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December 20, 2018

## **VIA HAND DELIVERY**

Mr. Thomas Mooney  
Planning Director  
City of Miami Beach  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

**Re: Sunset Land Associates LLC and SH Owner LLC (“Appellants”)  
Petition for Administrative Appeal to Board of Adjustment  
(ZBA18-0079) – Appellants’ Rebuttal**

Dear Mr. Mooney:

This shall constitute the Appellants’ rebuttal to the response letters from the Planning Director and Beach Towing Services, Inc. (“Beach Towing,” and together with the Planning Director, the “Respondents,” and each individually a “Respondent”) both dated November 19, 2018, in connection with the Appellants’ petition for an administrative appeal to the Board of Adjustment pursuant to Section 118-9(b)(1) of the City Code (the “Appeal”) of the Planning Director’s determination issued on August 30, 2018, published on August 31, 2018, and attached hereto Exhibit “A” (the “Determination”).

### **Background**

SH Owner LLC is the owner of the properties located at 1724, 1730, and 1752 Bay Road, Miami Beach, Florida, as identified by Folio Nos. 02-3233-012-0490, -0510, and -0550, and Sunset Land Associates LLC is the owner of the property located at 1738 Bay Road, Miami Beach, Florida, as identified by Folio No. 02-3233-012-0530 (collectively, the “Appellants’ Property”). The Appellants’ Property is within 375 feet of the property located at 1349 Dade Boulevard, Miami Beach, Florida (“1349 Dade”) from which Beach Towing operates and which property is the subject of this Appeal.

Prior to October 1, 1989, 1349 Dade was zoned C-6 (Intensive Commercial District) and was first developed as a service station in 1956—it was known as “Beach Garage” between 1975-1980. A Conditional Use permit for the reinstallation of gas tanks was approved by the City in

1980 (but these tanks were never reinstalled).<sup>1</sup> According to the Determination, the original Occupational License for towing services at 1349 Dade (RL-86098263) was issued on September 23, 1986. However, at the time, 1349 Dade was ostensibly being operated as an automobile service station with accessory vehicle storage. Since then, the towing operation has effectively, but not lawfully, become the primary use at 1349 Dade. On October 1, 1989, Ordinance No. 89-2655 (the “Ordinance”) was adopted, amending Zoning Ordinance 1891 (the “Pre-1989 Code”), and ever since, the zoning of 1349 Dade has been CD-2 (Commercial, Medium Intensity). Towing was neither an enumerated permitted use in the C-6 zoning district nor is towing currently a Main Permitted Use in the CD-2 zoning district. Nevertheless, the Occupational License (now referred to as a Business Tax Receipt, and hereinafter referred to as a “BTR”) for towing services has been renewed for Beach Towing annually.

On July 25, 2018, and pursuant to Agenda Item R9E, the City Commission directed the City Attorney to file an amicus curiae brief in the litigation captioned *Sunset Land Associates, LLC v. Beach Towing Services, Inc., et al.* (Eleventh Judicial Circuit Court Case No. 2016-4547-CA-01) (the “Litigation”) providing the Planning Director’s interpretation of the City Code regarding whether the Beach Towing operation is a legal, nonconforming use. The Appellants are appealing the Planning Director’s Determination of legal nonconforming status for 1349 Dade because it fails to adequately or correctly apply the provisions of Section 6 of the Pre-1989 Code and Article IX of the current City Code (the “City Code”).

### **Appellants’ Rebuttal to Planning Director’s Response Letter Dated November 19, 2018**

In his response to the Appeal, the Planning Director raised three arguments. The Appellants’ rebuttals to said arguments are as follows:

#### **I. The towing operation at 1349 Dade was not legally established, and is therefore an illegal nonconforming use.**

At the time the towing operation at 1349 Dade was established, the subject property was zoned C-6, which was governed by Section 6-13 of the Pre-1989 Code. This district’s purpose was to establish “a utilitarian district characterized by sales, storage, repair, processing, wholesaling and trucking activities and [that] shall not include any residential uses.” Despite the C-6 district purpose, towing was not a permitted use as of right with no additional required approvals. The Permitted Uses enumerated in the C-6 district allowed any non-residential use permitted in C-5 district, except those listed as Conditional Uses. Based on the plain language of the Pre-1989 Code, “towing,” “towing use,” or “towing services” were not listed Permitted Uses in the C-5 or C-6 districts.

The following uses, among others, were permitted in C-5 district under Section 6-12.B of the Pre-1989 Code:

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<sup>1</sup> The owner of 1349 Dade testified that he never sold gas to customers at that location and never intended to do so. See Exhibit “B”.

20. Storage Garages, automobile and truck storage, within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.

The Planning Director's Determination and response letter note that towing services are consistent with the above Permitted Uses in the C-5 zoning district. However, as established in the Appeal, in a deposition taken of the Planning Director on August 24, 2018, the Planning Director confirmed under oath that (i) the words "towing," "towing use," or "towing services" did not appear in the Pre-1989 Code; (ii) that if a use was not specifically enumerated under the Pre-1989 Code, then a Conditional Use permit would be required for said use; and (iii) "storage yard" and "towing/wrecker" uses are separate and independent uses under the Pre-1989 Code provisions that were in effect at the time the use on 1349 Dade was established (the "Testimony"). *See* Exhibit "C". The Planning Director's Testimony is consistent with the language of Section 6-13.B(20)(i) of the Pre-1989 Code below. The Determination and the Director's response to the Appeal overlook this Section in its entirety, making his conclusions wholly inconsistent with the Pre-1989 Code and his Testimony.

Section 6-13.B, which regulates the uses permitted in the C-6 zoning district, further states the following:

**20. The following uses may be permitted as a conditional use:**

- a. Aquarium commercial.
- b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
- c. Bus terminals.
- d. Filling station.
- e. Institution, educational or philanthropic, including museum and art gallery.
- f. Municipal buildings and uses.
- g. Private club.
- h. storage parking lots.
- i. **Uses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district.**
- j. Temporary use for a period not to exceed 15 days.

(Emphasis added). *See* Exhibit "D".

Again, “Towing,” “towing use,” or “towing services” were not a use listed as Permitted Uses in either the C-5 or the C-6 zoning districts. However, it was a use which would not be inappropriate in the district based on the district’s purpose stated above. Based on the plain language of the Pre-1989 Code, the towing use would have been permitted as a Conditional Use in the C-6 zoning district, with an approved Conditional Use permit pursuant to Section 6-13.B.20.i. Alternatively, the towing use could have been approved as an Accessory Use either to a Permitted Use in the C-6 District, or an approved Conditional Use.

As established in our appeal, the issuance of Occupational License RL-86098263 is not conclusive evidence that the towing use was legally established on or before September 23, 1986. The BTR was originally obtained for an Accessory Use that unlawfully evolved into a main use (at the time, the towing use was accessory to the approved Conditional Use—the Filling Station). When the Filling Station operations ceased, the towing use became the primary use of 1349 Dade without the requisite additional approvals and in violation of the Pre-1989 Code. Based on the City’s BTR form, it is established that a BTR “does not waive or supersede other city laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee’s business.” *See* Exhibit “E”. Thus, the issuance and/or renewal of the BTR does not constitute legal establishment of the towing use as the main use at 1349 Dade.

Likewise, a towing permit is not conclusive evidence that the towing use was legally established. The criteria for issuance of a towing permit does not consider land development regulations. *See* Section 106-266 of the City Code. The purpose/intent of Article VI of Chapter 106 of the City Code, which governs towing and immobilization of vehicles, is to ensure compliance with Section 715.07 of the Florida Statutes, which establishes the statewide regulatory guidelines for the towing of vehicles.

Given that Beach Towing does not have a Conditional Use permit granted by the City, and the towing use did not conform to the requirements of the Pre-1989 Code or the current City Code, the use was not legally established and is, therefore, an illegal, nonconforming use.

This analysis is corroborated by Jud Kurlancheek, AICP, a professional planner for approximately 42 years who was employed by the City of Miami Beach in the Planning and Zoning Department from 1975 to 1990. From 1975 through 1983 Mr. Kurlancheek held various planning positions, including but not limited to, Planner, Senior Planner, Principal Planner and, Assistant Director. From 1984 to 1990, he served as the Planning and Zoning Director, and from 1990 through 1993, he served as the Historic Preservation Director and Urban Design Director.<sup>2</sup> While he was the City of Miami Beach Planning and Zoning Director, Mr. Kurlancheek was responsible for making interpretations of the Pre-1989 Code and authored over 1,000 recommendations to the City of Miami Beach City Commission, Planning Board, Board of Adjustment (variances), Historic Preservation Board, and Design Review Board. In fact, Mr. Kurlancheek authored the Ordinance, which replaced the Pre-1989 Code.

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<sup>2</sup> Mr. Kurlancheek also served as the Planning and Zoning Director for the City of Hollywood and Village of Key Biscayne. Please refer to Exhibit “F” for more details regarding Mr. Kurlancheek’s qualifications.



In his Declaration, included as Exhibit “F” and incorporated by reference to this response letter, Mr. Kurlancheek notes that:

18. The Towing Service at 1349 Dade Boulevard is not a legal nonconforming use.

19. City of Miami Beach records indicate that in 1975, the property located at 1349 Dade Boulevard was used as a garage for mechanical services. This use was a Permitted Use in the C-6 Zoning District. On June 4, 1980, the owner of the 1349 Dade Boulevard property, Vincent Festa, applied for and was granted a Conditional Use to establish a Filling Station at 1349 Dade Boulevard []. During the course of the Conditional Use Public Hearing, it was disclosed that wrecked vehicles had been stored on the property as part of the garage for mechanical services. Thus, the garage for mechanical services was the Main Permitted Use and the storage of wrecked vehicles was an Accessory Use to the 1349 Dade Boulevard property. When the Filling Station was approved as a Conditional Use, vehicles were no longer being repaired at the property and Towing Services were to be operated as an Accessory Use to the Filling Station only. A few years after the Conditional Use for the Filling Station was approved, Mr. Festa applied for and was granted a DERM Permit to remove the underground fuel tanks []. When the fuel tanks were removed from the 1349 Dade Boulevard property, the Filling Station ceased to operate. The removal of the Filling Station tanks resulted in Towing Services becoming the main use of the property, as the Main Permitted Use and Conditional Use to which Towing Services could be an Accessory Use were no longer being conducted at the property.

20. Under the Zoning Ordinance that existed at the time, there were only three ways a Towing Service could be permitted at 1349 Dade Boulevard. These were: (1) as a Conditional Use permitted under Section 6-13(B)(20)(i); (2) as an Accessory Use to a Main Permitted Use such as a garage for mechanical services; or (3) as an Accessory Use to a Conditional Use such as a Filling Station. The Towing Service was not an approved Conditional Use at 1349 Dade Boulevard, and when the Main Permitted Use of the garage for mechanical services and the Filling Station as a Conditional Use ceased operating, the remaining use of the property at 1349 Dade Boulevard was a Towing Service. Since a Towing Service was not listed as a Main Permitted Use in C-6, and was not an approved Conditional Use at 1349 Dade Boulevard, it was not a conforming use prior to the adoption of the current Ordinance in 1989 and the designation of the property as CD-2, which zoning designation, Mr. Mooney has made clear, does not permit a towing use. As such, the Towing Service at 1349 Dade Boulevard cannot be considered a legal nonconforming use.

21. In 1989, Zoning Ordinance No. 1891 was replaced with the current Ordinance. 1349 Dade Boulevard was then zoned CD-2. On June 7, 2016, Mr. Penn requested that Planning Director Mr. Mooney determine “whether a towing storage yard and facility is a Main Permitted or Conditional Use in the CD-2 Zoning District.” []. Mr. Mooney replied on June 15, 2016 that, “Under Sections 142-302

and 142-303 of the Land Development Regulations of the City Code, towing storage yards and facilities are not listed as a permitted or conditional use within the CD-2 Zoning District.”<sup>3</sup>

22. A Towing Service was permitted as an Accessory use to the prior garage for mechanical services and the Filling Station. However, when those uses ceased to exist, as they did prior to 1989, the Towing Service became the Main Permitted Use of the 1349 Dade Boulevard property. As a Towing Service was never listed as a Main Permitted Use nor did the operator obtain Conditional Use approval for it, it operated in violation of the Zoning Ordinance. Furthermore, and in the alternative, since it was never a conforming use there in the absence of a Main Permitted Use (vehicle repair) or a Conditional Use (Filling Station) to which it could be an Accessory Use, it cannot be considered a legal nonconforming use today.

23. A BTR does not establish that a use of property complies with the Zoning Code. Rather, a BTR is a tax and not a land use regulation.

24. BTRs are regulated by the City of Miami Beach’s Finance Department, which is separate and distinct from the City of Miami Beach’s Planning Department. Thus, when the property owners of 1349 Dade Boulevard applied for an Occupational License (predecessor to the BTR), the administration of the application was overseen by the Finance Department and not the Planning Department. This occurred because the Occupation License was considered a tax on the applicant. Accordingly, there would typically be no review by the Planning and Zoning Staff to determine consistency with applicable zoning regulations. The Finance Department also administered the renewal process for Occupational Licenses thereby preventing any review by the Planning and Zoning Staff. The change from Occupation[al] Licenses to BTRs demonstrates the intent that the BTR was a tax and not a land use regulation.

25. A BTR may be issued under the City of Miami Beach’s City Code even where the use of land does not comply with zoning regulations because compliance with zoning regulations is not an enumerated requirement for approval of a BTR application. (See Sections 1062-371-372 of City of Miami Beach’s Code). Furthermore, the issuance of a BTR does not indicate compliance with the Zoning Code as the BTR states on its face that, it “does not waive or supersede other city laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee’s business.” [].

26. As noted above, the City of Miami Beach issued a Conditional Use Permit in 1980 for a Filling Station at 1349 Dade Boulevard (with certain conditions that Beach Towing’s representatives have testified are not being complied with). Thus, any BTR issued for towing at the 1349 Dade Boulevard property was as an

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<sup>3</sup> See Exhibit “G”.

accessory use to the Filling Station. However, Mr. Festa in 1984 applied for and was granted a DERM permit to remove the underground fuel tanks []. When the fuel tanks were removed from the 1349 Dade Boulevard property in 1984, the Filling Station ceased to operate. The removal of the Filling Station tanks resulted in Towing Services becoming the main use of the property. However, as the use of the property at 1349 Dade Boulevard evolved, there is no evidence that there was any additional review by the Planning Department for the renewal of the BTR for towing services at 1349 Dade Boulevard, even though the BTR was no longer the accessory use but the primary use of that property.

The above, is further verified and supported by the Declaration of Nancy Stroud, a Florida lawyer since 1979. Please refer to Exhibit “H” hereto. In addition to her law degree, Mrs. Stroud received a Master of Regional Planning from the University of North Carolina in 1978 and has been certified as a professional planner by the American Institute of Certified Planners (AICP) since 2008. In 2011, she received the APA Florida Chapter Award for Distinguished Contribution to the Chapter and, as part of a team, the APA’s National Planning Excellence Award for Best Practice, for the creation of a citywide zoning code and comprehensive plan known as “Miami 21.” Mrs. Stroud has been inducted as a Fellow of the AICP by the APA, the organization’s highest honor. Mrs. Stroud has served on the national APA’s amicus curiae committee since 1999, which is a committee appointed by the President of the APA to participate as amicus curiae in all major zoning and land use cases heard by the U.S. Supreme Court, as well as in other leading state and federal cases of particular importance to the planning profession. In her legal practice, Mrs. Stroud serves as counsel to numerous municipalities in the south Florida region. Her practice consists of writing zoning codes and ordinances, sitting as attorney in quasi-judicial hearings before local elected and appointed bodies, assisting staff in review of development applications for compliance with zoning and land use regulations, and counseling clients in litigation matters. She is a member of the United States Supreme Court bar and has co-written amicus briefs submitted to the Supreme Court. In addition, Mrs. Stroud lectures and writes regularly on various land use law topics, including zoning codes, and has been co-author since 2003 of the land use treatise Planning and Control of Land Development: Cases and Materials, updated annually, authoring the chapter on the Zoning Process.

In her Declaration, incorporated by reference to this response letter, Mrs. Stroud concludes that:

13. In order to be considered a legal nonconforming use, a use must have been legally in existence when the law changes to make the use nonconforming to the new regulations.

14. [Respondents] claim that towing services was a legal use in the C-6 zoning district, as that zoning district was in effect from October 1, 1971 - September 30, 1985. Specifically, they claim that the towing services use existed in 1983. Reviewing the zoning code version referenced by the [Respondents] ([ which states that it was effective as amended through 1985), my opinion is that the towing services use is not a listed permitted use in C-6, and was instead eligible to be a conditional use. However, because the City never issued a conditional use

permit for towing services under the zoning code, the use was never legally established as a conditional use.

15. The C-6 district does not list towing services as a permitted use. Neither does it fall under the permitted use at 6-13.B.1 (any non-residential use permitted in C-5 District but not the conditional uses listed in C-5). C-5 lists auto and truck storage (6-12.B.20) but a towing service is more intensive a use than simply storage of autos or trucks. It includes derelict vehicles that require use of heavy equipment such as forklifts and tow trucks, repair operations, and may include 24 hour service operation requiring use of the lot into the night hours and an on premise office operating 24 hours a day. C-6 allows as a listed permitted use “garage for mechanical service” but the definition of this use (3-2.50) does not include towing or car storage, which characterizes a towing services use, and a mechanical garage is not open 24 hours a day. In contrast, the conditional uses listed in C-6 include the more intensive uses like towing services - such as a filling station (20.b) and storage parking lots for new vehicles (20.h; *see* definition at 3-2. 95). The list of conditional uses allows as conditional uses those “which are similar in character to one or more permitted uses....” To the extent towing services are allowed under this version of the code, they would have to take place in a C-6 district and then only with a conditional use permit issued by the City Commission.

16. If towing services are a conditional use, they must be approved under the processes in the zoning code in effect in 1983, in Section 7. This process requires approval by the City Commission after a public hearing by the Planning and Zoning Board (7-1.B). The applicant must record the conditional use approval in the Circuit Court records (7-1.B.3.b.). [Respondents] ha[ve] presented no evidence of a conditional use permit, nor has it claimed that it received a conditional use permit.

17. Because the towing services use was not legally permitted, either as a permitted use or a conditional use, in the C-6 district, when the new zoning code was enacted in 1989 [] the use continued to be an illegal use. The property under the 1989 zoning code was placed in the new CD-2 district, and the use is not legal in the CD-2 district as discussed above. It is nonconforming to the CD-2 district, and because it was never a legal use, it cannot be a “legal nonconforming use” under the 1989 zoning ordinance.

18. The 1989 code also provides at Section 13-6 that the “illegal use of land or buildings shall not be sufficient to establish the existence of a Nonconforming Use.” Thus, although [Respondent] may have illegally been using its property for towing services, the code specifically provides that this illegal use is not sufficient to qualify it as a (legal) nonconforming use.

19. Under the 1989 zoning code, it should be noted that anyone who wishes its use to be recognized as a legal nonconforming use could receive such a determination by the Director of Planning and Zoning, with an appeal to the Board

of Adjustment. *See* Section 13-7. There is no evidence that the Defendant sought this determination.

20. The issuance of an occupational license by the City of Miami Beach does not demonstrate that the towing services use was allowed by the zoning code as a permitted use, conditional use, or legal nonconforming use. These documents state on their faces that issuance “does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee’s business...” [].

Moreover, the Respondent, on page 3, took aim at the Appellants’ use of testimony taken by deposition of Mr. Mooney and various experts in connection with the Litigation relating to the illegal use claim. It is incumbent upon all parties to this matter to understand and accept the purpose of a deposition. The purpose of a deposition is to allow the parties to discover what a witness knows and to preserve that witness’ testimony. Specifically, the intent of a deposition is to allow the parties to learn all of the facts before trial, ensuring neither party is surprised by the witness’ trial testimony. Thus, depositions are about gathering facts, locking in testimony in advance of trial, and shortening trials by allowing the parties to rely on the witness’ sworn deposition testimony. 6. Fla. Prac., Personal Injury & Wrongful Death Actions Section 25:3 (2018-2019 ed.). Florida Rules of Civil Procedure Rule 1.330, Use of Depositions in Court Proceedings, provides that “any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition.” Rule 1.330(a)(1) further provides that “any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose.” In addition, Rule 1.330(a)(4) states that “if only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.” Nothing prohibited the Respondents from using the same depositions to reaffirm their positions, if such testimony existed. However, it did not. It cannot be disputed that Mr. Mooney testified under oath that “towing” and “storage” are not the same.

## II. City Code Section 118-391 governing nonconforming uses is applicable.

It has been demonstrated that the towing use on 1349 Dade was not legally established and, as such, is not a legal nonconforming use. However, even were it to be determined that the towing use on 1349 Dade was a legally established nonconforming use at the time of enactment of the City Code, then Article X and particularly Section 118-391 of the City Code would apply. As confirmed by Beach Towing’s own expert, the towing use was a nonconforming use of land. *See* Exhibit “I”. Thus, in accordance with Section 118-391 relating to nonconforming uses of land, the towing use was required to be discontinued and the building incident to that use removed if not repurposed to a conforming use within two years of the adoption of the Ordinance.

Section 118-391 of the City Code defines a nonconforming use as “the main use and not accessory to the main use.” There is no dispute that towing is the main use at 1349 Dade and, again, as stated by Beach Towing’s own expert, towing is a use of land. Section 118-391 provides that:

Sec. 118-391. - Nonconforming use of land.

(a) In any district where vacant *land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two years from the effective date of these land development regulations*. During the two-year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to such use of land shall be removed at the end of the two-year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.

(b) A use approved as a conditional use pursuant to article IV of this chapter shall be considered a conforming use as long as the conditions of the approval are met.

(Emphasis added).

The Planning Director's response claims that because the entirety of the parcel of land that constitutes 1349 Dade is not vacant land, then this Section of the City Code is inapplicable. That is an inaccurate interpretation of the City Code. As evidenced by the title and language of this Section, it is clear that the intent is to regulate open land that *is being used* as a nonconforming use. In fact, based on the legislative history of the City Code, the terms open land and vacant land have been used interchangeably by the City over time. The Pre-1989 Code used the word "open" and the current City Code uses the word "vacant" to describe nonconforming uses of land. See Section 12.1 of the Pre-1989 Code and Section 118-391 of the City Code.

There are only three categories of nonconforming uses created by the City Code: (1) nonconforming use of land (Section 118-391); (2) nonconforming use of signs (Section 118-392); and (3) nonconforming use of buildings (Section 118-393). These three categories are meant to capture all nonconforming uses – no use can or should be interpreted to fall outside of these three categories if the City is truly to have the ability to police the property within its municipal boundaries and the applicable zoning laws. To take an interpretation that there is any other category of nonconforming use would mean that the City cannot enforce its laws with respect to those types of uses. However, the Planning Director, with his interpretation, would suggest the creation of a category of nonconforming uses that the City has no authority to regulate or enforce – land being used as a nonconforming use (such as a parking lot) with a structure (a fence or light pole, as discussed below) located on such land.

