District 7

This regards our meeting of yesterday, in which I asked you what your response was to my memo to you dated February 18, 2012 and also reminded you that the Playhouse property is not secure and (as per photographs provided by Miami City Commissioner Marc Sarnoff) in great danger of having its historical documents damaged or stolen.

You were unable to respond to my specific recommendations on a settlement that would clear title of all claims, at a cost of about one-eighth of the debts incurred by the previous owner-operator of the facility and about one-fourth of the filed encumbrances.

Instead, you once again insisted that you had to complete the "due diligence" analysis that has been presumably going on since I first started reporting to you on negotiations towards obtaining clear title, releases from all those claiming development rights, and a state-mandated title reverter to government by the current lessee-operator. (Note that the first written memo I wrote you containing a report of negotiations by me/my staff/*pro bono* third parties was dated August 22, 2011 – well over half a year ago…).

I have explained to you on more than one occasion that the title report, initially performed by the County Attorney's office, was updated by a *pro bono* counsel with a major law firm late last year. I have indicated that potential donors are considering major gifts, in connection with naming rights, but want assurances that the theatre will not be reduced to a tiny facility, dwarfed by commercial developments around it. Obviously, the design, restoration and new operating agreement, as well as the immediate securing of the site against deterioration and vandalism, are matters that require our attention going forward.

But nothing is as important as obtaining clear title to a venue worth (according to the property appraiser) well over five million dollars and key to the commercial revitalization of that area of Cocoanut Grove.

Your response was that you had no specific response, but would consult staff, in advance of the discussion item I have asked to be placed on the March 6 county commission agenda.

In addition, you mentioned the possibility that "two schools in the area" might want to get involved in the project. When I questioned you as to the "two schools" having any kind of restoration funding approaching our $20 million G.O.B monies already borrowed pursuant to voter approval in 2004, you clarified that you did not mean to suggest that the County would pass on the opportunity to take title.

I presume that you are simply concerned about operating losses – and that is a fair concern for all of us involved.

However, that concern cannot override the urgency of obtaining clear title and possession of the premises, after negotiations that have taken the greater part of my first three months in office and that have – due to the cooperation of city officials, of many essentially private parties not subject to our jurisdiction and of one prominent legislator – resulted in our being on the cusp of a final settlement of all claims for a comparatively paltry sum.

I trust that by Tuesday next, you will have something concrete to report to the commission as regards my very specific memo of February 18, 2012. ***And I remind you that the elements of the proposed settlements were conveyed to you in a call that took place right around Thanksgiving of last year, or more than 3 months ago. Since that day, nothing concrete has been done by you or your staff – even while the facility continues to deteriorate and the surrounding area continues to suffer the absence of this historic arts jewel.***

Xavier L. Suarez
Commissioner
District 7