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June 27, 2022

VIA HAND DELIVERY

Board of Rules and Appeals  
Attn: Secretary  
11805 SW 26<sup>th</sup> Street, Room 230  
Miami, FL 33175

CODE COMPLIANCE DIV.  
JUN 27 12 08:10

Re: Appeal of the City of Miami Building Official's Determination concerning 1265 SW 22<sup>nd</sup> Street, Miami, Florida

Dear Secretary:

This law firm represents Delia Hospitality, LLC (Delia) in relation to this appeal of the City of Miami Building Official's determination concerning City of Miami ("City") Building Permit No. BD15-009792-001-B001 for the Coral Way Hotel on 1265 SW 22nd Street (the "Building Permit").

This appeal is based on the fact that the Building Inspector (1) arbitrarily failed to pass a foundation inspection; and (2) the Inspector then imposed a higher standard—"extensive progress"—than required by FBC Section 105.4.1.3 the Florida Building Code. Accordingly, the City of Miami Building Official's determination, which denied an extension of the Permit, is incorrect and must be reversed.

**I. The Inspector's failure to pass the foundation inspection was improper.**

On March 9, 2022 Delia, through its contractor, called for an inspection of foundation work that had been completed under the Building Permit. As noted by the Inspector, seven new foundation pads had been constructed and were ready for inspection. See Exhibit A. The FBC Section 110.3 dictates that, upon request for an inspection, the Building Official shall make the inspection, and shall release that portion **or shall** notify of any violations. The Inspector's remarks from March 9, 2022 notes the construction of "another row of 7 new foundation pads". See Exhibit A. It follows, therefore, that

new work had been completed and met the code standards. The Building Official should have either released that portion or advised what was wrong with the foundation.

Instead, the Inspector sited to Section 105.4.1.1 and stated that the project had not had "extensive progress" so the inspection was not passed. See Exhibit A. Section 105.4.1.1 does not allow for the denial of an inspection or the failure of an inspection.

Delia commenced on authorized work within six (6) months and the authorized work has progressed thereafter in compliance with the Florida Building Code. On three prior occasions the Inspector had approved the Appellant's installation of foundation pads as meeting the requirement of "active progress" under FBC Section 105.4.1.3.

In denying the inspection of the work, Inspector Andres Perez (the "Inspector"), incorrectly cited to Section 105.4.1.1., which states:

"If work has commenced and the permit is revoked, becomes null and void, or expires because of lack of progress or abandonment, a new permit covering the proposed construction shall be obtained before proceeding with the work."

This Section describes what happens if the permit expires. However, based on the March 9 inspection, the Permit should not have expired. The project was in active progress on March 9, 2022 when the Inspector noted 7 new foundation pads had been constructed since the last inspection. See Exhibit A. The fact that the Inspector has thrice approved installation of foundation pads as active progress in this project demonstrates that the current jobsite progress regarding the installation of multiple foundation pads should have similarly been deemed active progress sufficient to maintain the Building Permit. Otherwise, the decision is arbitrary.

Since the determination has no basis in the Florida Building Code and there is ongoing litigation between Delia Hospitality and the City, it appears that the Inspector's decision is a tactic for the City to obtain leverage in the litigation.

## **II. The Inspector imposed a higher standard than stated in Section 105.4.1.3**

When arbitrarily failing the requested inspection, the Inspector imposed the standard of "extensive progress," which goes beyond what is obligated by FCB 105.4.1.3. The FCB requires a standard of "active progress," and nowhere requires "extensive progress" for maintenance of an active building permit. As mentioned above, the Inspector noted that new work had been done under the permit. Thus, the permit should not be deemed to have lapsed or been abandoned, as the authorized project work satisfies FCB requirements.

For all of the foregoing reasons, we respectfully request that the Building Official's failure of the Inspection and subsequent revocation of the Building Permit be overturned.

Sincerely,

A handwritten signature in blue ink, appearing to be 'TR', with a horizontal line extending to the right.

Thomas Robertson

EXHIBIT A

Insp. Date	Status	Result	Result Date	Updated By	Inspector Info	Remark
Mar/09/2022	Completed	NOK	Mar/09/2022	afperez	Name: Andre Perez Office Ph: Mobile Ph: (786)512-4210	019 FIELD WALKTHROUGH INSPECTION. I INFORMED THE OWNER AND CONTRACTOR IN SEPT OF 2021, UNDER FBC 105.4.1.1. THAT I WAS NOT GOING TO EXTEND PERMIT ANYMORE. UNLESS I SEE EXTENSIVE PROGRESS ON THE JOBSITE. ALL THAT'S BEEN DONE IN THE LAST 6 MONTHS IS ANOTHER ROW OF 7 NEW FOUNDATION PADS ONLY. IT THIRD TIME THEY DO THAT TO EXTEND THE PERMIT. FURTHERMORE ALL THE WORK IS PERFORMED A COUPLE OF WEEKS BEFORE THE PERMIT IS TO EXPIRES.