The question is not one of lots, parcels, or property lines, but what is the main nonconforming use actually using – is it using the land or is it using a structure – because one is easier to discontinue and without significant economic loss or peril to an owner as compared to the other.

What Section 118-391 does not say is that the entirety of a "property" must be vacant with no structures on it for the section to apply. Section 118-391 does not say that vacant land means that the entirety of the "lot" is vacant. Section 118-391 does not say that the entirety of a "parcel"

must be vacant. In fact, Section 118-391 does not impose any boundaries or suggestions of what the size or area or border of the land in question is supposed to be. To the contrary:

(a) the second sentence of Section 118-391(a) indicates that the nonconforming use is not to be extended or enlarged “*either on the same or adjoining property*.” If the “vacant land” encompasses the entirety of a lot, parcel, tax lot, or any other defined boundary that the City or Beach Towing might suggest, then there would be no need to restrict expansion of a nonconforming use on the *same* property.

(b) the third sentence of Section 118-391(a) provides that a *building* incident and subordinate to the primary nonconforming use of land should also be removed in two (2) years – in stark contrast to the provisions of Section 118-392 relating to buildings as main nonconforming uses- unless the building can be repurposed to a conforming use, and “thereafter, *both land and building* shall be used only as conforming uses.” If the vacant land referenced is intended to include the entirety of some imaginary property, lot, or boundary as the City and Beach Towing suggest, then there would be no need to reference the building removal in two (2) years nor that both land and building should be used as conforming uses going forward. The terms “building” and “structure” are defined in Section 114-1 of the City Code as:

***Building*** means any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property and includes the word structure and includes any part thereof.

***Structure*** means anything constructed or erected, the use of which requires permanent location on the ground. Among other things, structures include buildings or any parts thereof, walls, fences, parking garages, parking lots, signs and screen enclosures.

The Planning Director would suggest an interpretation where the City cannot enforce its own laws where land is being used for a nonconforming use because some structure, as small as a fence or a sign, takes the property in question outside of the purview of Section 118-391. The City’s interpretation means any nonconforming use of land as a parking lot also falls outside of the City’s police powers because the parking lot is fenced, has a parking attendant shed, or has light poles on the parking lot. Further, the City’s interpretation suggests that prior to any new change to the City Code, a use of land that will become nonconforming after a change to the City Code can be protected and not subject to the laws on nonconformities if the owner merely erects a fence or sign on the property or, as Beach Towing suggests, paves over the land.

The application of the nonconforming use provisions of the code focuses on what the nonconforming use is occupying, critically, whether that is land or a building. A building is on land as well, so without clarification *all* nonconforming uses would fall under the use of land. The use of “open” or “vacant” for land is purely to indicate that the section does not apply to buildings or structures, which are covered in Section 118-393. In fact, the City Code specifically distinguishes between the rights and obligations of nonconforming uses of a building on land as compared to nonconforming uses of land that may merely have an accessory building or other structure. The City Code grants more leniency to legal nonconforming uses of buildings due to the economic burden an owner would face if forced to modify or demolish a building.

The City and Beach Towing both point to a dictionary definition of “vacant land”, suggesting that vacant land is land that is not being used at all for any purpose. Such an interpretation would render all of Section 118-391 not only ineffective, but without meaning. If “vacant land” is land that is not being used at all, how can the City police “vacant land that is being used...”? Further, the second and third sentences of Section 118-391(a) reinforce the clear intent that buildings or structures may exist on such “vacant land” as applies to the property in question here. In an effort to support a nonsensical interpretation, the City and Beach Towing have resorted to dictionary definitions that render an entire section of the City Code meaningless and would create a disastrous precedent going forward – that the only police powers the City has for nonconforming uses are for buildings and structures, but not for uses of land.

In the simplest of terms, the Respondents suggest that Section 118-391 has no effect at all, as it governs uses of vacant land while they argue that vacant land has no use. They would also suggest that, no matter how big the size of the property and the land, so long as so much as a fence or light pole exists on a property, that the nonconforming use statute does not apply to uses of the surrounding land – which would necessarily include a primary use of land. Rather, the interpretation that the Planning Director should be insisting upon, and the correct one based on the language and intent of the City Code relating to nonconforming uses, is that all legal nonconforming uses are subject to the City Code, and not excluded by virtue of a fence or light pole, or as Beach Towing suggests, paved ground, or even some other accessory structure or building.

Accordingly, even if it is determined that the towing use at 1349 Dade was a legally established nonconforming use as of the enactment of the City Code, towing at 1349 Dade remains a primary, nonconforming use of land as defined under Section 118-391 of the City Code and the City was required to have phased out such a non-conforming use within two (2) years of enactment of the City Code.

### III. Analysis of City Code and Pre-1989 Code.

As explained by experts Nancy Stroud and Jud Kurlancheek in their Declarations, under, the Pre-1989 Code, the C-6 zoning district includes three types of uses: (1) Permitted Uses; (2) Conditional Uses; and (3) Accessory Uses. The Permitted Uses in the C-6 zoning district, per 6-13.B.1, consisted of any non-residential use permitted in C-5 District, but not the Conditional Uses listed in C-5. The C-6 district did not list towing services or towing uses as a Permitted Use, also corroborated by Mr. Mooney’s Testimony. C-5 lists auto and truck storage (Section 6-12.B.20) but a towing service is more intensive a use than simply storage of autos or trucks. It includes derelict vehicles that require the use of heavy equipment such as forklifts and tow trucks, repair operations, and may include 24-hour service operation requiring use of the lot into the night hours and an on premise office operating 24 hours a day. C-6 allows as a listed Permitted Use “garage for mechanical service” but the definition of this use (Section 3-2.50) does not include towing or car storage, which characterizes a towing services use, and a mechanical garage is not open 24 hours a day. Mr. Mooney’s Testimony also confirms that “storage yard” and “towing/wrecker” uses are separate and independent uses under the Pre-1989 Code. In contrast, the Conditional Uses listed in C-6 include the more intensive uses like towing services—such as a filling station (Section 6-13.B.20.b) and storage parking lots for new vehicles (Section 6-13.B.20.h; *see* definition at Section 3-2.95). The list of Conditional Uses in the Pre-1989 Code allows as Conditional Uses



those “which are similar in character to one or more permitted uses....” To the extent towing services are allowed under this version of the code, they would have to take place in a C-6 district and then only with a Conditional Use permit issued by the City Commission.

Under the Pre-1989 Code, a towing service could be permitted at 1349 Dade Boulevard under these circumstances: (1) as a Conditional Use permitted under Section 6-13(B)(20)(i); (2) as an Accessory Use to a Main Permitted Use such as a garage for mechanical services; or (3) as an Accessory Use to a Conditional Use such as a Filling Station. Mr. Mooney’s Testimony further confirms that if a use was not specifically enumerated under the Pre-1989 Code, then a Conditional Use permit would be required for said use. Thus, it is highly relevant to note that the towing services at 1349 Dade were associated with an accessory use to the Filling Station, which was the approved Conditional Use at 1349 Dade when the towing operations on the subject property were established. When the fuel tanks were removed from 1349 Dade, the Filling Station ceased to operate, making the towing service the main use of the property. As stated above, because the towing use was not an approved Conditional Use at 1349 Dade Boulevard, and was no longer an Accessory Use to the approved Conditional Use or to a Permitted Use in C-6, it was not a conforming use under the Pre-1989 Code.

In addition, the CD-2 zoning district, found at Article II, Division 5 of the current City Code, is a “commercial, medium intensity district” which allows as main permitted uses “commercial uses; apartments; apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter); religious institutions with an occupancy of 199 persons or less and alcoholic beverages establishments pursuant to the regulations set forth in chapter 6.” Towing is not listed as a Main Permitted Use in the CD-2 district. Neither is a towing use a “medium intensity” commercial use on the par with apartments or hotels. This is because a towing use involves an intense 24 hour a day activity that involves unsightly materials, namely, the storage of derelict vehicles as well as other towing equipment that is stored outdoors and can involve noxious materials such as gasoline and oils.

Further, the list of Conditional Uses<sup>4</sup> in this category informs the reader of which types of uses, when properly conditioned through a public hearing process, might be allowed in the zoning district. Although a Conditional Use will never be considered a “Main Permitted Use,” review of the Conditional Uses can inform the reader about what types of uses are considered to have greater negative impacts than the Main Permitted Uses. Towing is not listed as a Conditional Use in the CD-2 district and the uses listed there are not comparable to a towing services use. Instead, the Conditional Uses listed are less intensive than a towing services use. In fact, the most comparable use to a towing use is Section 142-303(a)(14), Storage and/or parking of commercial vehicles. However, that type of storage or parking involves vehicles that are not generally derelict or in need of repair but instead are associated with a licensed commerce, trade or business and thus is a less intensive use than towing services.

In 1989 the City of Miami Beach adopted the Ordinance, which among other things created a new I-1 light industrial district. The I-1 district includes towing services among its “Purpose,”

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<sup>4</sup> Section 114-1 of the City Code defines a Conditional Use “a use that would not be appropriate generally or without restriction throughout a particular zoning district, but would be appropriate if controlled as to number, area, location, or relation to the neighborhood.”

and its Main Permitted Uses included “[t]hose Uses that are consistent with the district purpose.” In 2008, the City Code was amended pursuant to Ordinance No. 2008-3608 to eliminate towing as a district purpose and the use was not specifically enumerated as a Main Permitted Use by this amendment. *See* Exhibit “J”. In 2009, Ordinance No. 2009-3663 further amended the City Code to establish towing services as a Conditional Use. *See* Exhibit “K”. Likewise, in the current version of the City Code, towing services are a Conditional Use in the City’s I-1 district. Listing towing services as a Conditional Use in this district is a clear demonstration that 1) the use is not an appropriate use to be deemed a commercial medium intensity use of the sort that is a Main Permitted Use in the CD-2 district and, 2) the use is too intense to be considered generally appropriate and allowable without restrictions throughout the I-1 district.

The case of Miami Beach v. Sunset Islands 3 & 4 Property Owners Assoc., 216 So. 2d 509 (Fla. 3d DCA 1968) confirms that the towing services use, being listed specifically in one zoning district, is not allowed in the zoning district of a less intensive character. This case involved a property owners association that sought a mandamus from the court to halt the use of property in a “BB” district for the storage of yachts by an adjacent yacht manufacturing business. The Third District Court of Appeal upheld the Circuit Court’s issuance of the mandamus. It explained that boat storage was specifically permitted in the more intensive (“more liberal”) zoning district of BD, and was not specifically listed as a permitted use in the BB district. 216 So. 2d at 511. The court also explained that the “catch-all” phrase in the BB district—“or any other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated”—could not be read to include the yacht storage because of the specific mention of boat storage in the more intensive district, BD:

“In fact, it would appear that where the legislative authority of the City had placed a particular use in a certain district, [\*\*6] it should not be permitted under the “catch-all” provision of any higher or more restrictive use district. To do otherwise nullifies the legislative decision of the City Council in determining where a designated business use would be permitted.”

216 So. 2d at 512. The same logic and interpretation is applicable in this instance with respect to the towing use at 1349 Dade.

The City zoning regulations regarding motor vehicle storage also confirm that towing services are not permitted in the CD-2 district. Towing services necessarily include motor vehicle storage. Section 142-1102. – Motor vehicle storage states “Except as also provided in Section 142-1103, storage of motor vehicles shall be permitted only in the I-1 light industrial district...” The exceptions of Section 142-1103 do not apply to towing services. Section 142-1103 states in part:

(a) Location regulations.

(1) In the I-1 light industrial district and in all commercial districts, commercial vehicles may be stored and/or parked on the same site at which the associated commerce, trade or business is located.

(2) Commercial vehicles stored and/or parked on a site other than the site at which the associated commerce, trade, or business is located shall only be permitted in the I-1 light industrial district, and pursuant to a conditional use permit in the CD-I, CD-2 and CD-3 districts...

The vehicles stored at a towing services site are not vehicles that serve the towing services business, but are instead the subjects of the business. For example, a towing truck used by the towing services company as a part of its towing business would be a commercial vehicle which can be stored or parked at the site, but even then only with a Conditional Use permit. The vehicles that are towed to the site are not commercial vehicles—these are vehicles belonging to third party owners that have been towed to the towing services site as part of the enforcement of a parking infraction. Those third party owners can be residents, tourists, and a variety of non-commercial owners, and they are not the owners of, nor do they typically have any affiliation with, the towing services use.

In the letter dated June 15, 2016, Mr. Mooney provided his professional opinion that towing storage yards and facilities are not listed as a Main Permitted Use or Conditional Use in the CD-2 zoning district. *See* Exhibit “G”. This corroborates Mrs. Stroud’s and Mr. Kurlancheek’s professional planning opinions. Therefore, the towing use at 1349 Dade was nonconforming prior to 1989 under the C-6 designation, is nonconforming under the CD-2 designation, and cannot be considered a legal nonconforming use.

#### **Appellants’ Rebuttal to Beach Towing’s Response Letter Dated November 19, 2018**

The response submitted by Beach Towing contained five arguments. The Appellants’ rebuttals to said arguments are as follows:

##### **I. Background and establishment of towing use**

According the City records, the deposition of Beach Towing’s owner and experts, and the Declaration of Mr. Kurlancheek, the City of Miami Beach Planning and Zoning Director from 1984 to 1990 (during the time the towing use at 1349 Dade was established, and the Ordinance was adopted), in 1975, 1349 Dade was used as a garage for mechanical services. This use was a Permitted Use in the C-6 Zoning District.

On June 4, 1980, the owner of 1349 Dade, Vincent Festa, applied for and was granted a Conditional Use to establish filling station at 1349 Dade. Whether Beach Towing was the applicant or not is immaterial. During the course of the Conditional Use public hearing for the filling station, it was disclosed that wrecked vehicles had been stored on the subject property as part of the garage for mechanical services. Thus, the garage for mechanical services was the main use and the towing and storage of wrecked vehicles were accessory uses to 1349 Dade.

The records for the Conditional Use approval, indicate that the request was to allow a filling station as the main use of the property, and towing uses were merely accessory. Had the towing use been considered a main use it would have been noted as part of the Conditional Use permit application request and have been incorporated into the corresponding analysis. Thus, when the filling station was approved as a Conditional Use, vehicles were no longer being repaired at the subject property and towing uses were to be operated as an accessory use to the filling station only.

A few years after the Conditional Use for the filling station was approved, the fuel tanks were removed from 1349 Dade and the filling station operations terminated. This resulted in the once accessory towing use unlawfully transitioning to the main use of 1349 Dade without the additional required approvals by the Pre-1989 Code. Under the Pre-1989 Code, the towing use could have been a permitted main use, had a Conditional Use permit been obtained pursuant to Section 6-13.B(20)(i), since towing was not listed as a Permitted Use in C-6. In addition, because towing had become the main use on 1349 Dade it was no longer an accessory use to a Permitted Use or an approved Conditional Use. Therefore, due to the absence of a public hearing approval for Conditional Use for towing services at 1349 Dade, the towing use was not a conforming use prior to the adoption of the Ordinance in 1989 and the designation of the property as CD-2, which zoning designation, Mr. Mooney has made clear, does not permit a towing use. As such, the towing service at 1349 Dade is an illegally established nonconforming use.

Furthermore, in its response letter, the Respondent references a recommendation dated February 9, 2009, by the then-City Manager, Jorge Gonzalez, which erroneously states, in relevant part, that “Tremont Towing, Inc., located at 1916 Bay Road, and Beach Towing, at 1349 Dade Boulevard...are both legal nonconforming uses, grandfathered in from when the properties were previously zoned industrial.” It must be noted that the grandfather exemption does not apply since it only protects conforming property uses that were made nonconforming by a subsequent law or ordinance. *See Chapman v. City Com'n of the City of St. Augustine Beach*, 2003 WL 26066630 (Fla.Cir.Ct.) (noting that because the use of the property was nonconforming prior to the adoption of the ordinance, the grandfather exemption could not protect the Petitioner because the rule was created to protect uses that were conforming prior to the ordinance or law). As such, the towing use is not a grandfathered use under the Ordinance and therefore the pre-existing nonconforming use may not continue.

Also, the Respondent, without basis, took aim at the Appellants’ use of testimony taken by deposition of Mr. Mooney and various experts in connection with the Litigation relating to the illegal use claim. As stated above, the very purpose of a deposition is to allow the parties to discover what a witness knows and to preserve that witness’ testimony. Florida Rules of Civil Procedure Rule 1.330, Use of Depositions in Court Proceedings, provides that “any part of all of a deposition may be used against any party who was present or represented at the taking of the deposition.” Rule 1.330(a)(1) further provides that “any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose.” In addition, Rule 1.330(a)(4) states that “if only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.” Again, nothing prohibited the Respondents from using the same depositions to reaffirm their positions, if such testimony existed. However, it must be reiterated that it did not. It cannot be disputed that Mr. Mooney testified under oath that “towing” and “storage” are not the same.

## II. Towing was not a Main Permitted Use at the time it was established

As established in our appeal, reaffirmed herein, and corroborated by experts Nancy Stroud and Jud Kurlancheek in their Declarations, at the time the towing operation at 1349 Dade was established, the property was zoned C-6 in the Pre-1989 Code. This district’s purpose was to establish “a utilitarian district characterized by sales, storage, repair, processing, wholesaling and

trucking activities and [that] shall not include any residential uses.” Nonetheless, towing was not a Permitted Use as of right in the C-6 district.

The Permitted Uses in the C-6 district allowed any non-residential use permitted in C-5 district, except those listed as Conditional Uses. The Pre-1989 Code did not list “towing,” “towing use,” or “towing services” as Permitted Uses in the C-5 or C-6 districts. Respondents argue that towing was inherently allowed pursuant to the following uses permitted in the C-5 district under Section 6-12.B of the Pre-1989 Code:

20. Storage Garages, automobile and truck storage, within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.

However, a towing service is a more intensive use in nature than the mere storage of autos or trucks. Thus, it is unreasonable to assume that the language in Section 6-12.B.20 was intended to allow a use of more intense character than the uses listed without specifically stating so. This assumption, adopted by the Respondents, also contradicts the Testimony of the Planning Director which specifically stated that “storage yard” and “towing/wrecker” uses are separate and independent uses under the provisions that were in effect at the time the use on 1349 Dade was established.

“Towing,” “towing use,” or “towing services” were not main Permitted Uses in the C-5 or C-6 districts of the Pre-1989 Code. Rather, it was a use which would not be inappropriate in the district based on the district’s purpose. Based on the plain language of the Pre-1989 Code, the towing use would have been permitted as a Conditional Use in the C-6 zoning district, with an approved Conditional Use permit pursuant to Section 6-13.B(20)(i). Alternatively, the towing use could have been approved as an Accessory Use to either a Permitted Use or an approved Conditional Use.

The Respondent’s misapplication of the case Rinker Materials Corp. v. City of N. Miami, 286 So. 2d 552 (Fla. 1973) is clear. In Rinker, a property owner applied for a permit to construct a concrete batching plant. Id., 286 So.2d at 554. The City Council denied the permit. The Circuit Court and district court denied certiorari relief. Id. at 553. The Supreme Court remanded for the grant of relief after determining that the District Court erroneously interpreted the applicable zoning ordinances. Id. “In failing to apply the plain and ordinary meaning and common usage of the language of the ordinance in determining intent, the district court misapplied the established decisional rules of statutory construction.” Id. The Supreme Court concluded that local ordinances are subject to the same rules of interpretation as are state statutes; a court interpreting local ordinances must first look to the plain and ordinary meaning of the words in the ordinance. Id. at 553–54. If the plain and ordinary meaning is clear, then “other rules of construction and interpretation are unnecessary and unwarranted.” Id. at 554. **In the end, the Supreme Court determined that the City Council’s interpretation of its own ordinances was improper because it violated the clear and ordinary meaning of the ordinance.** Id. at 555–56 (emphasis added). See Town of Longboat Key v. Islandside Prop. Owners Coal., LLC, 95 So. 3d 1037, 1041 (Fla. 2d DCA 2012) (noting that the wording of its laws binds a legislature, the Town is bound by the wording of its Code).

The Rinker case bolsters the Appellants' argument. The Appellant has limited their analysis to the wording of the Pre-1989 Code. See Holly v. Auld, 450 So.2d 217, 219 (Fla.1984) (“[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” (quoting A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 137 So. 157, 159 (1931))). The intent of the Pre-1989 Code is clear and there is no ambiguity that “towing,” “towing use,” or “towing services” was not a Permitted Use in C-5 or C-6 districts. Unlike the Respondents, the Appellants have relied on the plain language of Section 6-13.B(20)(i) of the Pre-1989 Code to demonstrate that a towing use could have been permitted as a main use only through approval of a Conditional Use permit or, in the alternative, as an Accessory Use to a Permitted Use or an approved Conditional Use. The Respondents, on the other hand, are arbitrarily disregarding the plain wording and clear intent of the Pre-1989 Code.

### III. 1349 Dade as a nonconforming use of land

Again, the towing use on 1349 Dade was not legally established and, as such, is not a legal nonconforming use. However, even if the towing use on 1349 Dade were to be deemed a legally established nonconforming use, then Section 118-391 of the City Code would apply. As confirmed by Beach Towing's own expert, the towing use was a nonconforming use of land. See Exhibit “I”. Thus, in accordance with Section 118-391 relating to nonconforming uses of land, the towing use was required to be discontinued within two years of the adoption of the Ordinance and the current towing use at 1349 Dade does not comply with the City Code.

Section 118-391 of the City Code defines a nonconforming use as “the main use and not accessory to the main use” and provides that:

Sec. 118-391. - Nonconforming use of land.

(a) In any district where vacant *land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two years from the effective date of these land development regulations*. During the two-year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to such use of land shall be removed at the end of the two-year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.

(b) A use approved as a conditional use pursuant to article IV of this chapter shall be considered a conforming use as long as the conditions of the approval are met.

(Emphasis added).

The Respondent claims that because 1349 Dade is not vacant land, then this section of the City Code is inapplicable. That is an inaccurate interpretation of the City Code. As evidenced by the title and language of this section, it is clear that the intent is to regulate open land that *is being used* as a nonconforming use. In fact, based on the legislative history of the City Code, the terms

open land and vacant land have been used interchangeably by the City over time. The Pre-1989 Code used the word “open” and the current City Code uses the word “vacant” to describe nonconforming uses of land. *See* Section 12.1 of the Pre-1989 Code and Section 118-391 of the City Code.

The definition of “vacant land” provided by the Respondents is wholly inconsistent with the clear intent of Section 118-391, which was to govern open lot uses of land, to wit, land that is being used. Although the term “vacant” creates ambiguity, it must be read in conjunction with the rest of the section, and, when read as a whole, the use of the term “vacant” is not sufficient to vitiate the section’s effectiveness to govern land that has buildings and is being used. If a land was truly vacant it would contain nothing and, as such, it would have no use subject to regulation by the Code.

Thus, even though Section 118-391 would only apply if the towing use had been legally established, said use would still constitute a nonconforming use and should have been discontinued no later than two years from the effective date of Ordinance.

