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November 20, 2017

Chairperson and Members of the Historic Preservation Board
City of Miami Beach
c/o Mr. Thomas Mooney, Planning Director
1700 Convention Center Drive
Miami Beach, FL 33131

**Re: Letter of Intent – Variance to Operating Hours of Rooftop Bar Counter
Deco Walk Hotel & Golf Club, LLC, d/b/a The Voodoo Lounge
928 Ocean Drive, Miami Beach
HPB File No. HPB17-0171**

Dear Chairperson and Members:

As you know, we represent Deco Walk Hotel & Golf Club, LLC, d/b/a The Voodoo Lounge (the “Applicant”), located at 928 Ocean Drive (the “Property”). Please allow the following to serve as a letter of intent in connection with the Applicant’s application to the Historic Preservation Board (“HPB”) for a variance from Section 142-543(3), Miami Beach Code of Ordinances (the “Code”), restricting accessory outdoor bar counters that neighbor a building with apartment units from operating between 8:00 pm and 8:00 am. The Applicant seeks a variance from this section of the Code in order to operate its rooftop bar counter (the “Rooftop Bar”) until 2:00 am. Given the late night entertainment-centric nature of the MXE District, in addition to the Applicant’s satisfaction of the Code’s hardship and variance criteria, as outlined below, we respectfully request the HPB grant a variance from Section 142-543(3).

First and foremost, our application satisfies Article 1, Section 2 of the Related Special Acts, which allows the granting of a variance if the HPB finds that practical difficulties or unnecessary hardships exist. Here, the Property falls under the Ocean Drive/Collins Avenue Historic District (the “Historic District”). Due to the special requirements of the Historic District, under Section 142-1161(d) of the Code, “non-oceanfront lots fronting Ocean Drive in the MXE zoning district,” may not construct rooftop additions. While we acknowledge and appreciate the reasoning behind the prohibition under Section 142-1161(d), it imposes an unnecessary hardship upon the Applicant. Specifically, the Applicant cannot enclose the Rooftop Bar, as doing so would constitute a “rooftop addition,” thus restricting operating hours to 8:00 pm. If this restriction did not exist, the Applicant would prefer to fully enclose the Rooftop Bar and no longer qualify as an ‘outdoor bar counter,’ thus allowing hours of operation until 5:00 am every day. Here, any negative impact that the 8:00 pm restriction seeks to reduce is already mitigated

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because the Applicant solely plays music at background levels. Given the fact that judicial decisions have recognized historic preservation as a hardship under the Code, the Applicant accordingly requests this variance.

The application also meets the variance criteria contained in Section 118-353(d) of the Code, set forth below:

- (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 need for the variance arises from the location of the Property, which falls under the Historic District, thus preventing any rooftop additions to existing structures as stated under Section 142-1161(d) of the Code.

- (2) *The special conditions and circumstances do not result from the action of the applicant;*

Establishment of the Historic District did not result from any action taken by the Applicant.

- (3) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;*

Granting the variance to allow the Rooftop Bar to operate until 2:00 am will not confer any special privilege that is denied to other lands, buildings, or structures in the MXE District. Rather, the granting of this variance will place the Applicant upon relatively more even ground as all other bars that front Ocean Drive. Furthermore, the HPB has a typically granted such variances from 142-543(3). For example, at the October 10, 2017 meeting, HPB granted the Park Central Hotel a variance to operate an outdoor bar counter until 2:00 am. Much like the Applicant, which neighbors a single building containing condominium units, Park Central neighbors three residential buildings within 320 feet¹ and was similarly subject to the 8:00 pm restriction under Section 142-543(3). Accordingly, granting a variance to operate until 2:00 am will not confer any special privilege upon the Applicant.

- (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;*

¹ See Page 4 of the October 10, 2017 Staff Report, HPB17-0104

First and foremost, judicial decisions have recognized historic preservation as a hardship under this section of the Code. Furthermore, a literal interpretation of Section 142-543(3) imposes an unnecessary hardship upon the Applicant by depriving the Applicant of the right to operate its business in substantially the same manner as a majority of other businesses on Ocean Drive. Specifically, indoor alcoholic beverage establishments are entitled to operate until 5:00 am; and, as discussed under (4) above, HPB has granted outdoor bar counters the right to operate until 2:00 am, placing the Applicant at a severe disadvantage if it cannot as well.

- (5) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*

As noted above, surrounding bars, restaurants, and hotels on Ocean Drive may operate their bar counters anywhere from 2:00 am until 5:00 am. Accordingly, the requested 2:00 am operating time is the minimum variance that makes reasonable use of the Property possible.

- (6) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*

The proposed variance harmonizes with the general intent of the Code's land development regulations and would be neither injurious nor otherwise detrimental to the public welfare. Specifically, the MXE District, as well as the more general character of Ocean Drive, encourages a festive and lively late-night atmosphere that has helped establish the world renowned reputation of Miami Beach. Outdoor bar counters such as the Applicant's accentuate this atmosphere by developing a seamless indoor-outdoor experience that highlights Miami Beach's best qualities: the weather, the ocean, and the vibrant energy of the City's nightlife.

Furthermore, any music played on the rooftop will not negatively impact the neighboring condominium property because the Applicant solely plays music at background levels. Also, a wall lining the southern edge of the Property's rooftop functions as an additional buffer between the Applicant and its neighbor.

- (7) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.*

As stated in the Miami Beach Comprehensive Plan, the purpose of the MXE district is "to enhance the desirability and quality of existing and/or new mixed use areas." For all of the reasons set forth above, the requested variance remains consistent with the Comprehensive Plan, and does not alter the levels of service as set forth in the thereunder.

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V. Conclusion

We respectfully request your approval of the variance from Section 142-542(3), in order to operate the Rooftop Bar until 2:00 am. If you have any questions with regard to the application, please do not hesitate to contact us. Thank you.

Sincerely,

Shutts & Bowen LLP

A handwritten signature in black ink, appearing to read "A. Tachmes" with a date "11/20" written at the end.

Alexander I. Tachmes, Esq.