

**UPLOADED ON CAP
AND HAND DELIVERED TO
ROGELIO A. MADAN, AICP
CHIEF OF COMMUNITY PLANNING AND SUSTAINABILITY**

February 20, 2018

Miami Beach
Planning Department
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: **Amended** Letter of Intent for Administrative Appeal
865 Collins Avenue, Unit D

Dear Sir/Madam:

This letter of intent is submitted in support of Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor (“**Ocean 9**”). Ocean 9 appeals the denial by the Planning Department with respect to allowed zoning in the district in which Ocean 9 operates. Said denial results in Ocean 9’s inability to obtain a Business Tax Receipt.

Until October 6, 2017, Ocean 9 serviced South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Ocean 9’s location is 865 Collins Avenue. Ocean 9 offered free delivery to the surrounding area of hotels, residences, and the beach. In addition Ocean 9 maintained a live disc jockey on the premises. Ocean 9 had operated at 865 Collins Avenue, Unit D since 2011. Doron Doar is Ocean 9’s principal.

A. The Events Leading up to the Instant Appeal

a. December 2016

1. On Wednesday, December 21, 2016 at 8:39 a.m. Ocean 9 was cited for alleged violation of Section 6-3(1)(A) of the City Code. The Notice stated that the violation was based upon Ocean 9’s sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit A.

2. Subsequently, Ocean 9 was provided a different sheet of paper for the December violation bearing Case Number CC2016-01704 and alleging a violation of Section 6-3(1)(A) of the City Code. Id. See Exhibit B.

3. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight. Id.

4. The December violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

5. As more fully discussed below, Ocean 9 appealed the December violation to the Special Master as allowed by the Code.

b. June 2017

6. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Ocean 9:

- Violation identified as Code Case Number CC2017-03102.
- Violation identified as Code Case Number CC2017-03103, alleging a violation of Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit D.

c. Ocean 9 appealed the fines and/or violations of the December and June notices

7. Consistent with the Code and as set forth in the violation notices, Ocean 9 appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

8. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Ocean 9 to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

9. As a result, on the very same day, Ocean 9 issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license. These facts were testified to by Manuel Marquez, Assistant Director of the Finance Department. See Exhibit E.

10. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit F.

11. In its agreed order the Special Master assessed a fine in the amount of One Thousand (\$1,000.00) Dollars against Ocean 9. Id. The order required Ocean 9 to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

12. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, Ocean 9 repeatedly presented payment to the City to comply with the Special Master’s

order and to obtain its BTR. See Exhibit E.

13. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master's order had not yet been put into the system. Id.

14. Finally, on Wednesday, October 4, 2017, the City accepted Ocean 9's payment of the \$1,000 fine.

15. The City also accepted late fees relative to the BTR; however it refused to accept the payment to renew the BTR.

16. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit G.

17. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Ocean 9's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit H.

18. Despite accepting the payment which was in compliance with the Special Master's order, the City did not issue the BTR.

d. October 2017

19. On Friday, October 6, 2017 at 5:00 p.m., a Code Compliance Officer again presented a notice of violation to Ocean 9 alleging that Ocean 9 had violated Article V, Section 102-377 of the City Code by failing to obtain a BTR. See Exhibit I. The Code Case Number was set forth at CC2017-03686.

20. The October notice was issued during the period allowed for payment of the Special Master's fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Ocean 9 had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a BTR.

e. Ocean 9 is Closed Down by Code Enforcement for Failing to Have a BTR License

21. On Friday, October 6, 2017, Code enforcement closed Ocean 9 for failure to obtain a BTR.

f. Ocean 9 Seeks Relief in Court

22. Ocean 9 initiated a case in Court to attempt to obtain its BTR. See Exhibit J.

23. Shortly thereafter, the Court held a hearing on Ocean 9's request for injunctive relief. See Exhibit E.

24. Although the Court denied the relief requested, it found Mr. Doar's testimony credible. See Exhibits K and L.

B. Grounds for Appeal

Ocean 9 operated without issue relative to its BTR since 2011. Beginning in June 2017, when Ocean 9 was first cited for failure to obtain its BTR, Ocean 9 has been attempting to obtain the BTR. Despite its efforts and compliance with applicable requirements, the City's failures during the months of August and September 2017 to accept the payment under the Special Master's order and accept payment of the BTR related fees was later used by the City as a pretext for forcibly closing Ocean 9's store. The City's failure to adhere to its policies and procedures (as admitted to by Mr. Marquez – Exhibit E) resulted in the Ocean 9 entering the new fiscal year 2017/2018 without a BTR. Packaged liquor stores were legally permitted uses in the MXE District under the City's Zoning Code until the City changed its code on October 19, 2016.¹ Upon the City changing its zoning code to prohibit packaged liquor stores in the MXE District, all existing package liquor stores operating in the MXE District, including Ocean 9, became legal non-conforming uses.² Ocean 9 never voluntarily abandoned the use of its store as a package liquor store. The city failed to follow its own procedures to prevent Ocean 9 from obtaining a BTR for 2016/1017 and wrongfully denied Ocean 9 a BTR for 2017/2018. Ocean 9 is appealing the City's decision to deny a BTR for its store at 865 Collins Avenue.

Ocean 9 submits that the facts of this matter and the undeniable fact that the City's own procedures and policies were not followed, the appeal should be granted, the decision of the Planning Board reversed and the BTR issued to Ocean 9 for its store at 865 Collins Avenue, Miami Beach, Florida.

Respectfully submitted

/s/ Doron Doar

Beach Blitz Co.
through its President, Doron Doar

¹ Ordinance No. 2016-4047 was passed on October 19, 2016. At that time Ocean 9 was in operation and lawfully provided entertainment.

² All package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

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