#### IV. Inconsistent conclusion reached in the Determination

As stated above, although the Planning Director’s Testimony is consistent with the Pre-1989 Code, his Determination provided an incorrect analysis of the Pre-1989 Code and, as such, a conclusion inconsistent with his Testimony. In his Testimony, the Planning Director confirmed under oath that (i) the words “towing,” “towing use,” or “towing services” did not appear in the Pre-1989 Code; (ii) that if a use was not specifically enumerated under the Pre-1989 Code, then a Conditional Use permit would be required for said use; and (iii) “storage yard” and “towing/wrecker” uses are separate and independent uses under the Pre-1989 Code provisions that were in effect at the time the use on 1349 Dade was established. *See* Exhibit “C”.

The Planning Director’s Testimony is consistent with the Pre-1989 Code which does not list “towing,” “towing use,” or “towing services” as a Permitted Use or Conditional Use, yet, under the C-6 district regulations (Section 6-13.B(20)(i)), allowed certain un-enumerated uses as Conditional Use when “similar in character to one or more permitted uses, and which would not be inappropriate in the district.” Nonetheless, the Determination overlooks this important section of the Pre-1989 Code in its entirety.

In addition, the Determination concludes that the towing use was legally established pursuant to Section 6-12(B)(20) of the Pre-1989 Code, which allowed “storage garages, automobile and truck storage.” This contradicts the Planning Director’s Testimony acknowledging that “storage yard” and “towing/wrecker” uses are separate and independent uses under the Pre-1989 Code. As established in our appeal and reaffirmed herein, Section 6-12(B)(20) does not allow towing uses. A towing service is a more intensive use than plainly the storage of autos or trucks. Towing includes dilapidated vehicles that require the use of heavy machinery like forklifts and tow trucks, repair operations, and even a 24-hour service operation requiring active use of the lot during the nighttime and an onsite office operating 24 hours a day. This distinction between the uses was recognized by Mr. Mooney in his Testimony, yet it was also disregarded in his Determination. As such, the Planning Director’s conclusions are wholly inconsistent with the Pre-1989 Code and his Testimony.

Similarly, the Respondents' responses erroneously apply Section 6-12(B)(20) of the Pre-1989 Code, which allowed "storage garages, automobile and truck storage," but which, as recognized by Mr. Mooney, are separate and independent uses from towing uses. In addition, the responses fail to address Section 6-13(B)(20)(i) of the Pre-1989 Code, which would have allowed a towing service as a Conditional Use, if a Conditional Use permit had been sought for the use. Compliance with this Section would have made the main use at 1349 Dade a legally established use.

Based on the above, the Determination and the Respondents' responses are based on unfounded arguments and inaccurate interpretations of the Pre-1989 Code.

V. The towing use on 1349 must be discontinued

Pursuant to Subpart B of the City Code – Related Special Acts, Section 2, the Board of Adjustment (the "Board") is bestowed with the authority to "hear and decide appeals from, and review, any order, requirements, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance of the City of Miami Beach." Furthermore, "[a]ny order or decision of the board of adjustment shall require an affirmative five-sevenths vote of the board. The decision of the Board shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari."

The powers and duties of the Board are further imposed in Section 118-136, which grant the Board the authority to "hear and decide appeals pursuant to the procedural requirements of Section 118-9." Section 118-9(a)(b)(4) states that upon appeal, and with the concurring vote of five members of the Board, the Board may reverse or affirm, wholly or partly, the order, requirement, decision, or determination of the planning director or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under these land development regulations. The Board's findings shall constitute the final administrative action of the City for purposes of judicial review under state law,<sup>5</sup> and the City has the responsibility to enforce the final administrative decision of the Board.

Therefore, if the Board reverses the Determination, finding that the towing use at 1349 Dade is an illegal nonconforming use or that if it were a legal nonconforming use, it was a legal nonconforming use of land that was to be phased out two (2) years after enactment of the City Code, then the City will be under the obligation to enforce said final determination and the nonconforming use at 1349 Dade would need to cease.

**Stay of Work on 1349 Dade and Beach Towing Proceedings During Pendency of Appeal**

The City Code recognizes that the City shall not take any new actions for a property under appeal. Section 118-9(b)(5) requires a stay of all work, including the issuance of BTRs, during the pendency of an appeal of a Director's determination to the Board of Adjustment. Specifically, Section 118-9(b)(5) provides that:

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<sup>5</sup> This statement is found throughout the Code, and shall be construed as the intent of the City of Miami Beach for purposes of hearing procedures and enforcement of orders. See Sections 14-408 and 102-385.



(5) Stay of work and proceedings on appeal. An administrative appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

A. The planning director shall certify to the board of adjustment that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application, with notice to the officer from whom the appeal is taken and for good cause shown; or

B. Associated land use board hearings, may proceed to a final order, provided, **however, (i) no building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney;** and (ii) the applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings.

(Emphasis added).

On October 4, 2018, after the appeal was filed on September 26, 2018, BTRs identified by License Numbers RL-85017671, RL-10003672, and RL-86098263 were issued to Beach Towing in violation of the City Code. These BTRs have an address of record of 1349 Dade Boulevard and are in connection with the towing operations on said property, which is the subject of this appeal. Based on City records, Beach Towing is also seeking renewal of additional BTRs. *See* Composite Exhibit “L”. The City Code explicitly prohibits any building permit, or certificate of occupancy, or business tax receipt, depending on final hearing approval, to be issued until the final resolution of all administrative and court proceedings as certified by the City Attorney, which has yet to occur.

Furthermore, pursuant to Section 106-259 of the City Code, “[e]very person engaged in towing or removing vehicles for profit must obtain an occupational license issued by the city.” However, in accordance with Section 106-266(B)(4)d., without a valid BTR, Beach Towing may not be issued a valid towing license. Section 106-266(B)(4)d. provides that:

(b) Standards for issuance of a permit. The city manager or his designee shall approve the application for issuance or renewal of a license hereunder where he finds:

- (1) That the application has been fully completed and submitted;
- (2) That the initial application or renewal application fee has been paid;
- (3) That proof of insurance, as required in section 106-263, has been met; and

(4) That the applicant has been subject to a complete background investigation as it affects the towing industry, conducted by the chief or his designee and it has been determined by the chief that:

- a. The applying business enterprise, if a corporation, does not have as an officer or director, a person who is or was an officer, director, partner or sole proprietor of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;
- b. The applying business enterprise, if a partnership, does not have as a partner a person who is or was an officer, director, partner or sole proprietorship of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;
- c. The applying business enterprise, if a sole proprietorship, does not have as the sole proprietor a person who is or was an officer, director, partner or sole proprietor of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;
- d. The permit is not revoked or currently under suspension; or
- e. No fraud or willful and knowing misrepresentation or false statement was made in the application.

Based on the requirements of the City Code and the pending Appeal, the City should not renew the BTRs and should not have considered a renewal of the towing license, as it erroneously did at the December 12, 2018 City Commission meeting, until the appeal proceedings are final pursuant to Section 118-9(b)(5)(B).<sup>6</sup>

## **CONCLUSION**

We hereby restate and reaffirm our position that “towing,” “towing use,” or “towing services” was not a Permitted Use, by right, in the C-6 district of the Pre-1989 Code, and that the establishment of said use as a main use at 1349 Dade without approval of a Conditional Use permit was in violation of the Pre-1989 Code. Therefore, the operations at 1349 were not a legally established nonconforming use, and continue to be a nonconforming use under the CD-2 district of the City Code. Based on the foregoing, we respectfully seek an approval of the Appeal by the Board of Adjustment along with a determination of the following:

1. That the towing use on 1349 Dade is a use that was not “legally established” under the City Code in effect at the time and all towing uses on the property must be ceased immediately.

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<sup>6</sup> In addition to the bar on BTR and towing permit renewal during the pendency of this appeal, the Appellants provided evidence to the City that Beach Towing misrepresented its ownership interests in its application documents and its disclosure of interest filings. The misrepresentation issue is not a part of this appeal but the City had the obligation to investigate these allegations prior to the consideration of the towing permit renewal nonetheless.

Or, in the alternative:

2. (a) That the towing use on 1349 Dade is a nonconforming use of land pursuant to Article IX of the City Code; and

(b) That, as a nonconforming use of land, the use on 1349 Dade was required to be discontinued two years after the adoption of the Ordinance in accordance with Section 118-391(a) of the City Code and all towing uses must be discontinued in compliance with the City Code.

Furthermore, pursuant to Sections 118-9(b)(5), 106-259, and 06-266(B)(4)d. of the City Code, during the pendency of this Appeal, no BTR or towing license should have been renewed, extended, or issued to Beach Towing in connection with its towing operations at 1349 Dade.

Thank you in advance for your considerate attention to this petition. If you have any questions or require additional information, please feel free to call me directly at 305-789-7642.

Respectfully submitted,

HOLLAND & KNIGHT, LLP



Tracy R. Slavens, Esq.

Enclosures

CC: Vanessa Madrid, Esq.  
Brett Von Borke, Esq.  
David Buckner, Esq.  
Bradley Colmer, Esq.  
Dan Marinberg, Esq.  
Nick Kallergis, Esq.  
Rafael Andrade, Esq.

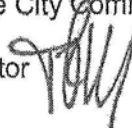
# **EXHIBIT “A”**



# MIAMI BEACH

## PLANNING DEPARTMENT MEMORANDUM

TO: Mayor Dan Gelber and the Members of the City Commission

FROM: Thomas R. Mooney, AICP, Planning Director 

DATE: August 30, 2018

SUBJECT: 1349 Dade Boulevard – Determination of Legal Non-Conforming Status for Beach Towing Services, Inc. ("Beach Towing")

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### Overview

On July 25, 2018, the City Commission, pursuant to item R9E, directed the City Attorney to file an Amicus Brief with regard to the pending litigation between Beach Towing and Sunset Land Associates Inc. Specifically, the Commission requested that the Amicus Brief state the Planning Director's interpretation of the City Code regarding whether Beach Towing is a legal nonconforming use.

### Background

Beach Towing is located at 1349 Dade Boulevard, which has been zoned CD-2 (Commercial, Medium Intensity) since the adoption of City Ordinance No. 89-2665 on October 1, 1989. Prior to October 1, 1989 the property at 1349 Dade Boulevard was zoned C-6 (Intensive Commercial District).

Towing is not currently a permitted use in the CD-2 zoning district. According to the City of Miami Beach Finance Department, the original Occupational License for towing services at 1349 Dade Boulevard (RL-86098263) was issued on September 23, 1986. This Occupational License (now referred to as a Business Tax Receipt or BTR) has been renewed by Beach Towing, and approved by the City, every year since then through the present day. The BTR is currently active.

### Establishment of Use

When the Occupational License for Towing Services at 1349 Dade Boulevard (RL-86098263) was first issued on or before September 23, 1986, the list of permitted uses within the C-6 District included the following, under Sec 6-13.B.1 of the then-applicable Zoning Ordinance:

*Any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses.*

Within the C-5 zoning district, the following was listed as a permitted use under Sec 6-12.B.20 of the Zoning Ordinance, when Beach Towing's Occupational License was first issued on or before September 23, 1986:

*Storage Garages, automobile and truck storage, within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.*

Towing services are consistent with the above noted permitted use under Sec. 6-12.B.20 of the Zoning Ordinance in the C-5 zoning district. As such, within the C-6 district, such use would fall within Sec 6-13.B.1 of the Zoning Ordinance, which allows as a permitted use 'Any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses.' Based upon the review of City records, this is also consistent with the application of these regulations by applicable City staff in 1986.

Establishment of Legal Non-Conforming Status

Currently, towing is not a permitted use in the CD-2 zoning district. As such, no new towing service uses would be permitted at 1349 Dade Boulevard, or in any CD-2 zoning district within the City.

In accordance with Sec. 118-397 of the City Code, pertaining to the existence of a nonconforming building or use, the Planning and Zoning Director is required to make a determination as to the existence of a nonconforming use or building. In making such determination, in addition to other information, the data presented on the occupational license or any other official record of the City, may be utilized. Additionally, pursuant to Sec. 118-390(d)(3) of the City Code, "legally established" shall apply to an existing use which conformed to the City Code at the time it was established.

In this particular instance, towing services were established at 1349 Dade Boulevard on or before September 23, 1986, pursuant to the issuance of Occupational License RL-86098263. Such use conformed to the requirements of the City Code in place on or before September 23, 1986, and therefore constitutes a legally established use.

Further, since the legally established use for towing services at 1349 Dade Boulevard has continued without interruption since at least September 23, 1986, and continues to date, it would be considered a Legal Non-Conforming Use. As such, the towing services use at the Beach Towing site on 1349 Dade Boulevard may continue to operate in accordance with the applicable provisions of Chapter 118, Article IX of the City Code.

C: Jimmy L. Morales, City Manager  
Raul Aguila, City Attorney  
Rafael Granado, City Clerk

# **EXHIBIT “B”**

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

SUNSET LAND ASSOCIATES, LLC,  
Plaintiff,

CASE NO.  
2016-004547 CA 01

vs.

MARK FESTA, individually and as  
trustee,  
Defendants.

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AND ALL RELATED CROSS-ACTIONS.

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VIDEOTAPED DEPOSITION OF VINCENT J. FESTA

November 10, 2017

10:09 a.m.

1230 Columbia Street, Suite 400

San Diego, California

REPORTED BY:

Barbra Zucker

CSR No. 11289



<p style="text-align: right;">Page 2</p> <p>1 IN THE CIRCUIT COURT OF THE</p> <p>2 11TH JUDICIAL CIRCUIT IN AND FOR</p> <p>3 MIAMI-DADE COUNTY, FLORIDA</p> <p>4 CIVIL DIVISION</p> <p>5 SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01</p> <p>6 Plaintiff,</p> <p>7 vs.</p> <p>8 MARK FESTA, individually and as trustee,</p> <p>9 MAUREEN FESTA,</p> <p>10 VINCENT J. FESTA, individually and as trustee,</p> <p>11 THE FESTA TRUST, and BEACH TOWING SERVICES, INC.,</p> <p>12 BEACH TOWING SERVICES OF MIAMI, INC.,</p> <p>13 CONSOLIDATED STORAGE YARDS, INC.,</p> <p>14 GOOFE PARTNERS, INC.,</p> <p>15 MIAMI AVENUE PROPERTIES, INC.,</p> <p>16 1718 BAY ROAD CORPORATION,</p> <p>17 FESTA TRANSPORT AND STORAGE, INC.,</p> <p>18 And CORONA STORAGE, LLC,</p> <p>19 Defendants.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>and</p> <p>THE LOFTS AT SOUTH BEACH CONDOMINIUM</p> <p>ASSOCIATES, INC.,</p> <p>Intervenor-Defendant.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXAMINATION</p> <p>2</p> <p>3 WITNESS: VINCENT J. FESTA</p> <p>4 EXAMINATION PAGE</p> <p>5 By Mr. Buckner 7</p> <p>6 By Mr. Reiss 141</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiff:</p> <p>3 BUCKNER &amp; MILES</p> <p>4 DAVID M. BUCKNER, ESQ.</p> <p>5 3350 Mary Street,</p> <p>6 Miami, Florida 33133</p> <p>7 305.964.8003</p> <p>8 786.523.0485</p> <p>9 david@bucknermiles.com</p> <p>10</p> <p>11 For Defendants Mark Festa, Maureen Festa, Beach</p> <p>12 Towing Services, Inc., Beach Towing Services of</p> <p>13 Miami, Inc., Consolidated Storage Yards, Inc.,</p> <p>14 Goofe Partners, Inc., Miami Avenue Properties,</p> <p>15 Inc., 1718 Bay Road Corporation, Festa Transport</p> <p>16 and Storage, Inc., and Corona Storage, LLC:</p> <p>17 (Via Telephone)</p> <p>18 LEVINE &amp; PARTNERS, P.A.</p> <p>19 ALLAN S. REISS, ESQ.</p> <p>20 3350 Mary Street</p> <p>21 Miami, Florida 33133</p> <p>22 305.372.1350</p> <p>23 305.372.1352</p> <p>24 asr@levinelawfirm.com</p> <p>25</p> <p>For Defendants Vincent Festa and The Festa Trust:</p> <p>THE LAW OFFICE OF SUSY RIBERO-AYALA, P.A.</p> <p>SUSY RIBERO-AYALA, ESQ.</p> <p>201 Alhambra Circle, Suite 1200</p> <p>Coral Gables, Florida 33134</p> <p>305.854.4711</p> <p>305.468.6197</p> <p>susy@riberoayalalaw.com</p> <p>Also Present:</p> <p>Huntington Paulson, Videographer</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXHIBITS</p> <p>2 VINCENT J. FESTA</p> <p>3 Sunset Land Associates, LLC vs Mark Festa, et al.</p> <p>4 Friday, November 10, 2017</p> <p>5 Barbra Zucker, CSR No. 11289</p> <p>6</p> <p>7 MARKED DESCRIPTION PAGE</p> <p>8 Exhibit 1 Exhibit F 26</p> <p>9 Exhibit 2 Exhibit D 26</p> <p>10 Exhibit 3 Aerial Photo of 1349 69</p> <p>11 Dade Boulevard</p> <p>12 Exhibit 4 Notice of Videotaped Deposition 89</p> <p>13 of Victor J. Festa</p> <p>14 Exhibit 5 Warranty Deed 90</p> <p>15 Exhibit 6 Mr. Festa and the Festa Trust 94</p> <p>16 Answer and Affirmative Defenses</p> <p>17 Exhibit 7 Series of plans for 107</p> <p>18 1349 Dade Boulevard</p> <p>19 Exhibit 8 Orange Dade Oil Company 118</p> <p>20 building/permit card</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>Page 6</p> <p>1 San Diego, California;</p> <p>2 Friday, November 10, 2017, 10:09 a.m.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning. We are on the</p> <p>5 record. My name is Huntington Paulson with U.S. Legal</p> <p>6 Support in San Diego, California, where this deposition</p> <p>7 is taking place.</p> <p>8 This is the recorded video deposition of Vincent</p> <p>9 Festa in the matter of Sunset Land Associates versus Mark</p> <p>10 Festa. The date is November 10th, 2017, at 10:09 a.m.</p> <p>11 Video and audio recording will be taking place</p> <p>12 at all times unless all counsel have agreed to go off the</p> <p>13 record.</p> <p>14 Would all present today please identify</p> <p>15 themselves beginning with the witness?</p> <p>16 THE WITNESS: I am Vincent J. Festa.</p> <p>17 MS. RIBERO-AYALA: Susy Ribero-Ayala on behalf</p> <p>18 of Vincent J. Festa.</p> <p>19 MR. BUCKNER: David Buckner on behalf of</p> <p>20 plaintiff.</p> <p>21 MR. REISS: Allan Reiss for a bunch of</p> <p>22 defendants except for Vincent Festa, Barbara Festa or</p> <p>23 The Lofts.</p> <p>24 THE VIDEOGRAPHER: The certified court reporter</p> <p>25 is Barbra Zucker.</p>	<p>Page 8</p> <p>1 understand. I want you to understand what I am asking.</p> <p>2 If you do answer my questions, all of us are</p> <p>3 going to assume that you understood what I was asking you</p> <p>4 and you were answering it based on the best of your</p> <p>5 knowledge.</p> <p>6 If, like I said, if you need to take a break at</p> <p>7 any point, we can take a break.</p> <p>8 A. Is it too early?</p> <p>9 Q. No, no. If you want to take a break --</p> <p>10 A. I'm only kidding.</p> <p>11 Q. I know. I know.</p> <p>12 And at various points during the day, your</p> <p>13 lawyer or Mr. Reiss, who is on the phone, may object to</p> <p>14 one of my questions. The rules basically require that</p> <p>15 for certain kinds of objections, that they are stated on</p> <p>16 the record. You are still going to answer the question.</p> <p>17 It's really just a placeholder for the lawyers so that</p> <p>18 later on, if there is an issue with the question, there</p> <p>19 is a record that there was an objection at the time.</p> <p>20 The only exception to that is if your lawyer instructs</p> <p>21 you not to answer something for some reason, but I don't</p> <p>22 expect that will come up today, but if it does, it does.</p> <p>23 Before we begin, do you have any questions for</p> <p>24 me?</p> <p>25 A. I don't think so.</p>
<p>Page 7</p> <p>1 Would you please swear in the witness?</p> <p>2 VINCENT J. FESTA,</p> <p>3 having been first duly sworn, was examined</p> <p>4 and testified follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. All right. Good morning, Mr. Festa, again.</p> <p>10 A. Good morning.</p> <p>11 Q. Have you ever had your deposition taken before?</p> <p>12 A. I don't remember.</p> <p>13 Q. Okay. I am going to go through the ground</p> <p>14 rules, but we are going to keep this very easygoing. So</p> <p>15 if at any point you need to take a break for any reason</p> <p>16 even, you know, as long as I don't have a question</p> <p>17 pending, feel free to just say so. You are not</p> <p>18 interrupting or anything. At your leisure, if you want</p> <p>19 to take a break at any time, let me know.</p> <p>20 A. Sure.</p> <p>21 Q. I am going to ask you questions. Obviously,</p> <p>22 you are under oath. All you are asked to do is answer</p> <p>23 them to the best of your ability.</p> <p>24 If you don't understand what I am asking you,</p> <p>25 just ask me to rephrase it and I will until you</p>	<p>Page 9</p> <p>1 Q. Okay. Is there any reason why you can't give</p> <p>2 full, complete and accurate testimony here today?</p> <p>3 A. No reason why.</p> <p>4 Q. Okay. Are you on any medication or anything</p> <p>5 else that would affect your ability to testify or to</p> <p>6 remember the events that we are here on?</p> <p>7 A. I just had six hours' sleep. That's all.</p> <p>8 Q. I am sorry to hear that. I assume that six</p> <p>9 hours of sleep won't affect your ability to testify?</p> <p>10 A. Not at all, no.</p> <p>11 Q. Okay. Well, let's, you know, let's just sort</p> <p>12 of try and work our way through this and see if we can't</p> <p>13 get done expeditiously today because I know you would</p> <p>14 probably like to get back --</p> <p>15 A. No. This is nice here. Cool, food is good,</p> <p>16 conversation is great.</p> <p>17 Q. There you go.</p> <p>18 A. I would like to stay --</p> <p>19 Q. I like your --</p> <p>20 A. -- I would like to stay a couple days if you</p> <p>21 don't mind.</p> <p>22 Q. I like your attitude. I like it.</p> <p>23 Anyways, so would you please, for the record,</p> <p>24 state your full name and spell your last name?</p> <p>25 A. Yes. Vincent, J., for John, Festa,</p>

<p style="text-align: right;">Page 10</p> <p>1 V-i-n-c-e-n-t, J, for John, Festa, F, as in Frank, 2 e-s-t-a, Festa. 3 Q. Okay. Mr. Festa, where do you currently 4 reside? 5 A. At 8660-4 Via La Jolla Drive, La Jolla, 6 California 92037. 7 Q. How long have you lived there? 8 A. 33 years. 9 Q. And has that been your exclusive residence for 10 the last 33 years, or have you lived other places part 11 of the year? 12 A. No. Exclusive. 13 Q. Okay. So 33 years, I have to now do math -- 14 A. Nineteen seventy -- 1983, '84. 15 Q. Okay. So is that when you moved to California? 16 A. In 1983, in December, I think. 17 Q. Okay. And you know, I may jump around a little 18 today. 19 A. That's okay. 20 Q. If I do, forgive me. But just sort of as we 21 go; I am not trying to be confusing. 22 A. That's okay. Are you comfortable, relaxed? 23 Q. I am okay. You? 24 A. Great. 25 Q. I know, it's an unusual sort of thing, a</p>	<p style="text-align: right;">Page 12</p> <p>1 backward because we were talking before we started 2 about, you know, Miami and Miami Beach in the 1950s. So 3 I know you were there at least that far back. I want to 4 sort of start backwards and sort of move forwards. 5 So where were you -- where were you born? 6 A. In New York City. 7 Q. And did you grow up there? 8 A. Well, we moved around quite a bit. I was born 9 on Mulberry Street and for probably six, seven years 10 there. Then we moved to Brooklyn for two years and 11 ended up in the Bronx. 12 Q. All right. And what was the highest level of 13 education you completed? 14 A. I completed high school. 15 Q. And was that also in New York, somewhere in New 16 York? 17 A. Yeah, Samuel Gompers in the Bronx. 18 Q. Oh, Samuel Gompers, the great labor union 19 leader. 20 A. Yeah. 21 Q. And what did you do after high school? 22 A. I did what he told me, strike. No. I am 23 kidding. But anyway, I am sorry. 24 Q. That's okay. 25 A. I shouldn't do this.</p>
<p style="text-align: right;">Page 11</p> <p>1 deposition, but we will try and make it as 2 comfortable -- 3 A. I am new at this but okay. 4 Q. Yeah, I know. It is what it is, but it will be 5 fine. 6 So when you moved to California, you said 1983, 7 were you working or had you retired? 8 A. I retired. 9 Q. And what was the last job or occupation you 10 held before retirement? 11 A. I owned Beach Towing. 12 Q. Okay. And that -- what did -- 13 A. I did the towing for the city. 14 Q. And the City of Miami Beach? 15 A. Uh-huh. 16 Q. Oh, and let me say something else. 17 The court reporter can't take down, you know, 18 uh-huh. You have to say either yes or no just because 19 she can't make a record of that. 20 A. Oh, I'm sorry. 21 Q. No, not at all. 22 So when I asked you that was towing for the 23 City of Miami Beach, you said -- 24 A. Yes. 25 Q. Let me go a little -- so I want to work</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. That's okay. 2 MS. RIBERO-AYALA: Of course you can. 3 BY MR. BUCKNER: 4 Q. That's fine. 5 MS. RIBERO-AYALA: Of course you can. 6 BY MR. BUCKNER: 7 Q. It really is. 8 A. Can you repeat that? 9 Q. Sure, of course. 10 I said what did you do after you completed high 11 school? 12 A. I went into show business. 13 Q. Okay. And was that also in New York? 14 A. No. It was in Florida. 15 Q. Okay. So what year was that? What year did 16 you -- 17 A. Say in 1955. 18 Q. And that was the year you moved to Florida? 19 A. Well, I didn't move. I just went down there 20 for the season. 21 Q. Oh, I see. Okay. So you were performing in 22 some kind of show business-related -- 23 A. In nightclubs, yes. 24 Q. What specifically was -- what was your act? 25 A. I did comedy. I was with a trio, Dave Fisher</p>

<p style="text-align: right;">Page 14</p> <p>1 Trio.</p> <p>2 MS. RIBERO-AYALA: Of course, you were.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. You did comedy. Of course, you did.</p> <p>5 I mean, so far, you know, you are way funnier</p> <p>6 than I am.</p> <p>7 Okay. So you started going --</p> <p>8 A. Yeah, but looks aren't everything.</p> <p>9 MS. RIBERO-AYALA: This is the best -- this is</p> <p>10 the best deposition in this case by far.</p> <p>11 THE WITNESS: Okay. I'm sorry. I'll --</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. It's okay.</p> <p>14 MS. RIBERO-AYALA: No, no. This is great.</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. It's fine. It really is fine.</p> <p>17 So you started going to Florida in 1955-ish,</p> <p>18 correct?</p> <p>19 A. Yes. It was seasonal then.</p> <p>20 Q. And were you going to Miami Beach or to a</p> <p>21 different --</p> <p>22 A. Miami Beach.</p> <p>23 Q. And how long were you in show business as a</p> <p>24 living, I guess I should say?</p> <p>25 A. I would say to '75, '80.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Okay.</p> <p>2 A. No. Excuse me -- yeah, about 1965. Did shows</p> <p>3 and worked other jobs in the -- in the Seville Hotel --</p> <p>4 Q. I see.</p> <p>5 A. -- ended up -- ended up being a catering</p> <p>6 manager.</p> <p>7 Q. Okay. So I take it during that time, somewhere</p> <p>8 during that time, you actually moved to Miami Beach full</p> <p>9 time, is that right?</p> <p>10 A. Yeah, I lived in Hollywood.</p> <p>11 Q. Okay. What year did you move to Hollywood, do</p> <p>12 you remember?</p> <p>13 A. 1970 -- wait. No. 1960, something like that.</p> <p>14 I don't remember.</p> <p>15 Q. Okay. So sometime in the 1960s, you become a</p> <p>16 full-time Florida resident?</p> <p>17 A. Oh, yes, always Florida.</p> <p>18 Q. Okay. So I want to jump ahead.</p> <p>19 We talked when we started that at a certain</p> <p>20 point, you were involved with Beach Towing, correct?</p> <p>21 A. No. I went into Beach Towing. I bought -- I</p> <p>22 bought the building in 1970, I think, '75.</p> <p>23 Q. And, listen, I realize this is a long time ago.</p> <p>24 So I am --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. And during that time from basically 1955</p> <p>2 to whenever that was in the -- '75, 1975 to '80,</p> <p>3 somewhere in there, was -- were you in any other line of</p> <p>4 work besides performing --</p> <p>5 A. No.</p> <p>6 Q. -- in comedy clubs?</p> <p>7 A. No. I was in -- I was with the comedy trio.</p> <p>8 Q. Okay. And then at a certain point you, I</p> <p>9 guess, left comedy and decided to go into a different</p> <p>10 line of work?</p> <p>11 A. Well, I was -- I was doing comedy with a trio,</p> <p>12 and I didn't want to go on the road anymore. So I ended</p> <p>13 up doing catering. I used to do the weddings and the</p> <p>14 bar mitzvahs at the Seville Hotel.</p> <p>15 Q. Okay. That was the Seville Hotel in Miami</p> <p>16 Beach?</p> <p>17 A. Right, 29th and Collins.</p> <p>18 Q. And so you opened a catering business</p> <p>19 sometime --</p> <p>20 A. I didn't open it. I worked for the Seville</p> <p>21 Hotel.</p> <p>22 Q. I see. Okay. So you worked for the Seville</p> <p>23 Hotel, and do you remember when you started working for</p> <p>24 the Seville?</p> <p>25 A. Well, 19 -- maybe 1960, '65.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. -- I am not looking for absolute precision.</p> <p>2 A. Yeah.</p> <p>3 Q. I am sort of trying to get a sense as to your</p> <p>4 sort of history. So --</p> <p>5 A. You can tell I didn't rehearse.</p> <p>6 Q. Yeah, that's okay. Again, it's a long time</p> <p>7 ago, you know.</p> <p>8 A. Yeah.</p> <p>9 Q. So let me see if I can break this down a</p> <p>10 little.</p> <p>11 When you say you bought the building, is that</p> <p>12 the building at 1349 --</p> <p>13 A. Dade Boulevard.</p> <p>14 Q. -- Dade Boulevard?</p> <p>15 Okay. And so -- and your recollection is you</p> <p>16 bought 1349 Dade Boulevard sometime in the 1970s, is</p> <p>17 that right?</p> <p>18 A. Yes, I think so, 1970, yeah.</p> <p>19 Q. Okay. And was there already a business</p> <p>20 operating there, or did you start a business?</p> <p>21 A. It was a gas station. I even forgot the name</p> <p>22 of the brand it was.</p> <p>23 Q. Was it -- and I'm not trying to put words in</p> <p>24 your mouth --</p> <p>25 A. That's okay.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. -- but would it -- does the name Orange State</p> <p>2 ring a bell?</p> <p>3 A. No. It's not that.</p> <p>4 Q. It wasn't Orange State? Okay.</p> <p>5 A. No, it wasn't that. It's a famous name. It</p> <p>6 wasn't S-o --</p> <p>7 Q. Was it Citgo?</p> <p>8 A. Citgo. Okay. Good one.</p> <p>9 Q. Okay. And the reason I say that is, we'll go</p> <p>10 through some documents later, I saw the Citgo logo in</p> <p>11 there somewhere. I wasn't sure if you had a Citgo</p> <p>12 station or if it was previous --</p> <p>13 A. No. I had a Citgo station. I also had a</p> <p>14 station in -- on Miami Beach on 14th Street and -- Miami</p> <p>15 Beach.</p> <p>16 Q. Okay. So you had two -- at some point in time,</p> <p>17 you had two gasoline stations on Miami Beach?</p> <p>18 A. Yes, and towing.</p> <p>19 Q. And towing.</p> <p>20 Okay. So there was the one obviously 1349 Dade</p> <p>21 Boulevard. That's the one that you bought that was a gas</p> <p>22 station, correct?</p> <p>23 A. Was a gas station.</p> <p>24 Q. Right. And then there was another one, I think</p> <p>25 it was -- am I correct, it was on Alton that you owned?</p>	<p style="text-align: right;">Page 20</p> <p>1 not complete by any means. So as we go through this</p> <p>2 stuff, if there is a document that might refresh your</p> <p>3 recollection on some of this stuff, I am happy to give</p> <p>4 it to you, and we will go through them. I just --</p> <p>5 A. Okay.</p> <p>6 Q. -- I don't know what's going to help you</p> <p>7 because --</p> <p>8 A. Yeah.</p> <p>9 Q. -- I don't know the history.</p> <p>10 A. If it helps you, see if it helps you.</p> <p>11 Q. We'll see. I don't know how much can help me.</p> <p>12 I mean, we will have to see by the end of the day.</p> <p>13 Maybe not much.</p> <p>14 A. All right.</p> <p>15 Q. Okay. So the 1349 Dade Boulevard was a gas</p> <p>16 station when you bought it. And is it your recollection</p> <p>17 that you were able to continue operating as a gas</p> <p>18 station or were you --</p> <p>19 A. No. I didn't want gas.</p> <p>20 Q. Okay.</p> <p>21 A. I didn't want gas because we had the gas wars,</p> <p>22 not gas wars, but we had rationing for a while, a long</p> <p>23 time ago.</p> <p>24 Q. You are talking in the 1970s?</p> <p>25 A. Something like -- maybe before that too.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. No. It was on Collins Avenue, actually. It</p> <p>2 was on Collins Avenue, yes.</p> <p>3 Q. Which one did you own first, do you recall?</p> <p>4 A. The one on Collins.</p> <p>5 Q. Okay. And did you ever own any more than those</p> <p>6 two gas stations on Miami Beach?</p> <p>7 A. No, I don't think so.</p> <p>8 Q. What prompted you to start buying gas stations?</p> <p>9 A. Well, I had a friend of mine, we did a lot of</p> <p>10 investing. We bought properties and sold them,</p> <p>11 properties. And we -- we went into Alton Road and</p> <p>12 picked up a station that we did AAA and towing.</p> <p>13 Q. Right. So you had a towing operation at the</p> <p>14 gas station sort of as an accessory to the gas station?</p> <p>15 A. Right.</p> <p>16 Q. Okay. And so with regard to the gas station at</p> <p>17 1349 Dade Boulevard, your recollection is that was a</p> <p>18 Citgo station?</p> <p>19 A. I think so. I think you're right.</p> <p>20 Q. Okay.</p> <p>21 A. That would have been my guess.</p> <p>22 Q. Yeah, and, by the way, this -- I didn't say</p> <p>23 this before, but I think I have sort of implied it, but</p> <p>24 I will say it now. This is not meant to be a</p> <p>25 closed-book test. I have got some documents; they are</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay.</p> <p>2 A. We had a gas station on Alton Road. It was a</p> <p>3 Gulf station that we just leased it, you know. You buy</p> <p>4 their -- you buy their equipment, and they let you use</p> <p>5 their station. And I had AAA and I had towing, and I</p> <p>6 had -- I had everything.</p> <p>7 Q. Right. So when you bought the gas station --</p> <p>8 so -- let me strike that.</p> <p>9 So you had the other gas station --</p> <p>10 A. I had Alton Road first.</p> <p>11 Q. Okay. And I just want to make sure we are</p> <p>12 talking about the same thing because a moment ago you</p> <p>13 said you thought the other station was on Collins.</p> <p>14 A. It is Collins. Alton Road -- Alton Road was a</p> <p>15 different place. We did AAA there --</p> <p>16 Q. Oh, I see.</p> <p>17 A. -- then we had Collins, then we had Collins</p> <p>18 Avenue which I bought the property and sold it. There</p> <p>19 is a high-rise there now. And then I had 1349 Dade</p> <p>20 Boulevard.</p> <p>21 Q. Okay. That's my mistake. I thought we were --</p> <p>22 A. That's okay.</p> <p>23 Q. -- talking about two places.</p> <p>24 A. No problem.</p> <p>25 Q. So just so I am clear, you owned a gas station</p>

<p style="text-align: right;">Page 22</p> <p>1 on Collins, correct?</p> <p>2 A. No. We leased -- we didn't buy -- we didn't</p> <p>3 own the property. We just ran it. Gulf owned it, we</p> <p>4 sold their gas and we ran AAA and towing out of there.</p> <p>5 Q. That's the one on Collins?</p> <p>6 A. Collins. Then we grew because the City of</p> <p>7 Miami Beach was getting a lot of tows away -- tow-aways.</p> <p>8 And so we bought a piece of property on Collins Avenue,</p> <p>9 I think that was on 12th and Collins. I am not sure.</p> <p>10 Q. And I am not trying to quibble with you; I am</p> <p>11 just trying to keep it straight.</p> <p>12 So you leased the property on Alton and you</p> <p>13 owned the property on Collins?</p> <p>14 A. Yeah. Well, see, a lot of gas stations, you</p> <p>15 don't buy the property. You just work for Gulf Oil, you</p> <p>16 buy their parts --</p> <p>17 Q. Sure.</p> <p>18 A. -- and you sell their gas, and that's it.</p> <p>19 Q. Right. So --</p> <p>20 A. But I owned -- I didn't own that. I owned the</p> <p>21 one on 1349 Dade Boulevard and the one on Collins</p> <p>22 Avenue.</p> <p>23 Q. Okay. So the Collins one is owned and the Dade</p> <p>24 Boulevard is owned by you or was owned by you --</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">Page 24</p> <p>1 reason I ask this is I think I saw something about this</p> <p>2 in the records -- when you purchased 1349 Dade Boulevard</p> <p>3 from the prior owner, is it your recollection that</p> <p>4 whatever gas company was supplying the gasoline there</p> <p>5 wasn't willing to let you continue operating as a</p> <p>6 service station, as a gasoline station?</p> <p>7 MR. REISS: Form.</p> <p>8 THE WITNESS: That I don't remember.</p> <p>9 MR. REISS: Object to form.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Okay. Well, we will go through and let's see,</p> <p>12 actually, let me see -- let me see if I can lay my hands</p> <p>13 on a document that might help you. Give me a minute. I</p> <p>14 am looking for something specific.</p> <p>15 This is it.</p> <p>16 Do you recall in about 1980 you went before the</p> <p>17 City of Miami Beach Commission to get a conditional use</p> <p>18 permit to start selling gasoline at 1349 Dade Boulevard</p> <p>19 again?</p> <p>20 A. Did I? I don't remember.</p> <p>21 Q. You don't remember?</p> <p>22 A. I really don't.</p> <p>23 Q. Let me make sure this is the right thing. I</p> <p>24 can't see anymore either.</p> <p>25 A. What year did you say that was?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. -- and the Gulf station -- was it the Gulf</p> <p>2 station?</p> <p>3 A. Gulf station on Alton Road, yes.</p> <p>4 Q. That was the one you leased?</p> <p>5 A. Okay.</p> <p>6 Q. Am I right about that?</p> <p>7 A. Yeah, okay.</p> <p>8 Q. Okay. No. I --</p> <p>9 A. No. Leased. I understand what you mean now.</p> <p>10 Q. Okay. I got you. Well, leased may not be the</p> <p>11 right word --</p> <p>12 A. Yeah, okay.</p> <p>13 Q. -- but you basically worked for them, they</p> <p>14 owned it?</p> <p>15 A. Right. We bought their parts and we used their</p> <p>16 gas -- and we sold their gas.</p> <p>17 Q. Got it. Okay. And, yeah, the only reason we</p> <p>18 can't talk over each other is she can only take down one</p> <p>19 voice at a time, and it's kind of hard for her. That</p> <p>20 was my fault.</p> <p>21 And so you were selling gas from these three</p> <p>22 stations, correct?</p> <p>23 A. Gas, gas -- no. I wasn't selling gas at the</p> <p>24 Citgo, at 1349.</p> <p>25 Q. Okay. And is it your recollection -- and the</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. 1980.</p> <p>2 A. 1980?</p> <p>3 Q. Yes. I am going to hand you -- here's what I</p> <p>4 am going to -- I am going to hand you a couple of</p> <p>5 documents. Let me see if I can help with your memory on</p> <p>6 this. Like I said, I know it's been a long time.</p> <p>7 MR. BUCKNER: Allan --</p> <p>8 THE WITNESS: 1980 I wasn't selling gas there</p> <p>9 at all.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Right, you weren't, but I want to show you --</p> <p>12 MR. BUCKNER: Would you mark this, please?</p> <p>13 Allan, I am handing the witness Exhibit 22 from</p> <p>14 my set which we are going to mark as Exhibit 1.</p> <p>15 MR. REISS: Exhibit 22 in what?</p> <p>16 MR. BUCKNER: How did -- you got an e-mail with</p> <p>17 all the exhibits?</p> <p>18 MR. REISS: You gave me a flash drive, but they</p> <p>19 are not identified as exhibits. There is one subfolder</p> <p>20 marked Discovery, and then there is aerial, aerial,</p> <p>21 complaint log, contract, contract with city, e-mail from</p> <p>22 Andrade, the deed --</p> <p>23 MR. BUCKNER: Allan, hang on a second. Hang on</p> <p>24 a second. We will figure out a way to work through</p> <p>25 this, but she can't take all that down so fast.</p>

<p style="text-align: right;">Page 26</p> <p>1 So let me -- I have handed the witness --</p> <p>2 MR. REISS: Okay.</p> <p>3 MR. BUCKNER: I am going to tell you what they</p> <p>4 are, and we will see if we can get you to them, Allan.</p> <p>5 I am going to hand the witness two documents.</p> <p>6 All right? One is, on the cover of it, it says, "Exhibit</p> <p>7 F." It starts with the roll call, City of Miami Beach</p> <p>8 Commission. It's a series of documents related to the</p> <p>9 conditional use permit, but it's Exhibit F. And the</p> <p>10 other one is Exhibit -- has got Exhibit D on the cover.</p> <p>11 MR. REISS: I see that.</p> <p>12 MR. BUCKNER: Okay. So we are going to -- here</p> <p>13 is what we are going to do. We are going to mark</p> <p>14 Exhibit F as Exhibit 1 here and Exhibit D as Exhibit 2</p> <p>15 for this deposition. Okay?</p> <p>16 MR. REISS: Thank you.</p> <p>17 MR. BUCKNER: Yeah, no worries.</p> <p>18 (Exhibits No. 1 and No. 2 marked.)</p> <p>19 BY MR. BUCKNER:</p> <p>20 Q. Mr. Festa, let me give you that.</p> <p>21 (Discussion off the record.)</p> <p>22 BY MR. BUCKNER:</p> <p>23 Q. Here is a copy for each of you. So let me</p> <p>24 just -- I am going to hand you this in a second,</p> <p>25 Mr. Festa.</p>	<p style="text-align: right;">Page 28</p> <p>1 MS. RIBERO-AYALA: Right, right.</p> <p>2 MR. BUCKNER: -- there is more in here than</p> <p>3 just his stuff. So I don't want to --</p> <p>4 MS. RIBERO-AYALA: Right. Let's not bog him</p> <p>5 down with stuff. Let me let him go through whatever</p> <p>6 belongs to him, and then he can say what he understands</p> <p>7 it to be. So --</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. Maybe I can help. You are in Exhibit 1,</p> <p>10 Mr. Festa. The fourth page of Exhibit 1 you will see a</p> <p>11 City of Miami Beach letterhead.</p> <p>12 MR. BUCKNER: You are there, Susy.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. A memorandum dated May 7th, 1980. Do you see</p> <p>15 that?</p> <p>16 MS. RIBERO-AYALA: Okay. All right. So let's</p> <p>17 let him read this.</p> <p>18 MR. BUCKNER: Go ahead. I think that may help.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. So the reason I showed you that is because this</p> <p>22 document relates to a conditional use application for</p> <p>23 operating a filling station at 1349 Dade Boulevard.</p> <p>24 Do you see that?</p> <p>25 MR. REISS: Objection to the form.</p>
<p style="text-align: right;">Page 27</p> <p>1 We have marked as Exhibit 1 a document that on</p> <p>2 its face says, "Roll Call Miami Beach City Commission"</p> <p>3 and has a series of agenda items behind it. And that's</p> <p>4 your copy, Mr. Festa, Exhibit 1.</p> <p>5 And Exhibit 2 is entitled -- well, it's on City</p> <p>6 of Miami Beach letterhead, at least the first page, and</p> <p>7 it's entitled, "Action Summary," but then behind it,</p> <p>8 several pages back, there is a transcript of a hearing</p> <p>9 from the City of Miami Beach Commission. It appears to</p> <p>10 be June 4th, 1980, I think. And that's No. 2.</p> <p>11 Let me give you both of those.</p> <p>12 And, by the way, when I hand you documents</p> <p>13 today, you can take as much time as you need to look at</p> <p>14 them. We are not in a hurry. So, you know, be my guest.</p> <p>15 A. This is saying that in 1980 I was selling gas?</p> <p>16 Q. No. Well, let me go through it with you, and I</p> <p>17 will tell you what I think it says, and we will see if</p> <p>18 it refreshes your recollection.</p> <p>19 There is -- the first item here is a -- in</p> <p>20 Exhibit 1 -- let me find it.</p> <p>21 MS. RIBERO-AYALA: Well, why don't we let him</p> <p>22 go through it.</p> <p>23 MR. BUCKNER: Yes, go through it.</p> <p>24 MS. RIBERO-AYALA: Yeah.</p> <p>25 MR. BUCKNER: I don't want the --</p>	<p style="text-align: right;">Page 29</p> <p>1 THE WITNESS: I see it, but I don't remember</p> <p>2 it.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. So you don't recall applying for a</p> <p>5 conditional use permit to operate a filling station in</p> <p>6 1980 at the Dade Boulevard location?</p> <p>7 MR. REISS: Objection to form, documents speak</p> <p>8 for themselves, mischaracterizing the witness'</p> <p>9 testimony.</p> <p>10 You can answer the question.</p> <p>11 THE WITNESS: No. I was doing mostly towing.</p> <p>12 I don't remember -- I was one of the few people that</p> <p>13 was -- in fact, at one time I was the only one that was</p> <p>14 doing towing.</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. Right.</p> <p>17 A. So I was towing from the -- I was also -- had</p> <p>18 a -- rented a place down on 5th Street, and we were</p> <p>19 towing on Collins Avenue, and we were towing on 1349</p> <p>20 Dade Boulevard.</p> <p>21 I can't -- I can't remember how we could get all</p> <p>22 those cars in and out with pumps there. I just -- that's</p> <p>23 what I can't understand --</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 30</p> <p>1 A. -- but I don't remember.</p> <p>2 Q. Okay. Let me maybe start a little further</p> <p>3 back.</p> <p>4 From -- prior to 1980 certainly you were not</p> <p>5 selling gasoline at 1349 Dade Boulevard, correct?</p> <p>6 MR. REISS: Objection to form, leading,</p> <p>7 mischaracterizing the witness' testimony.</p> <p>8 THE WITNESS: Yeah, I don't remember selling it</p> <p>9 at all. I don't remember. Maybe I did when it first --</p> <p>10 I don't remember, to be honest.</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Okay. So you don't -- as you sit here, you</p> <p>13 don't recall whether you sold gas at any point in time</p> <p>14 at 1349 Dade Boulevard?</p> <p>15 A. I don't remember --</p> <p>16 MR. REISS: Objection to form, leading.</p> <p>17 THE WITNESS: It wasn't conducive of bringing a</p> <p>18 tow in because we towed quite a bit. I was one of the</p> <p>19 few -- I was one of the few people that was doing the</p> <p>20 towing, and then they brought in -- what's the new one?</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. Tremont?</p> <p>23 A. Tremont.</p> <p>24 Q. Okay.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay.</p> <p>2 A. Was it 12th? 11th and Collins maybe.</p> <p>3 Q. Okay. So --</p> <p>4 A. That just came to my mind.</p> <p>5 Q. No. That's fine. So -- and, again, if I sound</p> <p>6 repetitive --</p> <p>7 A. But I don't remember selling gas at the -- at</p> <p>8 1349 Dade Boulevard. I just really don't.</p> <p>9 Q. And I am not suggesting that you did.</p> <p>10 A. No. I am just saying. Okay. I'm telling</p> <p>11 you --</p> <p>12 Q. I don't know. We will work through it and see</p> <p>13 if we can get to, like I said, the best of your</p> <p>14 recollection.</p> <p>15 But just so I am clear, and, again, forgive me</p> <p>16 for being repetitive; I sometimes go back --</p> <p>17 A. That's okay.</p> <p>18 Q. -- to try and make sure I understand. So the</p> <p>19 three businesses -- I am sorry, the three properties we</p> <p>20 talked about before, the gas station at Collins, the gas</p> <p>21 station at Alton and 1349 Dade Boulevard, those three</p> <p>22 together were Beach Garage, is that correct?</p> <p>23 MR. REISS: Object to the form,</p> <p>24 mischaracterizes the witness' testimony, leading --</p> <p>25 THE WITNESS: Yeah, Beach Garage --</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. All right. So let me see if I can work through</p> <p>2 this a little -- and, again, all I am asking, sir, is</p> <p>3 the best of your recollection.</p> <p>4 A. Yeah, that's it. I can't remember. I am</p> <p>5 trying to picture it.</p> <p>6 Q. No. I appreciate that. Like I said, we will</p> <p>7 look at some more documents. If it helps you</p> <p>8 remember --</p> <p>9 A. Okay.</p> <p>10 Q. -- great. If it doesn't --</p> <p>11 A. All right.</p> <p>12 Q. So just so I am clear, though -- well, let me</p> <p>13 ask you this: Do you recall having a business called</p> <p>14 Beach Garage?</p> <p>15 A. That was it.</p> <p>16 Q. Okay. When you say, "That was it," was that</p> <p>17 the business at 1349 Dade?</p> <p>18 A. Right.</p> <p>19 Q. Okay. And what business was Beach Garage in?</p> <p>20 A. We were -- well, actually, we were in the</p> <p>21 repair business, the car -- automobiles, cars, and we</p> <p>22 had two gas stations. One was at Alton Road, which was</p> <p>23 the Gulf, and the one which was down on Collins Avenue</p> <p>24 and was it 7th -- I don't remember the street. 7th</p> <p>25 Street?</p>	<p style="text-align: right;">Page 33</p> <p>1 MS. RIBERO-AYALA: Wait.</p> <p>2 THE WITNESS: I'm sorry.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Allan is making a series of objections, which</p> <p>5 is fine; he can do that. Let's give him a chance to do</p> <p>6 that. Again, it's the two voices thing. And then as</p> <p>7 soon as he is done, you can go ahead and answer.</p> <p>8 A. I am sorry.</p> <p>9 Q. No, no, no. Don't be sorry. You're fine. He</p> <p>10 is just -- he is making a record, and it's fine, but I</p> <p>11 just don't -- she can't take it all down.</p> <p>12 So go ahead -- she got his objections. Go ahead</p> <p>13 and say --</p> <p>14 A. Give me the question again.</p> <p>15 MR. BUCKNER: That's fine. Can you read it</p> <p>16 back? That way Allan doesn't have to object again.</p> <p>17 That's all right. I will save us time.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. We talked earlier today about three locations,</p> <p>20 a gas station on Collins, a gas station on Alton and I</p> <p>21 think it's a vehicle repair business at 1349 Dade</p> <p>22 Boulevard, correct?</p> <p>23 A. Right.</p> <p>24 MR. REISS: Objection to form, mischaracterizes</p> <p>25 the witness' testimony and leading.</p>



<p style="text-align: right;">Page 34</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. Those three operations together, were all three</p> <p>3 of those part of Beach Garage?</p> <p>4 A. Right.</p> <p>5 Q. They were?</p> <p>6 A. Until -- until we got -- we got rid of Alton</p> <p>7 Road.</p> <p>8 Q. Okay. So those three businesses were Beach</p> <p>9 Garage, and what business was Beach Garage in then,</p> <p>10 selling gasoline --</p> <p>11 A. No. I don't remember.</p> <p>12 MS. RIBERO-AYALA: Objection; form, leading.</p> <p>13 THE WITNESS: I don't remember that, honest. I</p> <p>14 don't remember selling gas there.</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. All right. I am not trying to suggest at 1349</p> <p>17 you were selling gas. I am saying Beach Garage</p> <p>18 generally.</p> <p>19 A. Well, yeah, when we had the station down on</p> <p>20 Collins Avenue, we were selling gas, and then when we</p> <p>21 had -- our original first gas station was Alton Road</p> <p>22 on -- the Gulf station. We started there. We were</p> <p>23 doing towing, we were doing AAA, we were doing --</p> <p>24 selling gas.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yeah, I guess we could have done some repairs</p> <p>2 there.</p> <p>3 Q. Okay. And were you doing vehicle repair at the</p> <p>4 Alton Road location?</p> <p>5 A. At the Alton Road, yes, definitely.</p> <p>6 Q. Okay. And that was all under the umbrella of</p> <p>7 Beach Garage, correct?</p> <p>8 A. That was me, Beach Garage.</p> <p>9 MR. REISS: Objection to form, leading,</p> <p>10 mischaracterizes the witness' testimony.</p> <p>11 THE WITNESS: I didn't hear him.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. You don't have to. You don't have to worry</p> <p>14 about what he is saying.</p> <p>15 The answer was yes, that was the answer to my</p> <p>16 question, yes?</p> <p>17 A. Give me the question again.</p> <p>18 Q. I said all three of those were operating under</p> <p>19 the umbrella of Beach Garage, correct?</p> <p>20 A. Beach Garage.</p> <p>21 Q. Got it. And then in terms of sales of --</p> <p>22 A. Beach Towing -- go ahead.</p> <p>23 Q. Right. And sales of gasoline, do you recall</p> <p>24 selling gasoline at the Alton Road location, correct?</p> <p>25 A. Definitely.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. And I don't -- okay.</p> <p>2 Q. No. Go ahead, go ahead. I didn't mean to</p> <p>3 interrupt you.</p> <p>4 A. Again, I don't remember anymore that we got rid</p> <p>5 of Alton Road or else they closed -- I don't even know</p> <p>6 if they closed it or it wasn't paying off for us,</p> <p>7 something like that. Then I sold -- then I sold the gas</p> <p>8 station which they put a condominium up on Collins</p> <p>9 Avenue.</p> <p>10 Q. Okay. So over time, and we will see if we</p> <p>11 can't fix it in time, you stopped operating at Alton</p> <p>12 Road and you sold the gas station at Collins. So all</p> <p>13 you had left was 1349 Dade, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And as we talk, we will see if we can</p> <p>16 figure out when that happened, but to the best of your</p> <p>17 recollection, the only -- well, strike that.</p> <p>18 So were you doing vehicle repair at the Collins</p> <p>19 Avenue location?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Were you doing vehicle repair at the</p> <p>22 Dade Boulevard location?</p> <p>23 A. That I am not sure of. Let me think a minute.</p> <p>24 Okay?</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Okay. And you recall selling gasoline at</p> <p>2 Collins?</p> <p>3 A. Definitely.</p> <p>4 Q. But as you sit here today, you don't have any</p> <p>5 recollection of ever selling gasoline at 1349 Dade</p> <p>6 Boulevard?</p> <p>7 A. I don't know. No, I don't.</p> <p>8 Q. So I showed you, there are two exhibits in</p> <p>9 front of you, Exhibit 1 and Exhibit 2. You had a chance</p> <p>10 to look at Exhibit 1. I know you looked at at least</p> <p>11 part of it, which is the commission memorandum on the</p> <p>12 fourth page. I know you had that in front of you with</p> <p>13 regard to a conditional use application for a filling</p> <p>14 station at 1349 Dade Boulevard.</p> <p>15 Do you recall applying for a conditional use</p> <p>16 permit to operate a filling station at that location?</p> <p>17 A. I guess I did. I had to, yeah.</p> <p>18 Q. Okay. Well, I don't want you to guess. I just</p> <p>19 want to make sure we're clear on which --</p> <p>20 A. Yes, I had to. I had to. I guess it was the</p> <p>21 format that I had to comply with the city.</p> <p>22 Q. Okay. And I want to make sure you and I are</p> <p>23 talking about the same thing.</p> <p>24 A. Okay.</p> <p>25 Q. I am just talking now about 1349 Dade</p>

<p style="text-align: right;">Page 38</p> <p>1 Boulevard.</p> <p>2 A. Yes, yes.</p> <p>3 Q. Okay. Because that's the one where you said</p> <p>4 you don't have any recollection of ever selling gas</p> <p>5 there.</p> <p>6 A. Right.</p> <p>7 Q. Okay.</p> <p>8 A. I don't remember.</p> <p>9 Q. Okay. If you look at Exhibit 2, you will see</p> <p>10 that it's a -- and, again, you can take your time</p> <p>11 looking at it -- you will see that there is an agenda</p> <p>12 from the City of Miami Beach for the first couple of</p> <p>13 pages, and then there is a transcript behind it of a</p> <p>14 City of Miami Beach Commission meeting.</p> <p>15 MS. RIBERO-AYALA: Where specifically --</p> <p>16 MR. BUCKNER: I will --</p> <p>17 MS. RIBERO-AYALA: -- are we looking?</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. I will point you to the specific places as we</p> <p>20 go. I just wanted you to -- if you want to take a look</p> <p>21 at it first, go ahead, take your time.</p> <p>22 MS. RIBERO-AYALA: Okay. Here, right here.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. If you look at -- yeah, if you look at the</p> <p>25 second -- before you can get to the transcript, if you</p>	<p style="text-align: right;">Page 40</p> <p>1 numbered; for whatever reason, they are not, but there</p> <p>2 is -- on the fourth page -- on the fourth page of the</p> <p>3 actual transcript itself --</p> <p>4 MR. BUCKNER: Susy, if you will go there.</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. -- it says, "Yes, my name is Vincent J. Festa.</p> <p>7 I am the owner of the property on 1349 Dade Boulevard."</p> <p>8 MS. RIBERO-AYALA: All right. Let me give him</p> <p>9 an opportunity to read it.</p> <p>10 MR. BUCKNER: Okay.</p> <p>11 THE WITNESS: Here?</p> <p>12 MS. RIBERO-AYALA: Yeah.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Take your time.</p> <p>15 A. Okay.</p> <p>16 MR. REISS: You are on Exhibit 2?</p> <p>17 MR. BUCKNER: On Exhibit 2.</p> <p>18 MR. REISS: What page?</p> <p>19 MR. BUCKNER: If you go to the part that's</p> <p>20 transcript, Allan, it's the fourth transcript page, but</p> <p>21 it's not numbered.</p> <p>22 MR. REISS: Thank you, sir.</p> <p>23 THE WITNESS: I don't remember this.</p> <p>24 MS. RIBERO-AYALA: If you don't remember, you</p> <p>25 don't remember.</p>
<p style="text-align: right;">Page 39</p> <p>1 look on the second page, you will see -- of the exhibit,</p> <p>2 you will see that there is an agenda item C, 13 -- it's</p> <p>3 a planning board recommendation.</p> <p>4 A. I don't remember.</p> <p>5 Q. Okay.</p> <p>6 A. But did they give me the application? Did I</p> <p>7 serve gas? I don't remember that.</p> <p>8 Q. Well --</p> <p>9 A. I spent a lot of time there, I know that.</p> <p>10 Q. I don't know. I can't answer your question</p> <p>11 because I only know what's in the documents.</p> <p>12 A. Right.</p> <p>13 Q. That's why we are trying to find out what you</p> <p>14 remember. I don't know the answer to some of what you</p> <p>15 are asking me.</p> <p>16 Do you remember appearing -- let me ask you</p> <p>17 this: Over the course of the time you lived on Miami</p> <p>18 Beach, did you appear before the City of Miami Beach</p> <p>19 Commission often?</p> <p>20 A. No.</p> <p>21 Q. Do you recall ever appearing in front of the</p> <p>22 commissioner?</p> <p>23 A. Not that I remember.</p> <p>24 Q. Okay. This transcript here that's on Exhibit</p> <p>25 2, if you would go to -- I am sorry the pages aren't</p>	<p style="text-align: right;">Page 41</p> <p>1 THE WITNESS: I don't remember going to that</p> <p>2 meeting. I really don't.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. So --</p> <p>5 A. Now, are they saying that in 1980 I had, I</p> <p>6 still had Alton Road?</p> <p>7 Q. What I will represent to you, Mr. Festa, is</p> <p>8 this is a transcript that was in the records of the City</p> <p>9 of Miami Beach of a City of Miami Beach meeting. I</p> <p>10 can't speak to what other people say, but, obviously,</p> <p>11 the part where it says, "Festa" purports to be</p> <p>12 statements that you made to the commission.</p> <p>13 A. Oh, wait a minute.</p> <p>14 MR. REISS: Object to the form, document speaks</p> <p>15 for itself.</p> <p>16 Mr. Festa, you do not have to take a lawyer's</p> <p>17 representation for what a document is or isn't. You</p> <p>18 should testify from your own memory.</p> <p>19 MS. RIBERO-AYALA: 1980, but if you don't</p> <p>20 remember, you don't remember.</p> <p>21 THE WITNESS: I don't remember. Honest to God,</p> <p>22 I really don't.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. As you sit --</p> <p>25 A. I want to comply, but I really don't remember.</p>

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<p>1 Q. No, no, no. Listen, Mr. Festa, I don't want 2 you to feel -- 3 A. No, no. 4 Q. -- you are under any obligation. 5 A. No. I know that. 6 Q. I mean, I am just really just trying to find 7 out what you remember. 8 A. I don't. 9 Q. Okay. So as you sit here, you don't remember 10 appearing in front of the City of Miami Beach 11 Commission -- 12 A. I really don't. 13 Q. -- in 1980? 14 A. No, I don't. 15 Q. Do you recall -- let me -- I want to -- here is 16 what I want to try and do. Again, if it doesn't refresh 17 your recollection, so be it. But I want to work through 18 this transcript a little, show you some of the things 19 that you said to the commission and see if that helps 20 you recall any aspects of it -- 21 A. I think that's a good idea. 22 Q. -- if it does, great. If it doesn't, you tell 23 me. 24 So if you go a little further down that page, 25 it says -- there is a statement that purports to be by</p>	<p>1 BY MR. BUCKNER: 2 Q. Okay. So when you -- 3 A. -- but I didn't have anyplace to put it -- to 4 put the cars. I needed that spot too. 5 Q. Okay. 6 A. I also had a place on 5th Street, but it's not 7 in this -- it's not in there. So but -- yeah, Man -- 8 Manchester, they used to do conventions and stuff. 9 Man -- Mancraft, does that sound familiar to you? 10 Q. No, but that doesn't mean anything. 11 A. Okay. I once had a place down on 5th Street -- 12 Q. Okay. 13 A. -- Mancraft. 14 Q. So when it says here, "Well, I had a gas 15 station down at 1150 Collins Avenue which I had to get 16 out after 30 years because I couldn't get a license for 17 towing," do you know what you were referring to there? 18 A. No. 19 MR. REISS: Objection to form, predicate, 20 mischaracterizes the witness' testimony, leading. 21 You can answer. 22 BY MR. BUCKNER: 23 Q. If you'd flip with me to the next page, sir, 24 there's some more back-and-forth here between you and 25 the commission. If you go partway down the page, it</p>
Page 43	Page 45
<p>1 you. It says, "Okay. Well, I had a gas station down at 2 1150 Collins Avenue which I had to get out after 30 3 years because I couldn't get a license for towing. 4 Wrecker license after 30 years of doing wrecker service 5 there for everybody on the Beach, we finally came up 6 with a reason why it couldn't be renewed." 7 Let me ask you a few questions about that. 8 Is the 1150 Collins Avenue the service station 9 on Collins you were telling me about before? 10 MR. REISS: Objection to the form, predicate. 11 THE WITNESS: Ask me that again. 12 BY MR. BUCKNER: 13 Q. Sure. I said is the 1150 Collins Avenue the 14 service station location you told me about before as one 15 of the three service stations -- 16 A. Yes. 17 Q. -- operated by Beach Garage? 18 A. Yes. I sold that property. 19 Q. Okay. And do you recall that the reason you 20 sold it was they weren't going to let you do towing of 21 vehicles to there anymore? 22 MR. REISS: Form, leading, predicate. 23 THE WITNESS: No. I did -- I did towing there 24 until I sold it -- 25 ///</p>	<p>1 says, "They are not" -- again, it purports to be quoting 2 you. It says, "They are not in there. If you'd look at 3 this piece of property is 135 by 200, and the last 30 to 4 40 feet of the 200 is where the cars are stored." 5 MS. RIBERO-AYALA: Where is this? 6 MR. BUCKNER: I'm sorry, it's about six lines 7 down. 8 BY MR. BUCKNER: 9 Q. Do you see it says, "Festa" -- 10 MR. REISS: Objection to form. 11 MS. RIBERO-AYALA: They are not in there? 12 MR. BUCKNER: Yeah, they are not in there. 13 BY MR. BUCKNER: 14 Q. Go ahead, go ahead and read it, and then I will 15 ask you again. 16 A. What's your question? 17 Q. Okay. My question is -- 18 MR. BUCKNER: Allan? 19 MR. REISS: Yeah. 20 MR. BUCKNER: Who is that? 21 MR. ANDRADE: This is Ralph. 22 MR. BUCKNER: Who is that? I'm sorry, I didn't 23 hear you. 24 MR. REISS: Ralph. 25 MR. BUCKNER: Oh, Ralph Andrade. Okay. Sorry.</p>

<p style="text-align: right;">Page 46</p> <p>1 That's fine.</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. So it says, Mr. Festa -- well, it purports that</p> <p>4 you said to the commission, "They are not in there. If</p> <p>5 you'd look at this piece of property is 135 by 200, and</p> <p>6 the last 30 to 40 feet of the 200 is where the cars are</p> <p>7 stored."</p> <p>8 Is it your recollection that at 1349 Dade</p> <p>9 Boulevard, that's how you were storing cars at this time</p> <p>10 in 1980, the last 30 to 40 feet of the property?</p> <p>11 MR. REISS: Objection to the form -- objection</p> <p>12 to form, leading, predicate, mischaracterizes the</p> <p>13 witness' testimony.</p> <p>14 You can answer the question.</p> <p>15 THE WITNESS: What's he saying?</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. You can answer it. You don't have to --</p> <p>18 MS. RIBERO-AYALA: Answer whatever you</p> <p>19 remember, if you remember.</p> <p>20 THE WITNESS: I don't remember this whole</p> <p>21 meeting, to tell you the truth.</p> <p>22 BY MR. BUCKNER:</p> <p>23 Q. Right. Yeah, I understand you don't remember</p> <p>24 the meeting. I am actually trying -- I am actually</p> <p>25 trying to get at the stuff that was said at the meeting.</p>	<p style="text-align: right;">Page 48</p> <p>1 the 200 is where the cars are stored."</p> <p>2 Is it your recollection that in 1980 when this</p> <p>3 purports to have taken place, this hearing, you were</p> <p>4 storing cars at 1349 Dade Boulevard only on the back 30</p> <p>5 to 40 feet of the property?</p> <p>6 A. I don't know.</p> <p>7 MR. REISS: Objection to form, misleading,</p> <p>8 mischaracterizes the witness' testimony, leading,</p> <p>9 predicate.</p> <p>10 You can answer the question.</p> <p>11 THE WITNESS: I had a place -- I had a place on</p> <p>12 8020 North Miami Avenue that we -- we put some cars.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Okay. I want to talk just now about 1349 Dade</p> <p>15 Boulevard.</p> <p>16 A. Right.</p> <p>17 Q. I understand you had other places.</p> <p>18 A. Yes.</p> <p>19 Q. I just want to talk about 1349 Dade. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. So the statement you made to the commission in</p> <p>22 1980 was that you were storing cars in the last 30 to 40</p> <p>23 feet of the 200 feet of the property at 1349 Dade</p> <p>24 Boulevard.</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. At that time -- at that time I was the only --</p> <p>2 I think I was the only one that was towing. Maybe</p> <p>3 Fernandez was doing AAA because I gave up AAA to do the</p> <p>4 towing, and I had spots all over -- I had cars all over</p> <p>5 the place. I used my place, I used -- I didn't have --</p> <p>6 I had a place down on 5th Street. I don't remember when</p> <p>7 it was Mancraft or Mancraft something owned the</p> <p>8 property. There were -- they installed, they went into</p> <p>9 a hotel and did commercial stuff for them, you know.</p> <p>10 But I don't remember. I don't remember -- I</p> <p>11 don't even remember -- I don't even remember going to the</p> <p>12 board, to tell you the truth.</p> <p>13 Q. No. I understand. I am trying to ask you</p> <p>14 something more specific and, again, only if you</p> <p>15 remember, not so much about this meeting but</p> <p>16 specifically where you said here to the board, "If you'd</p> <p>17 look at this piece of property, the 135 by 200" --</p> <p>18 A. We are talking about Collins Avenue.</p> <p>19 Q. No. 1349 Dade Boulevard.</p> <p>20 A. Oh, oh, 13 -- yeah, go ahead.</p> <p>21 Q. Okay. "If you'd look at this piece of property</p> <p>22 is 135 by 200." Is that your recollection about roughly</p> <p>23 the size --</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. It says, "And the last 30 to 40 feet of</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. What I am asking you is is it your recollection</p> <p>2 that as of that time in 1980, you were storing cars at</p> <p>3 1349 Dade Boulevard only on the back 30 to 40 feet of</p> <p>4 the property?</p> <p>5 MR. REISS: Objection to the form, misleading,</p> <p>6 predicate, mischaracterizing the witness' testimony,</p> <p>7 leading.</p> <p>8 You can answer the question.</p> <p>9 MS. RIBERO-AYALA: Go ahead.</p> <p>10 THE WITNESS: What's that?</p> <p>11 MS. RIBERO-AYALA: Go ahead. Go ahead.</p> <p>12 THE WITNESS: If I could remember when I sold</p> <p>13 the property on 1349 -- I mean on Collins Avenue, I</p> <p>14 could tell -- but I don't remember.</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. Okay.</p> <p>17 A. I could figure what I had to do to put the</p> <p>18 cars. I think they took some to Miami, because I had a</p> <p>19 piece of property -- I still had a piece of property up</p> <p>20 there, but I don't remember -- in fact, I don't even</p> <p>21 remember the meeting, to tell you the truth.</p> <p>22 Q. No. I understand, and, like I said, we're</p> <p>23 going to -- you can remember what you can remember. I</p> <p>24 am not asking you to --</p> <p>25 A. I am trying to.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Let me ask you some more general stuff maybe</p> <p>2 first. Let's just talk about 1349 Dade Boulevard for</p> <p>3 the moment.</p> <p>4 A. Okay.</p> <p>5 Q. Who owns that property today?</p> <p>6 A. Me.</p> <p>7 Q. Okay. You own it --</p> <p>8 A. The trust.</p> <p>9 Q. The trust does. So this is the Festa Trust?</p> <p>10 A. Festa Trust.</p> <p>11 Q. The Festa Trust.</p> <p>12 Okay. And that's the other -- that's the Festa</p> <p>13 Trust that's one of the defendants in this case, is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 MR. REISS: Objection; calls for a legal</p> <p>17 conclusion, predicate, form.</p> <p>18 THE WITNESS: I guess it is because that's the</p> <p>19 name of the property, Festa Trust.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. Okay. So the Festa Trust today owns 1349 Dade</p> <p>22 Boulevard, correct?</p> <p>23 A. Yes.</p> <p>24 Q. How long has the Festa Trust owned 1349 Dade</p> <p>25 Boulevard?</p>	<p style="text-align: right;">Page 52</p> <p>1 Vincent J. Festa, I think.</p> <p>2 Q. Okay. And at some point then you transferred</p> <p>3 1349 Dade Boulevard into the Festa Trust?</p> <p>4 A. Yeah, when I retired, yes.</p> <p>5 Q. Okay. So -- and I think you told me you</p> <p>6 retired in 1983?</p> <p>7 A. Yes.</p> <p>8 Q. Right. Okay. So from sometime in the '70s</p> <p>9 until 1983, you owned 1349 Dade Boulevard in your own</p> <p>10 name?</p> <p>11 A. Yes.</p> <p>12 Q. And then in 1983 you transferred 1349 Dade</p> <p>13 Boulevard into the Festa Trust?</p> <p>14 A. All my properties.</p> <p>15 Q. All your properties including 1349 Dade</p> <p>16 Boulevard?</p> <p>17 A. Oh, yeah.</p> <p>18 Q. Okay. And 1349 Dade Boulevard has remained in</p> <p>19 the Festa Trust since 1983 to the present?</p> <p>20 A. With all the other properties, yes.</p> <p>21 Q. Okay. In 19 -- whenever it was in the 1970s --</p> <p>22 well, let me step back. Strike that.</p> <p>23 Did you start Beach Garage, or did you buy that</p> <p>24 company from someone else?</p> <p>25 A. No. I started it.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Maybe 15, 16 years. I don't know the date. I</p> <p>2 could find out.</p> <p>3 Q. That's okay. I don't need to know precisely.</p> <p>4 Before the Festa Trust owned 1349 Dade</p> <p>5 Boulevard, who owned it?</p> <p>6 A. What's that?</p> <p>7 Q. I said before the Festa Trust owned 1349 Dade</p> <p>8 Boulevard, who owned it?</p> <p>9 A. Gulf -- the -- Citgo station was that?</p> <p>10 Q. Well --</p> <p>11 A. I bought it from Citgo.</p> <p>12 Q. You bought it from Citgo. So that was about in</p> <p>13 1975, correct?</p> <p>14 A. Was it '79?</p> <p>15 Q. I think it was '75.</p> <p>16 A. Okay.</p> <p>17 Q. Whatever you remember.</p> <p>18 A. I don't -- I thought it was '79. I don't</p> <p>19 remember.</p> <p>20 Q. Okay. Sometime in the 1970s you bought 1349</p> <p>21 Dade Boulevard?</p> <p>22 A. Right.</p> <p>23 Q. Did you buy it in your own name or in the name</p> <p>24 of the company?</p> <p>25 A. Must have been Vincent J. -- I don't remember.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Okay.</p> <p>2 A. I started, like I told you, I started with the</p> <p>3 one on Collins Avenue, which was the Gulf station, we</p> <p>4 started with the AAA and did towing, and then the police</p> <p>5 department didn't have anybody to tow. So I got the job</p> <p>6 because I was there on the Collins -- on Collins Avenue,</p> <p>7 and we started doing towing for them.</p> <p>8 Q. Okay. So --</p> <p>9 A. And there was no one else. I don't know --</p> <p>10 somebody had to come from out of state. I don't know of</p> <p>11 anybody else that was doing towing there.</p> <p>12 Q. Okay. So one of the -- so -- I don't want to</p> <p>13 cover ground we have already covered because we have</p> <p>14 covered this, but with regard to Beach Garage, so at</p> <p>15 what point did you -- well, let me step back.</p> <p>16 Does Beach Garage at some time become -- at</p> <p>17 some point in time become Beach Towing?</p> <p>18 MR. REISS: Form, predicate.</p> <p>19 THE WITNESS: I don't know if it was when Mark</p> <p>20 Festa came. I don't know if he changed it. I am not</p> <p>21 sure.</p> <p>22 BY MR. BUCKNER:</p> <p>23 Q. Okay.</p> <p>24 A. But I always remember it as Beach Garage.</p> <p>25 Q. Okay. And it was called Beach Garage because</p>

<p style="text-align: right;">Page 54</p> <p>1 it was in the business of being a repair garage, in 2 part, correct?</p> <p>3 MS. RIBERO-AYALA: Object to form. 4 MR. REISS: Form, leading, predicate. 5 THE WITNESS: Ask the question again. 6 BY MR. BUCKNER: 7 Q. I said it was called Beach Garage because it 8 was in the business of repairing cars, correct? 9 A. We did some of that. 10 MR. REISS: Form, leading, predicate. 11 BY MR. BUCKNER: 12 Q. So was the answer to the question yes? 13 A. Yes, we did. 14 Q. And -- 15 A. We did mostly for our own trucks really. 16 Q. Okay. So Beach Garage obviously was in the 17 business of being a tow truck company, correct, in part, 18 is that right? 19 A. Yes. 20 Q. And it was also a garage company, correct? 21 MR. REISS: Objection to form, predicate, 22 misleading, leading. 23 You can answer the question. 24 THE WITNESS: What do I do after that? 25 MS. RIBERO-AYALA: You can answer.</p>	<p style="text-align: right;">Page 56</p> <p>1 did towing, we did repairs mostly for our own trucks 2 too. I don't remember selling gas there, but nothing is 3 impossible. 4 BY MR. BUCKNER: 5 Q. Okay. And I'm not suggesting you did, by the 6 way. I am asking you. But just to be clear, as you sit 7 here today, you don't recall ever selling gasoline at 8 1349 Dade Boulevard, correct? 9 A. No, no. 10 Q. Okay. Do you recall that the tanks were, the 11 underground tanks were removed from 1349 Dade -- 12 A. Yes. 13 Q. -- Boulevard? 14 A. Yeah. I wanted them out of there in case they, 15 you know -- I wanted them out. 16 Q. Right. And is that because you were worried 17 about them leaking? 18 A. Just in case, yeah. 19 Q. Do you recall roughly, and, again, you may not, 20 but do you recall roughly when the underground tanks 21 were removed from the 1349 Dade Boulevard? 22 A. If -- I am guessing but I think -- I don't 23 think I was there. I think I was in California at that 24 time. 25 Q. Okay. We'll go through some more documents,</p>
<p style="text-align: right;">Page 55</p> <p>1 BY MR. BUCKNER: 2 Q. You can answer. He is just making objections 3 for the record. Don't worry -- I mean, I am not telling 4 you to ignore him, but you can basically ignore him. 5 It's just for the record. He's not talking to you; he's 6 talking to me. 7 MS. RIBERO-AYALA: And for the record, I am 8 going to adopt all of Mr. Reiss' objections. 9 THE WITNESS: Okay. 10 BY MR. BUCKNER: 11 Q. So Beach Garage was also a garage company, 12 correct? It was repairing cars? 13 A. Yes -- 14 MR. REISS: Predicate, leading, form -- 15 THE WITNESS: -- it was a garage -- 16 MR. REISS: -- mischaracterizing the witness' 17 testimony. 18 MS. RIBERO-AYALA: Wait. Hang on. 19 MR. REISS: You can answer the question. 20 MS. RIBERO-AYALA: Wait. 21 THE WITNESS: Oh, I'm sorry. 22 BY MR. BUCKNER: 23 Q. Go ahead. 24 MS. RIBERO-AYALA: Okay. Go ahead. 25 THE WITNESS: We did -- we had a garage. We</p>	<p style="text-align: right;">Page 57</p> <p>1 we'll see. 2 So one of the other businesses -- strike that. 3 One of the other uses of the property at 1349 4 Dade Boulevard was a storage lot for cars, correct? 5 A. Yes. 6 MS. RIBERO-AYALA: Object to form. 7 MR. REISS: Form. 8 THE WITNESS: You mean storage? We didn't 9 store cars. We -- what we -- if you use the word 10 loosely, we stored the towed cars there. That's all. 11 BY MR. BUCKNER: 12 Q. Okay. 13 A. We didn't have people come in and store their 14 car there. 15 Q. Got it. 16 A. It was just towed -- cars that we towed. 17 Q. Got it. Okay. And I know I asked this before, 18 and I am not sure I got -- I am not sure you and I got 19 to the same place. I want to make sure I did. 20 As you sit here now, do you know at what point 21 in time the name of the business changes from Beach 22 Garage to Beach Towing? 23 A. No, I don't, but I left for California in 1983, 24 and maybe Mark, my nephew, may have done it. I don't 25 know. I don't remember.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. Let me talk to you a little about that</p> <p>2 transition in 1983 because that may help me a little.</p> <p>3 When you retired -- you said you -- strike that.</p> <p>4 You said you retired in 1983, correct?</p> <p>5 A. I retired to California, but I was still the</p> <p>6 owner of the property.</p> <p>7 Q. Okay. And when you say "the property," 1349</p> <p>8 Dade Boulevard?</p> <p>9 A. Right.</p> <p>10 Q. Okay.</p> <p>11 A. Yes.</p> <p>12 Q. When you retired in 1983, did you still have</p> <p>13 any kind of an ownership stake in Beach Garage or Beach</p> <p>14 Towing?</p> <p>15 A. Well -- well, Beach Garage is Beach Towing.</p> <p>16 Q. Okay. Well, then if I refer to it as Beach</p> <p>17 Towing, we'll know I'm referring to both Beach Garage</p> <p>18 and Beach Towing --</p> <p>19 A. Okay. Fine.</p> <p>20 Q. -- is that okay with you?</p> <p>21 A. Sure.</p> <p>22 Q. Yeah, I don't want to confuse you. That's</p> <p>23 the --</p> <p>24 A. Well, I am confused about the Beach Garage,</p> <p>25 Beach Towing.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I still own it.</p> <p>2 MR. REISS: Form.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. I want to make sure I am clear on this.</p> <p>5 I am not talking about the property at 1349 Dade</p> <p>6 Boulevard; I am talking about the company.</p> <p>7 A. Well --</p> <p>8 MR. REISS: Form, predicate, argumentative,</p> <p>9 misleading, confusing.</p> <p>10 You can answer if you understand the question.</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Okay. 1349 Dade Boulevard we've established</p> <p>13 the Festa Trust still owns that property, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So put aside the property for a second.</p> <p>16 A. Right.</p> <p>17 Q. I just want to talk about the company that you</p> <p>18 knew as Beach Garage. Okay?</p> <p>19 A. Right.</p> <p>20 Q. Okay. Do you still own any part of Beach</p> <p>21 Garage?</p> <p>22 A. Yeah, I am the owner.</p> <p>23 Q. You are still the owner of Beach Garage?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Are there any other owners of Beach Garage?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. Are you more comfortable referring to it</p> <p>2 as Beach Garage?</p> <p>3 A. I don't know what came first, to tell you the</p> <p>4 truth. Was it Beach Garage first or was it Beach</p> <p>5 Towing? I don't remember.</p> <p>6 Q. Okay. How about this: When you operated it,</p> <p>7 do you remember operating it as Beach Garage?</p> <p>8 A. I don't remember.</p> <p>9 Q. Okay. I will make it even easier. I will</p> <p>10 refer to it as Beach Garage, and we will both know that</p> <p>11 we are talking about the three operations that we talked</p> <p>12 about before on Collins, Alton and Dade Boulevard.</p> <p>13 A. Okay.</p> <p>14 Q. We are clear on that?</p> <p>15 A. Yes.</p> <p>16 Q. Perfect. Okay.</p> <p>17 MR. REISS: Objection to the form.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. When you retired in 1983 to California, did you</p> <p>20 retain any ownership interest in Beach Garage?</p> <p>21 A. I was the owner.</p> <p>22 MR. REISS: Form.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. Okay. But when you retired, did you continue</p> <p>25 to own Beach Garage?</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Well, I took partners. What had happened was</p> <p>2 when I was retiring, I -- Mark came to me from New York</p> <p>3 and wanted a job. So I said, of course, I will give you</p> <p>4 a job.</p> <p>5 So when I wanted to retire maybe a year later or</p> <p>6 less, I don't remember, I said okay. Here's what we will</p> <p>7 do. I am the owner of Beach Garage, Beach Towing,</p> <p>8 whatever you want to say, and I will -- Mark, you will</p> <p>9 get 24 percent of the business, Pete Knight, who worked</p> <p>10 for me as a mechanic for many, many years -- I am closing</p> <p>11 my eyes because I can think better -- and I said I want</p> <p>12 to give Pete 24 percent of the business, and I -- we used</p> <p>13 a fellow that was -- I am trying to remember, I can't</p> <p>14 remember his name, but it was -- he used to do a lot of</p> <p>15 towing -- Morejon, his last name was Morejon. I can't</p> <p>16 remember his first name. And he wanted Morejon to -- to</p> <p>17 do the towing with him.</p> <p>18 I said okay. You are going to run it. So you</p> <p>19 do what you want.</p> <p>20 Okay. Three months later, four months later</p> <p>21 they caught him, Morejon, the towing, stealing, and they</p> <p>22 bought him out. They had to pay him 12,000 or 14,000 in</p> <p>23 those days, I don't remember, they had to pay him.</p> <p>24 Pete Knight passed away, and so that left just</p> <p>25 me and Mark.</p>

<p style="text-align: right;">Page 62</p> <p>1 Now, am I taking too long?</p> <p>2 Q. No. You're okay.</p> <p>3 A. Okay. 12 -- 12 -- 24 percent, 24 percent, 24</p> <p>4 percent and I had the difference. They were supposed to</p> <p>5 give me \$15,000 whenever he made some money, there is no</p> <p>6 pressure, whenever you make it, to become a partner. It</p> <p>7 was just cheaper enough to get into a business at 15,000</p> <p>8 as long as you are loyal, which I found out he wasn't.</p> <p>9 And so here we are, we got Morejon was caught</p> <p>10 stealing. They got rid of him, had to pay him off. Pete</p> <p>11 Knight died. And now it was just Mark and me.</p> <p>12 Q. And just so I am clear, Mark is Mark Festa?</p> <p>13 A. Mark Festa.</p> <p>14 Q. Okay. And that -- what is the ownership of</p> <p>15 Beach Towing -- I am sorry, strike that.</p> <p>16 What is the ownership of what you -- the company</p> <p>17 you know as Beach Garage today?</p> <p>18 A. The ownership?</p> <p>19 Q. Yes.</p> <p>20 MR. REISS: Objection to the form,</p> <p>21 mischaracterizes the witness' testimony, misleading,</p> <p>22 predicate.</p> <p>23 You can answer the question.</p> <p>24 THE WITNESS: What do I do?</p> <p>25 MS. RIBERO-AYALA: You can answer.</p>	<p style="text-align: right;">Page 64</p> <p>1 doing over here? Okay. So he says okay. Why don't we</p> <p>2 just take both our names off, but we are still the</p> <p>3 owners. We are still the owners, but we are taking our</p> <p>4 name off the property so we don't, you know, after the</p> <p>5 big lawsuit that he lost because of the -- one of the</p> <p>6 drivers. I said okay. That's a good idea. We will do</p> <p>7 that.</p> <p>8 And that's what -- that's the -- that's the best</p> <p>9 I can think of.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Okay. So Beach Garage becomes Beach Towing.</p> <p>12 Today your understanding is that you and Mark Festa are</p> <p>13 the owners of that company, correct?</p> <p>14 MS. RIBERO-AYALA: Objection; leading.</p> <p>15 MR. REISS: Objection to the form,</p> <p>16 mischaracterizes the witness' testimony, predicate --</p> <p>17 THE WITNESS: I'm still --</p> <p>18 MR. REISS: -- confusing, leading.</p> <p>19 You can answer the question.</p> <p>20 THE WITNESS: I'm still supposed to be -- I'm</p> <p>21 still supposed to be the top owner because it was my</p> <p>22 business. They got in there for nothing, no price, no</p> <p>23 nothing. They didn't buy it. They were supposed to pay</p> <p>24 me. They never paid me. I never got a penny from any</p> <p>25 one of them, but I can see why I didn't get a penny from</p>
<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: Okay. Let me have it again.</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. Sure. I said what is your understanding of the</p> <p>4 ownership of Beach Garage today?</p> <p>5 A. Beach Garage? Okay.</p> <p>6 MR. REISS: Objection to the form, predicate,</p> <p>7 confusing.</p> <p>8 You can answer the question.</p> <p>9 THE WITNESS: I am the property owner.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Right.</p> <p>12 A. Oh, property owner. Okay. You want to keep</p> <p>13 that separate from Beach Garage?</p> <p>14 Q. Right. We have already established that you</p> <p>15 own 1349 Dade Boulevard through the trust. I am just</p> <p>16 talking about the business of --</p> <p>17 A. Okay. All right.</p> <p>18 MR. REISS: Form.</p> <p>19 THE WITNESS: About ten years ago, I am</p> <p>20 guessing, ten years ago one of Mark's workers, drivers,</p> <p>21 got into a fight with somebody that wanted to pick up</p> <p>22 their car, didn't want to pay for the towing and</p> <p>23 threatened to fight the guy. The guy hit him or</p> <p>24 something, and the thing went to a lawsuit. Okay?</p> <p>25 After the lawsuit, I said Mark, what are we</p>	<p style="text-align: right;">Page 65</p> <p>1 Pete Knight because he died, and he was a terrific guy.</p> <p>2 So I don't care. But the guy that stole -- stole from</p> <p>3 them when I wasn't there, I never got anything from him</p> <p>4 either. So -- I never got 15,000 from Mark either, but</p> <p>5 I am not holding it against him.</p> <p>6 So that's how I answer that.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. Okay. I want to go through some more of this</p> <p>9 again to see how much you remember.</p> <p>10 A. Go ahead.</p> <p>11 Q. We have been going, like, an hour. Do you want</p> <p>12 to take a break?</p> <p>13 A. No --</p> <p>14 Q. You're okay?</p> <p>15 A. -- while I am thinking. I get lapse. You</p> <p>16 know, I am 90 years old. So I get lapse once in awhile.</p> <p>17 Q. You are doing fine. You remember more -- I</p> <p>18 can't remember what I did yesterday. You are doing</p> <p>19 better than I.</p> <p>20 Do you recall -- I know you can't recall this</p> <p>21 commission meeting --</p> <p>22 A. No, I really can't.</p> <p>23 Q. -- we are talking about Exhibit 2.</p> <p>24 A. I really can't.</p> <p>25 Q. Do you recall whether there were any conditions</p>



<p style="text-align: right;">Page 66</p> <p>1 that were imposed on Beach Towing with regard to the</p> <p>2 physical facility at 1349 Dade Boulevard?</p> <p>3 A. No.</p> <p>4 MR. REISS: Form.</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. So, for example, if there is a note in here</p> <p>7 that Beach Towing was required to construct a masonry</p> <p>8 wall on the property, do you have any recollection of</p> <p>9 that?</p> <p>10 A. In what year?</p> <p>11 MR. REISS: Form, predicate.</p> <p>12 THE WITNESS: When I was talking to them?</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. 1980, yeah. Does that ring a bell?</p> <p>15 A. No.</p> <p>16 MR. REISS: Form, predicate. Form, predicate.</p> <p>17 THE WITNESS: No, I don't remember that.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. Okay. Do you remember a condition being</p> <p>20 imposed by the city commission that you could only store</p> <p>21 cars on a certain part of the 1349 property?</p> <p>22 A. Definitely not.</p> <p>23 Q. Okay.</p> <p>24 MR. REISS: Form, predicate, leading.</p> <p>25 ///</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes.</p> <p>2 Q. -- do you have any recollection of limiting the</p> <p>3 storage of cars at 1349 Dade Boulevard to just a certain</p> <p>4 part of the property at any point in time?</p> <p>5 A. No, because that was the main business.</p> <p>6 MR. REISS: Form.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. Okay. Do you recall as a result of this</p> <p>9 commission meeting or any other basis a requirement that</p> <p>10 you put a certain amount of landscaping on the property</p> <p>11 at 1349 Dade Boulevard?</p> <p>12 A. Landscaping?</p> <p>13 Q. Yeah.</p> <p>14 MR. REISS: Form, predicate.</p> <p>15 THE WITNESS: No. Is that like a wall, we put</p> <p>16 a wall?</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. Well, I asked you about a wall before. Do you</p> <p>19 remember having to put up a wall?</p> <p>20 MR. REISS: Form.</p> <p>21 THE WITNESS: No, I don't remember that. I</p> <p>22 just remember that we had a light up there that the city</p> <p>23 wanted down, and we took it down, but I don't</p> <p>24 remember -- I don't remember if we had a wall or did</p> <p>25 they have? I don't remember. They don't have a wall or</p>
<p style="text-align: right;">Page 67</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. Doesn't ring a bell?</p> <p>3 A. No, because I was the only one that was doing</p> <p>4 the towing at the time until -- what's the name of the</p> <p>5 towing?</p> <p>6 Q. Tremont.</p> <p>7 A. I keep forgetting.</p> <p>8 Q. That's okay.</p> <p>9 A. What is it?</p> <p>10 Q. Tremont.</p> <p>11 A. Tremont came in and started doing some -- took</p> <p>12 some of the load.</p> <p>13 Like I say, we were towing cars all over the</p> <p>14 place, and there was nobody else.</p> <p>15 Q. Okay. So you don't have any recollection, as</p> <p>16 you sit here today, of reducing the footprint of the</p> <p>17 cars stored on the 1349 Dade Boulevard property?</p> <p>18 A. Write that down.</p> <p>19 Q. Sure.</p> <p>20 MR. REISS: Form, predicate.</p> <p>21 MR. BUCKNER: I am going to restate it.</p> <p>22 MR. REISS: Form, predicate.</p> <p>23 MR. BUCKNER: Allan, I am going to restate it.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. I said as you sit here today --</p>	<p style="text-align: right;">Page 69</p> <p>1 we had, we put up the wall, I don't remember that.</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. Okay.</p> <p>4 A. On Dade Boulevard I am talking about.</p> <p>5 Q. Let me do this: --</p> <p>6 A. Gee, I wish I was younger, I could answer it</p> <p>7 better.</p> <p>8 Q. You're fine, really.</p> <p>9 MS. RIBERO-AYALA: You're doing better than I</p> <p>10 would have done.</p> <p>11 THE WITNESS: Get out of here.</p> <p>12 MS. RIBERO-AYALA: I promise.</p> <p>13 MR. BUCKNER: Allan, I am going to mark as</p> <p>14 Exhibit 3 an aerial photograph of 1349 Dade Boulevard.</p> <p>15 It should be on your -- I mean, you know what it looks</p> <p>16 like but --</p> <p>17 MR. REISS: I have two aerial photos --</p> <p>18 MR. BUCKNER: No, no, no, no, no. I am not</p> <p>19 talking about aerial photos of the whole area. There is</p> <p>20 a close-up just of 1349 Dade Boulevard.</p> <p>21 (Exhibit No. 3 marked.)</p> <p>22 THE WITNESS: This is Dade Boulevard, isn't it?</p> <p>23 MS. RIBERO-AYALA: Well, let's go on what you</p> <p>24 recognize, yeah.</p> <p>25 ///</p>

<p style="text-align: right;">Page 70</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. I don't know either, honestly. I am not</p> <p>3 familiar enough with Miami Beach to tell you that I know</p> <p>4 which street is which.</p> <p>5 A. It has to be Dade Boulevard. This is Bay Road.</p> <p>6 So that was -- yeah. This went into -- yeah.</p> <p>7 Q. Okay. Do you recognize Exhibit 3?</p> <p>8 A. Do I recognize it?</p> <p>9 MR. REISS: Objection to form.</p> <p>10 THE WITNESS: Yeah, I guess I do.</p> <p>11 It's been 30 years since I've been there.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. Oh, so you -- have you not been back to 1349</p> <p>14 Dade Boulevard since you retired?</p> <p>15 A. Once. My son had a motorcycle convention in --</p> <p>16 where was it? It's past Miami. Where is that --</p> <p>17 Daytona Beach.</p> <p>18 Q. Daytona. Okay.</p> <p>19 A. That was about 30 something years ago. That's</p> <p>20 the last time I was there.</p> <p>21 Q. That was the last time you were at 1349 Dade</p> <p>22 Boulevard?</p> <p>23 A. I guess that -- I guess that that's Dade -- if</p> <p>24 I remember, that's Dade Boulevard, and this is the</p> <p>25 street I'm on.</p>	<p style="text-align: right;">Page 72</p> <p>1 drawings. So I would object.</p> <p>2 And I think that you would be well within your</p> <p>3 right, Mr. Festa, if you don't want to not to have to</p> <p>4 make drawings, circle things or write anything. You're</p> <p>5 there to answer questions only.</p> <p>6 BY MR. BUCKNER:</p> <p>7 Q. Would you -- would you take that pen, sir, and</p> <p>8 you just marked where you -- the wall you were talking</p> <p>9 about a moment ago, would you just put your initials</p> <p>10 next to that for me just so we know --</p> <p>11 MR. REISS: Same objection.</p> <p>12 THE WITNESS: Okay. Like I say, I think.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Okay. No. That's all I am asking. You</p> <p>15 think --</p> <p>16 A. Yeah, because we used to have a big -- a Citgo</p> <p>17 sign up here that went real high. So we finally had to</p> <p>18 get rid of that right here.</p> <p>19 Q. And do you recall why you got rid of it?</p> <p>20 A. Well, it was a nuisance because of -- the city</p> <p>21 didn't want it and we didn't have -- what do you call</p> <p>22 it -- to comply with the city, we had to take it -- we</p> <p>23 took it down.</p> <p>24 Q. Okay.</p> <p>25 A. But I think Mark did that, had that done.</p>
<p style="text-align: right;">Page 71</p> <p>1 Do you have a question on it?</p> <p>2 MR. REISS: Objection to -- objection to form.</p> <p>3 There is no question pending. Move to strike.</p> <p>4 BY MR. BUCKNER:</p> <p>5 Q. I gave you this because I wanted to see if this</p> <p>6 helped refresh your recollection about any of the things</p> <p>7 I am asking you about.</p> <p>8 Looking at this, do you recall ever</p> <p>9 constructing any kind of a masonry wall on this property</p> <p>10 anywhere?</p> <p>11 MR. REISS: Objection to form, predicate,</p> <p>12 mischaracterizing the witness' testimony. He just</p> <p>13 testified he hasn't been there in 30 years.</p> <p>14 THE WITNESS: I'm not sure, but I think we are</p> <p>15 the ones that put this wall here.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. Okay. Would you do me a favor? I'm going to</p> <p>18 give you my pen --</p> <p>19 A. It's on Dade -- on Dade Boulevard?</p> <p>20 Q. -- would you mark -- you just indicated with</p> <p>21 your hand. Would you mark what wall you are talking</p> <p>22 about?</p> <p>23 MR. REISS: I object to the witness writing</p> <p>24 anything. I think under the Rules of Civil Procedure,</p> <p>25 this witness is there to answer questions and not make</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. And was it also the case that you took it down</p> <p>2 because you weren't selling gasoline there?</p> <p>3 MR. REISS: Objection to form, leading,</p> <p>4 predicate.</p> <p>5 THE WITNESS: I don't remember selling gas at</p> <p>6 all here. That's what I am saying.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. Okay. That's fine.</p> <p>9 MS. RIBERO-AYALA: And I am objecting to lack</p> <p>10 of predicate on this photo because we don't know when it</p> <p>11 was taken or how it was taken or who took it or the time</p> <p>12 period.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Let me ask you this, Mr. Festa: Looking at</p> <p>15 Exhibit 3, that photo, do you recognize it?</p> <p>16 MR. REISS: Form.</p> <p>17 THE WITNESS: I could -- I could say yes, I</p> <p>18 recognize it, yeah. I recognize the roof.</p> <p>19 BY MR. BUCKNER:</p> <p>20 Q. Okay. And what do you recognize that to be a</p> <p>21 photograph of?</p> <p>22 A. What's that?</p> <p>23 MR. REISS: Form, predicate.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. What do you recognize that to be a photograph</p>

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<p>1 of?</p> <p>2 A. Okay. I --</p> <p>3 MR. REISS: Form, predicate.</p> <p>4 BY MR. BUCKNER:</p> <p>5 Q. I don't mean specifically. I mean just</p> <p>6 generally, what is that a photograph of?</p> <p>7 A. 1349 Dade Boulevard.</p> <p>8 MR. REISS: Form, predicate.</p> <p>9 BY MR. BUCKNER:</p> <p>10 Q. Let me ask you a little, just before we go into</p> <p>11 more of these documents; I don't know how much they will</p> <p>12 help your memory or not. So we will see, but I want to</p> <p>13 ask you some general things.</p> <p>14 Tell me, what did you do to prepare for your</p> <p>15 deposition today?</p> <p>16 A. What's that?</p> <p>17 Q. What did you do to prepare for your deposition?</p> <p>18 A. Nothing.</p> <p>19 Q. Did you meet with your lawyer?</p> <p>20 A. I saw her yesterday. She just said we were</p> <p>21 going to go ahead.</p> <p>22 In fact, I am confused, I will tell you. I</p> <p>23 thought she was coming to do the deposition at my house</p> <p>24 on -- today, and she came yesterday, and it's a good</p> <p>25 thing I had my pants on. I was really shocked, and I</p>	<p>1 picture.</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. So in terms of, like -- if I -- well, strike</p> <p>4 that.</p> <p>5 So if I asked you what you did to gather</p> <p>6 documents related to this lawsuit, have you done</p> <p>7 anything to look for or gather documents related to this</p> <p>8 lawsuit?</p> <p>9 A. No.</p> <p>10 MR. REISS: Form, predicate, hypothetical.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: No, I didn't.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Okay. Have you talked to your -- well, strike</p> <p>15 that.</p> <p>16 Vincent -- strike that.</p> <p>17 Mark Festa is your nephew, correct?</p> <p>18 A. Right.</p> <p>19 Q. Have you talked --</p> <p>20 A. My sister's son.</p> <p>21 Q. Your sister's son.</p> <p>22 Okay. And have you had any conversations with</p> <p>23 Mark Festa about this lawsuit?</p> <p>24 A. No. Only --</p> <p>25 MR. REISS: Form.</p>
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<p>1 said I thought it was tomorrow. No, no. We're going</p> <p>2 to -- the deposition is tomorrow. Well, I am not -- I am</p> <p>3 not too hip on depositions. I thought they are done the</p> <p>4 same day. I'm not sure.</p> <p>5 Q. Okay. Did you review any documents to prepare</p> <p>6 for today?</p> <p>7 A. Did I review? No. We just talked for a</p> <p>8 minute. No, I haven't.</p> <p>9 Q. Okay. Prior to getting ready for your</p> <p>10 deposition, did you gather any documents in response to</p> <p>11 any request for documents in this case?</p> <p>12 A. No, because I -- I was going to say -- I was</p> <p>13 going to tell what I know.</p> <p>14 Q. Right.</p> <p>15 A. And I don't -- you know, what I know I know.</p> <p>16 What I don't --</p> <p>17 Q. Sure. Do you have any documents related to</p> <p>18 1349 Dade Boulevard or Beach Towing in your possession?</p> <p>19 MR. REISS: Form, predicate.</p> <p>20 THE WITNESS: No. What kind of documents?</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. Any kinds of documents.</p> <p>23 A. No. I don't even --</p> <p>24 MR. REISS: Form.</p> <p>25 THE WITNESS: -- I don't even have that</p>	<p>1 THE WITNESS: -- only that he is being sued and</p> <p>2 we are being sued. And I said how am I involved?</p> <p>3 And --</p> <p>4 BY MR. BUCKNER:</p> <p>5 Q. And what did he say?</p> <p>6 A. He said well, because you are the owner.</p> <p>7 Q. Okay. And do you understand what this lawsuit</p> <p>8 is about?</p> <p>9 A. Not -- not 100 percent. I didn't ask</p> <p>10 questions.</p> <p>11 Q. What is your understanding about what this</p> <p>12 lawsuit is about?</p> <p>13 A. Well, I found out either yesterday or today</p> <p>14 something about -- and I thought that they -- see how</p> <p>15 far I'm out of it. I thought they had the building up</p> <p>16 already, and she told me no. It's still flat where</p> <p>17 there is -- I thought they had built the building and</p> <p>18 then they were going to need some space for the -- for</p> <p>19 their parking, and well, she refreshed my memory. She</p> <p>20 said no, no. There is -- they didn't build anything.</p> <p>21 So I said what is the lawsuit for?</p> <p>22 MS. RIBERO-AYALA: Right. Okay.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. And I don't want you to go into -- I should</p> <p>25 have said this; it's my fault. I don't want you to tell</p>

<p style="text-align: right;">Page 78</p> <p>1 me what you and Ms. Ayala -- Ribero-Ayala talked about.</p> <p>2 Other people, fine but --</p> <p>3 A. Okay. Because this is my first deposition.</p> <p>4 Q. -- conversations with her -- no, no. It's not</p> <p>5 your fault. It's my fault. It's not your fault.</p> <p>6 Let me ask --</p> <p>7 A. I excuse you.</p> <p>8 Q. I appreciate that.</p> <p>9 You were talking about those lots being flat.</p> <p>10 Let me ask you --</p> <p>11 A. What, the lots --</p> <p>12 Q. The lots being flat, so there is nothing built</p> <p>13 on them. We are talking about the lot that's across the</p> <p>14 street on Purdy Avenue and Bay Road. Those are the lots</p> <p>15 you are referring to?</p> <p>16 A. Oh, where they -- where the company bought</p> <p>17 for -- to put their building up?</p> <p>18 Q. Yes.</p> <p>19 A. Yeah. What about it?</p> <p>20 Q. Yeah. Well, you said they were still flat.</p> <p>21 Those are the properties --</p> <p>22 A. Well, no. I thought they -- I thought they put</p> <p>23 the building up already.</p> <p>24 Q. Right. Okay.</p> <p>25 A. I never got involved in that stuff, but go</p>	<p style="text-align: right;">Page 80</p> <p>1 there.</p> <p>2 Q. Are you thinking of Giant Motors?</p> <p>3 A. Giant Motors.</p> <p>4 Q. Yeah, that's a different piece of property.</p> <p>5 That's --</p> <p>6 A. Yeah, but wasn't it adjacent to it?</p> <p>7 Q. It is, you are right.</p> <p>8 A. That's it. I rented that for many years.</p> <p>9 Q. Okay.</p> <p>10 A. And leased it.</p> <p>11 Q. Okay. So who did you lease that property from,</p> <p>12 do you recall?</p> <p>13 A. The owner. I don't remember the name.</p> <p>14 Q. Okay. And you leased it from him to park cars</p> <p>15 that you had towed there?</p> <p>16 A. Yeah, because I had an overabundance of cars.</p> <p>17 Q. Okay. So there wasn't enough room at 1349 Dade</p> <p>18 Boulevard, you parked it on --</p> <p>19 A. Right across the street --</p> <p>20 Q. -- the other lot?</p> <p>21 A. -- and then I also had the property on</p> <p>22 79th -- 8020 North Miami Avenue.</p> <p>23 Q. Okay. But just talking about those pieces of</p> <p>24 property there, Giant Motors --</p> <p>25 A. That's okay. I am not going to take it.</p>
<p style="text-align: right;">Page 79</p> <p>1 ahead. So I don't know. I didn't know.</p> <p>2 Q. Okay. Let me ask you then, let me be even more</p> <p>3 specific perhaps.</p> <p>4 Did you ever -- the properties that we are here</p> <p>5 on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay</p> <p>6 Road.</p> <p>7 A. Okay.</p> <p>8 Q. Are you familiar generally with that property?</p> <p>9 A. Yeah, it used to be a -- what kind of a shop</p> <p>10 where they fix broken fenders and stuff like that.</p> <p>11 Q. Okay.</p> <p>12 A. What do you call that?</p> <p>13 Q. Body shop.</p> <p>14 A. Body shop.</p> <p>15 Q. Right. Okay. So did you ever own any of those</p> <p>16 properties?</p> <p>17 A. No, but I leased them. I leased one. I had so</p> <p>18 many cars that were parked there, I parked the cars in</p> <p>19 the piece of property that Mark sold to them.</p> <p>20 Q. Okay. And when you say "them," you are talking</p> <p>21 about the three parcels we just talked about that Mark</p> <p>22 sold some years ago, correct?</p> <p>23 A. Well, I don't know how many -- how many parcels</p> <p>24 they were, but whatever it was that he sold -- was it</p> <p>25 three parcels? No, because the -- the body shop was</p>	<p style="text-align: right;">Page 81</p> <p>1 (Discussion off the record.)</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. I want to talk about those parcels for a</p> <p>4 second, the ones across the street there where you used</p> <p>5 to store cars when you had too many --</p> <p>6 A. When I was there, it was an empty lot that I</p> <p>7 leased --</p> <p>8 Q. Okay.</p> <p>9 A. -- many years.</p> <p>10 Q. Got it. Do you know how --</p> <p>11 A. I am turning this off.</p> <p>12 Q. That's okay.</p> <p>13 So as you sit -- strike that.</p> <p>14 So you never owned any of those properties</p> <p>15 across the street --</p> <p>16 A. Leased it.</p> <p>17 Q. Leased it but not owned?</p> <p>18 A. Many, many years.</p> <p>19 Q. Okay. Do you know how Mark Festa acquired the</p> <p>20 property over there that he acquired?</p> <p>21 A. How did he acquire it?</p> <p>22 Q. Yeah. Do you know who he bought it from?</p> <p>23 A. Didn't acquire it. I had an option.</p> <p>24 (Discussion off the record.)</p> <p>25 THE WITNESS: I am sorry.</p>

<p style="text-align: right;">Page 82</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. No, no, no. Don't worry.</p> <p>3 So I want to talk about those properties across</p> <p>4 the street. I asked you a moment ago if you knew how</p> <p>5 Mark Festa acquired them, and you were about to tell me.</p> <p>6 A. Yeah, I had -- I was leasing it as an option.</p> <p>7 I mean, I was leasing them for many years because I had</p> <p>8 my storage and I was paying -- I was paying the owners.</p> <p>9 Q. Okay. And then -- so you were leasing those</p> <p>10 properties there on Purdy and Bay to store cars --</p> <p>11 A. Yeah.</p> <p>12 Q. -- when you had too many at 1349 --</p> <p>13 A. Right.</p> <p>14 Q. -- correct?</p> <p>15 A. And also 8020.</p> <p>16 Q. And 8020 was another storage place you had for</p> <p>17 cars?</p> <p>18 A. Yeah.</p> <p>19 MR. REISS: Form, leading.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. Okay. But just referring to the ones on Purdy</p> <p>22 and Bay Road there where you were storing cars, how did</p> <p>23 Mark Festa, if you know, come to own some of those</p> <p>24 pieces of property?</p> <p>25 MR. REISS: Form, calls for a legal conclusion.</p>	<p style="text-align: right;">Page 84</p> <p>1 THE WITNESS: Because I didn't know it was</p> <p>2 being -- they wanted to get rid of it at that time.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. Do you know if Mark Festa exercised that</p> <p>5 option to purchase the property?</p> <p>6 MR. REISS: Objection to form, leading, calls</p> <p>7 for a legal conclusion, predicate.</p> <p>8 THE WITNESS: Ask me again.</p> <p>9 BY MR. BUCKNER:</p> <p>10 Q. Sure. I said do you know if Mark Festa is the</p> <p>11 one that exercised the option to purchase --</p> <p>12 A. He must have because he ended up with it.</p> <p>13 Q. But you weren't involved in any way in</p> <p>14 purchasing any of those properties, is that correct?</p> <p>15 A. No. I just had an option.</p> <p>16 Q. Okay. Did you lend Mark Festa the money to buy</p> <p>17 the properties?</p> <p>18 A. No.</p> <p>19 MR. REISS: Form, predicate.</p> <p>20 THE WITNESS: I didn't know about it.</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. You didn't know about it. Okay.</p> <p>23 I want to go back because we were talking about</p> <p>24 Beach Garage and the three locations Beach Garage was</p> <p>25 operating on Miami Beach.</p>
<p style="text-align: right;">Page 83</p> <p>1 You can answer.</p> <p>2 THE WITNESS: Should I pay attention to that?</p> <p>3 MS. RIBERO-AYALA: I mean, if you know, you can</p> <p>4 answer.</p> <p>5 THE WITNESS: I can't hear him.</p> <p>6 BY MR. BUCKNER:</p> <p>7 Q. You don't need to.</p> <p>8 A. Yeah. How did he -- well, apparently he talked</p> <p>9 him into selling it to him.</p> <p>10 Q. Okay. Were you in any way involved in that</p> <p>11 transaction?</p> <p>12 A. I was supposed to be, but I don't think I was.</p> <p>13 Q. Okay. When you say you were supposed to be but</p> <p>14 you don't think you were, tell me what you mean.</p> <p>15 A. Well, I had the option on it.</p> <p>16 Q. You had an option to purchase those properties,</p> <p>17 is that right?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. And --</p> <p>20 MR. REISS: Form, leading.</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. And did you try to exercise that option?</p> <p>23 A. No.</p> <p>24 Q. Did -- was Mark --</p> <p>25 MR. REISS: Leading.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Right.</p> <p>2 Q. Okay. I want to start with the Alton Road</p> <p>3 location. That was the one you were -- you didn't own</p> <p>4 but you were operating the filling station.</p> <p>5 A. Right.</p> <p>6 MR. REISS: Objection to form, leading.</p> <p>7 THE WITNESS: A lot of companies lease out just</p> <p>8 to -- if you buy their parts, you don't have to buy the</p> <p>9 property. You buy their parts, use their gas and that's</p> <p>10 it. So we bought a lot of parts from them because we</p> <p>11 had AAA too, and so we didn't buy that. We couldn't buy</p> <p>12 it.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. When you say you bought parts, you mean like</p> <p>15 parts for installing on vehicles?</p> <p>16 A. Yeah.</p> <p>17 Q. Like for repairing vehicles?</p> <p>18 A. Yes.</p> <p>19 Q. I got you.</p> <p>20 A. Gulf -- it was a Gulf station.</p> <p>21 Q. Okay.</p> <p>22 A. They sold parts and gasoline.</p> <p>23 Q. Okay. And you did vehicle repair there too?</p> <p>24 A. There, yes.</p> <p>25 MR. REISS: Form, predicate.</p>

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<p>1 BY MR. BUCKNER:</p> <p>2 Q. Do you remember when you stopped operating at</p> <p>3 the Alton location?</p> <p>4 A. No, I don't, really.</p> <p>5 Q. Okay. Did Mark Festa ever have any role at the</p> <p>6 Alton location?</p> <p>7 A. No.</p> <p>8 Q. And -- okay. And then the Collins location you</p> <p>9 did own, correct?</p> <p>10 A. I did own that.</p> <p>11 Q. Right.</p> <p>12 MR. REISS: Form, predicate --</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. And you owned it --</p> <p>15 MR. REISS: -- leading.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. And you owned it through Beach Garage, correct?</p> <p>18 A. And I owned Beach Garage.</p> <p>19 MR. REISS: Form, predicate, leading.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. That location on Collins, did Beach Garage own</p> <p>22 the property, or did you own the property independently</p> <p>23 and Beach Garage just operated it?</p> <p>24 A. Mark wasn't even involved.</p> <p>25 MR. REISS: Form, predicate.</p>	<p>1 Q. That's okay. So with the Collins Avenue</p> <p>2 location, I understand that you owned that location?</p> <p>3 A. I owned it, yes.</p> <p>4 Q. And there also we talked before about the</p> <p>5 filling station that you had there, right?</p> <p>6 A. Right.</p> <p>7 Q. And you were also doing vehicle repair there,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall when you stopped operating the</p> <p>11 Collins Avenue location?</p> <p>12 A. I sold the property, I don't remember when, I</p> <p>13 sold the property, and they put condos up.</p> <p>14 Q. Okay. But you don't remember what year?</p> <p>15 A. No.</p> <p>16 Q. And what, if any, involvement did Mark Festa</p> <p>17 have with that?</p> <p>18 A. Nothing. He wasn't -- he was still in New York</p> <p>19 working for my brother.</p> <p>20 Q. Okay. So at some point in time, you were no</p> <p>21 longer operating -- strike that.</p> <p>22 At some point in time, Beach Garage was no</p> <p>23 longer operating at Alton or at Collins but it still had</p> <p>24 1349 Dade Boulevard?</p> <p>25 A. Correct, plus 8020 --</p>
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<p>1 THE WITNESS: He was working for my brother in</p> <p>2 New York.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Right. I am not -- I am not actually asking</p> <p>5 about Mark Festa right now; I am just asking about you.</p> <p>6 A. Oh, okay. And what was the question?</p> <p>7 Q. At the Collins Avenue location --</p> <p>8 A. Yes. Okay. What is it?</p> <p>9 Q. -- that was also part of Beach Garage, correct?</p> <p>10 A. Right.</p> <p>11 Q. Okay.</p> <p>12 MR. REISS: Leading, form, predicate.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Did Beach Garage own the real estate that that</p> <p>15 that was on, or did you own the real estate</p> <p>16 independently of Beach Garage?</p> <p>17 MR. REISS: Form --</p> <p>18 THE WITNESS: I was Beach Garage --</p> <p>19 MR. REISS: -- predicate.</p> <p>20 THE WITNESS: -- or Beach Towing. Okay? I</p> <p>21 owned -- I didn't own Collins Avenue. I owned Collins</p> <p>22 Avenue, and I owned Beach Garage which was on --</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. Right. Okay.</p> <p>25 A. So what's your question? I am sorry.</p>	<p>1 MR. REISS: Form, leading, predicate.</p> <p>2 THE WITNESS: Plus 8020 North Miami Avenue.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. And -- okay. Are you still okay?</p> <p>5 A. Sure.</p> <p>6 Q. You want to keep going?</p> <p>7 A. Yeah, go ahead.</p> <p>8 Q. Okay. I am going to be able to -- these piles</p> <p>9 look daunting, but I am not going to go through most of</p> <p>10 this.</p> <p>11 A. What's this?</p> <p>12 Q. They look daunting, these piles of paper, but</p> <p>13 we have covered some of it already. So I am not going</p> <p>14 to go through all of them.</p> <p>15 A. Okay.</p> <p>16 (Exhibit No. 4 marked.)</p> <p>17 MR. BUCKNER: I am handing the witness the</p> <p>18 notice of his videotaped deposition, Allan.</p> <p>19 MR. REISS: Yes.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. You don't have to study it. I'm only going to</p> <p>22 ask you do you understand you are here today pursuant to</p> <p>23 this notice of your deposition?</p> <p>24 A. Okay.</p> <p>25 Q. Is that a yes?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. If we -- Mr. Festa, if we needed you to come to</p> <p>3 Miami for the trial in this case to testify, is that</p> <p>4 something you'd be able to do, or are you still able to</p> <p>5 travel?</p> <p>6 A. If I -- if I -- if my health takes care -- as</p> <p>7 good as it is today; I have been having a rough time. I</p> <p>8 have prostate cancer and stuff like that --</p> <p>9 Q. I am sorry.</p> <p>10 A. -- but I will try to make it.</p> <p>11 Q. Okay.</p> <p>12 A. I don't get to go first class, do I?</p> <p>13 MS. RIBERO-AYALA: You should.</p> <p>14 BY MR. BUCKNER:</p> <p>15 Q. You should. Why wouldn't you? Susy will tell</p> <p>16 you all about it.</p> <p>17 A. I don't do that stuff.</p> <p>18 Did we do all that?</p> <p>19 Q. We did. I told you, it's not as bad as it</p> <p>20 looks. It looks worse than it is.</p> <p>21 (Exhibit No. 5 marked.)</p> <p>22 BY MR. BUCKNER:</p> <p>23 Q. I am going to hand you, sir, Exhibit 5.</p> <p>24 A. Do you want these back?</p> <p>25 Q. No, no. You hang onto those. We are going to</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. BUCKNER: No. That was a different sale</p> <p>2 you're talking about, Susy. That was the sale to Mark.</p> <p>3 This is the sale from Mark.</p> <p>4 MS. RIBERO-AYALA: Okay.</p> <p>5 MR. BUCKNER: If he does, he does. If he</p> <p>6 doesn't, he doesn't.</p> <p>7 MS. RIBERO-AYALA: Right.</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. I'm going to -- again, what you know -- you</p> <p>10 know, only what you know, sir. It's okay if you don't</p> <p>11 recall or don't know.</p> <p>12 Have you ever seen this warranty deed before?</p> <p>13 A. Is this a warranty deed? No, I don't -- what</p> <p>14 is it? Lots -- is this the property that he bought?</p> <p>15 Q. This is the property that Mark sold in 2003</p> <p>16 that we were talking about before.</p> <p>17 A. Okay.</p> <p>18 Q. Okay.</p> <p>19 A. I know nothing about it.</p> <p>20 Q. Okay. And that's all I am trying to get to the</p> <p>21 bottom of, sir.</p> <p>22 A. I know nothing about it. I didn't know he</p> <p>23 bought anything. All I know is, like I said, I had the</p> <p>24 first option on it.</p> <p>25 Q. Okay. Did Mark Festa ever talk to you about</p>
<p style="text-align: right;">Page 91</p> <p>1 eventually give them to the court reporter. They are</p> <p>2 sort of like bar mitzvah gifts. You know, at the end of</p> <p>3 the bar mitzvah, they give you stuff. It's kind of like</p> <p>4 that. Yeah, not really.</p> <p>5 Exhibit 5 is a --</p> <p>6 MS. RIBERO-AYALA: I thought those gifts were</p> <p>7 better.</p> <p>8 MR. BUCKNER: They usually are. I hope so</p> <p>9 anyway. A good bar mitzvah they would be.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. I am handing you Exhibit 5, sir.</p> <p>12 MR. BUCKNER: Allan, Exhibit 5 is the warranty</p> <p>13 deed.</p> <p>14 MR. REISS: Okay.</p> <p>15 THE WITNESS: Are these the same?</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. They are. One of them is the exhibit, and one</p> <p>18 is just Susy's copy.</p> <p>19 A. Okay.</p> <p>20 Q. She gets a copy too. Like I said, it's like a</p> <p>21 bar mitzvah.</p> <p>22 MS. RIBERO-AYALA: And I'm going to object to</p> <p>23 him being asked questions about this. He's already</p> <p>24 testified that he didn't know anything about this sale.</p> <p>25 THE WITNESS: Is this the sale?</p>	<p style="text-align: right;">Page 93</p> <p>1 selling this property when he sold it?</p> <p>2 A. No. I didn't know he had it.</p> <p>3 Q. Okay.</p> <p>4 A. I thought we were still -- I thought we were</p> <p>5 still putting our cars there.</p> <p>6 Q. Okay. And when you say "our cars," you mean</p> <p>7 Beach Towing's cars?</p> <p>8 A. Beach Towing, yeah.</p> <p>9 Q. Okay. In the middle of this page there is a</p> <p>10 restrictive covenant that says, "This property is being</p> <p>11 conveyed by the grantor to the grantee subject to the</p> <p>12 grantee agreeing that the property will not be used as a</p> <p>13 parking lot, storage yard facility or for a garage or</p> <p>14 tow truck company. This covenant shall run with the</p> <p>15 land."</p> <p>16 Did Mark Festa ever tell you why he included</p> <p>17 that in this deed?</p> <p>18 A. I didn't know anything about the -- the sale.</p> <p>19 Q. Okay.</p> <p>20 A. I didn't know anything about the sale until I</p> <p>21 think somebody at the -- what was the -- the shop next</p> <p>22 door told me that Mark had bought it. I said what? How</p> <p>23 could he buy it? I had the -- okay. Go ahead.</p> <p>24 Q. You are talking about somebody at Giant Motors?</p> <p>25 A. Giant Motors, yeah.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. That was back when Mark bought it?</p> <p>2 A. Yeah, I know.</p> <p>3 Q. Okay. But in terms of when he sold it, do you</p> <p>4 know anything about --</p> <p>5 A. I didn't know -- I didn't know he bought it, I</p> <p>6 didn't know he sold it.</p> <p>7 Q. Got it.</p> <p>8 (Exhibit No. 6 marked.)</p> <p>9 MR. BUCKNER: Exhibit 6, Allan, is Mr. Festa</p> <p>10 and the Festa Trust Answer and Affirmative Defenses.</p> <p>11 MR. REISS: Thank you.</p> <p>12 MR. BUCKNER: Uh-huh.</p> <p>13 THE WITNESS: What is this?</p> <p>14 BY MR. BUCKNER:</p> <p>15 Q. I am going to ask you. Do you recognize</p> <p>16 Exhibit 6?</p> <p>17 THE WITNESS: What is this?</p> <p>18 (Discussion off the record.)</p> <p>19 THE WITNESS: I don't know what it is.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. You don't recognize Exhibit 6, Mr. Festa?</p> <p>22 A. No.</p> <p>23 Q. Okay. So Exhibit 6 is entitled, "Defendant</p> <p>24 Vincent J. Festa and the Festa Trust's Answer and</p> <p>25 Affirmative Defenses to Second Amended Complaint."</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Do you see there at the bottom of the page it</p> <p>2 starts, "Affirmative Defenses"?</p> <p>3 A. Right.</p> <p>4 Q. Okay. And that goes on for -- until page 13.</p> <p>5 I am just going to ask you a very general question about</p> <p>6 these.</p> <p>7 Other than what's written here as your</p> <p>8 affirmative defenses in this case, do you have any</p> <p>9 information beyond what's on this document?</p> <p>10 A. I know nothing about it.</p> <p>11 MR. REISS: Form, calls for a legal conclusion,</p> <p>12 predicate.</p> <p>13 You can answer.</p> <p>14 (Discussion off the record.)</p> <p>15 MS. RIBERO-AYALA: I think we are about ready</p> <p>16 for a restroom break.</p> <p>17 MR. BUCKNER: No, no. Absolutely. No. I kept</p> <p>18 going because he wanted to keep going.</p> <p>19 Let's take a break.</p> <p>20 THE WITNESS: I know. I just wanted to go to</p> <p>21 the little boys room.</p> <p>22 THE VIDEOGRAPHER: We are off the record at</p> <p>23 11:45 a.m.</p> <p>24 (Recess.)</p> <p>25 THE VIDEOGRAPHER: We are back on the record at</p>
<p style="text-align: right;">Page 95</p> <p>1 Mr. Festa, do you recall ever reviewing this</p> <p>2 document prior to today?</p> <p>3 A. Repeat that.</p> <p>4 Q. Certainly. Do you recall ever reviewing</p> <p>5 Exhibit 6 prior to today?</p> <p>6 A. No.</p> <p>7 Q. Do you recall ever seeing Exhibit 6 prior to</p> <p>8 today?</p> <p>9 A. This is what, the sale of the property?</p> <p>10 Q. No. This is your answer to the complaint in</p> <p>11 this case.</p> <p>12 A. I don't remember it.</p> <p>13 Q. Okay. You don't recall seeing this document</p> <p>14 before today?</p> <p>15 MR. REISS: Asked and answered, leading.</p> <p>16 THE WITNESS: These are all denied, right?</p> <p>17 MS. RIBERO-AYALA: Yeah, that's what we did.</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. BUCKNER:</p> <p>20 Q. Let me ask you more specifically. If you go</p> <p>21 back to page 5, Mr. Festa, there is a section entitled,</p> <p>22 "Affirmative Defenses."</p> <p>23 A. Exhibit 6?</p> <p>24 Q. Still on Exhibit 6, page 5.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 97</p> <p>1 12:08 p.m.</p> <p>2 BY MR. BUCKNER:</p> <p>3 Q. All right. Mr. Festa, we are back on the</p> <p>4 record, and you understand you are still under oath,</p> <p>5 correct?</p> <p>6 A. Thank you.</p> <p>7 Q. Great. We were talking before about Beach</p> <p>8 Towing today, and I asked you some questions about who</p> <p>9 owned it and those kinds of things.</p> <p>10 Do you ever talk to Mark Festa about the</p> <p>11 operation of Beach Towing?</p> <p>12 A. No, not really.</p> <p>13 Q. Do you recall the last time you did speak to</p> <p>14 him about it?</p> <p>15 A. What's that?</p> <p>16 Q. Do you recall the last time you did speak to</p> <p>17 Mark Festa about the operation of Beach Towing?</p> <p>18 A. Well, probably maybe 10, 12, 15 years ago I</p> <p>19 told him what's going on with that lawsuit, you know.</p> <p>20 That's why we took our names off, but we still are</p> <p>21 supposed to be in the same but took it off so they don't</p> <p>22 come to us with a lawsuit. And I said what's going on?</p> <p>23 Well, it's stupid, driver did a stupid thing. I said</p> <p>24 yeah, but oh, my God. So that's about it.</p> <p>25 Q. Other than that conversation, do you recall any</p>



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<p>1 other conversations you have had with Mark Festa about</p> <p>2 Beach Towing in the last ten years?</p> <p>3 A. Well, I don't -- I don't get to talk to him too</p> <p>4 often really.</p> <p>5 Q. Okay. As part of your ownership of Beach</p> <p>6 Towing, do you get an annual distribution or dividend or</p> <p>7 profits of any kind?</p> <p>8 MR. REISS: Form, predicate --</p> <p>9 THE WITNESS: Rentals.</p> <p>10 MR. REISS: -- mischaracterizes the witness'</p> <p>11 testimony.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. Is that -- are you talking about rental payment</p> <p>14 for the 1349 property?</p> <p>15 A. Yeah, you know, the monthly rent. They pay the</p> <p>16 rent.</p> <p>17 Q. I got it. Okay. Other than whatever amount of</p> <p>18 money you get from Beach Towing for the rental of 1349</p> <p>19 Dade Boulevard, do you receive any other profits or</p> <p>20 dividends from Beach Towing?</p> <p>21 MR. REISS: Form, predicate, mischaracterizes</p> <p>22 the witness' testimony.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. No?</p>	<p>1 A. No.</p> <p>2 Q. Any knowledge about it?</p> <p>3 A. No.</p> <p>4 Q. A company called Goofe, G-o-o-f-e, Partners,</p> <p>5 Incorporated, do you know what that is?</p> <p>6 A. No.</p> <p>7 Q. Do you have any involvement with it?</p> <p>8 A. No.</p> <p>9 Q. Do you know anything about it?</p> <p>10 A. No.</p> <p>11 Q. Miami Avenue Properties, Incorporated, do you</p> <p>12 know what that is?</p> <p>13 A. Miami Avenue?</p> <p>14 Q. Miami Avenue Properties, Incorporated.</p> <p>15 A. Is that -- is that an empty -- a lot? Is that</p> <p>16 a lot?</p> <p>17 Q. Honestly, I don't know.</p> <p>18 A. Okay. That's the only thing I would -- if it</p> <p>19 was Northwest 7th Avenue, somewhere in that area, that's</p> <p>20 the only thing I would know about it.</p> <p>21 Q. Okay. But other than that, do you know</p> <p>22 anything else about Miami Avenue Properties,</p> <p>23 Incorporated?</p> <p>24 A. No.</p> <p>25 Q. Do you have any involvement with it?</p>
Page 99	Page 101
<p>1 A. No.</p> <p>2 Q. Okay. Is it your understanding that at</p> <p>3 present, you and Mark Festa are the only two owners of</p> <p>4 Beach Towing?</p> <p>5 MR. REISS: Form, predicate, calls for a legal</p> <p>6 conclusion.</p> <p>7 THE WITNESS: Yeah. There is nobody else</p> <p>8 involved.</p> <p>9 BY MR. BUCKNER:</p> <p>10 Q. Okay. And when we are talking about Beach</p> <p>11 Towing, the Beach Towing we have been talking about</p> <p>12 today, that's Beach Towing Services, Incorporated, is</p> <p>13 that correct?</p> <p>14 A. Right.</p> <p>15 MR. REISS: Form, leading.</p> <p>16 THE WITNESS: But he has -- he has some other</p> <p>17 businesses that I am not involved with.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. Okay. Well, let me ask you about those, and I</p> <p>20 am just going to go through them. I think I probably</p> <p>21 know the answer, but let me just see.</p> <p>22 Are you aware of a company called Consolidated</p> <p>23 Storage Yards, Incorporated?</p> <p>24 A. No.</p> <p>25 Q. Any involvement with that company?</p>	<p>1 A. Nothing.</p> <p>2 Q. 1718 Bay Road Corporation, do you know anything</p> <p>3 about that?</p> <p>4 A. No.</p> <p>5 Q. Do you have any involvement with it?</p> <p>6 A. Uh-ugh.</p> <p>7 Q. Do you know any facts about it?</p> <p>8 A. No.</p> <p>9 Q. Okay. That was a no?</p> <p>10 A. I am sorry, no.</p> <p>11 Q. Okay. A company called Festa Transport and</p> <p>12 Storage, Incorporated --</p> <p>13 A. No.</p> <p>14 Q. -- do you know what that is? No?</p> <p>15 A. No.</p> <p>16 Q. Do you have any involvement with it?</p> <p>17 A. No.</p> <p>18 Q. Do you know any facts about it?</p> <p>19 A. No.</p> <p>20 Q. Okay. I know this is repetitive.</p> <p>21 A. It's okay. Hey.</p> <p>22 Q. A company called Corona Storage, LLC, do you</p> <p>23 know anything about it?</p> <p>24 A. No.</p> <p>25 Q. No? Any involvement with it?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. No.</p> <p>2 Q. Do you know any kind of facts about it?</p> <p>3 A. No.</p> <p>4 Q. Do you know anything about -- we were talking</p> <p>5 earlier today about the properties across from Beach</p> <p>6 Towing on Bay Road and on Purdy where you used to store</p> <p>7 cars when you had too many to fit at 1349 Dade</p> <p>8 Boulevard. Do you recall that?</p> <p>9 A. Say that again.</p> <p>10 Q. Sure. You were talking earlier about there</p> <p>11 were some properties on Purdy and on Bay Road there --</p> <p>12 A. When I was leasing?</p> <p>13 Q. The ones you were leasing, right.</p> <p>14 A. Yeah. What about it?</p> <p>15 Q. Okay. Do you know anything about how those</p> <p>16 properties are being used today?</p> <p>17 A. No.</p> <p>18 Q. Do you know anything about any illegal uses on</p> <p>19 those properties today?</p> <p>20 A. I don't know anything --</p> <p>21 MS. RIBERO-AYALA: Can we be more specific</p> <p>22 about the address?</p> <p>23 THE WITNESS: Yeah, I don't know anything about</p> <p>24 it.</p> <p>25 ///</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. Sure.</p> <p>3 A. -- you want to reword that?</p> <p>4 Q. I'm happy to.</p> <p>5 1759 Purdy Avenue, 1747 Purdy Avenue and 1738</p> <p>6 Bay Road, were those the properties that you were</p> <p>7 storing cars on -- you were leasing to store cars on?</p> <p>8 A. If that's -- I don't remember the --</p> <p>9 MR. REISS: Form, leading.</p> <p>10 THE WITNESS: I was leasing them.</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Okay.</p> <p>13 A. And I don't remember the numbers or whatever</p> <p>14 number you have there.</p> <p>15 Q. Okay. So -- but we were talking before about</p> <p>16 the properties you were leasing to store cars on.</p> <p>17 A. That's it --</p> <p>18 Q. Right.</p> <p>19 A. -- but I don't remember the lot, the number or</p> <p>20 anything like that. All I know, it was next to Giant</p> <p>21 Motors.</p> <p>22 Q. Right. Okay. And you were -- that's the place</p> <p>23 where you would store cars that were towed by Beach</p> <p>24 Towing --</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 103</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. Sure. Well, I can give you the addresses. The</p> <p>3 reason I haven't given them to you is I'm not sure --</p> <p>4 there are five -- well, let me -- let me actually ask</p> <p>5 you this: Are you familiar with the property at 1724</p> <p>6 Bay Road?</p> <p>7 A. No.</p> <p>8 Q. Okay. 1743 Purdy Avenue?</p> <p>9 A. No.</p> <p>10 Q. Okay. Those are the old -- those are the old</p> <p>11 Giant Motors lots. That's the actual addresses of those</p> <p>12 lots. You remember where Giant Motors was, right?</p> <p>13 A. Yes. Oh, that I know. I remember the</p> <p>14 building, yes.</p> <p>15 Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy</p> <p>16 Avenue and 1738 Bay Road, those were the properties you</p> <p>17 were leasing to store cars on, correct?</p> <p>18 A. Yes.</p> <p>19 MS. RIBERO-AYALA: Object to form.</p> <p>20 MR. REISS: Form, leading.</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. Is that right?</p> <p>23 MR. REISS: Leading.</p> <p>24 THE WITNESS: You want to --</p> <p>25 ///</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. -- when you didn't have enough room at 1349</p> <p>2 Dade Boulevard --</p> <p>3 A. Right.</p> <p>4 Q. -- right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you know anything about how those</p> <p>7 properties are being used today?</p> <p>8 A. No.</p> <p>9 Q. Do you know anything about how the old Giant</p> <p>10 Motors properties are being used today?</p> <p>11 A. No.</p> <p>12 Q. Do you know how any of the uses of the old</p> <p>13 Giant Motors property is in any way impacting Beach</p> <p>14 Towing or its operations?</p> <p>15 A. No.</p> <p>16 Q. Do you know if the property you used to lease</p> <p>17 for storage of cars, do you know how the present uses of</p> <p>18 those properties are impacting Beach Towing's operation?</p> <p>19 A. No, I don't know.</p> <p>20 Q. Okay. Are you familiar with a company called</p> <p>21 Touch of Class Body Shop?</p> <p>22 A. No.</p> <p>23 Q. By the way, these aren't trick questions. I</p> <p>24 expect --</p> <p>25 A. Yeah, that's okay. That's all right.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Okay. Have you ever had any conversations with 2 anyone from Tremont Towing? 3 A. No. I know the story about it, but I don't 4 know anybody. I never -- I knew the father, but I 5 never -- I never got to know the son. 6 Q. Okay. I am sorry, I don't know -- what were 7 their names, do you recall? 8 A. I don't remember. 9 Q. Okay. Do you know who's operating Tremont 10 Towing today? 11 A. Is it Mr. Galbut? 12 Q. I don't know. I mean, I -- I could guess. I 13 am just asking you if you know. 14 A. I am guessing. I am guessing. I thought it 15 was Galbut. 16 Q. Have you ever had any conversations with 17 Mr. Galbut? 18 A. No. 19 Q. Any conversations with anybody else from 20 Tremont Towing? 21 A. No. You know, I left before that all started 22 there. 23 Q. Okay. 24 A. I never met -- I never met the son, and I never 25 met the new owner if there is a new owner. I don't</p>	<p style="text-align: right;">Page 108</p> <p>1 referred to in what you have. It's a series of 2 documents -- well, it's a series of plans for 1349 Dade 3 Boulevard. I don't know what it's called, though, in 4 what you have. 5 MR. REISS: Does it have any -- was it an 6 exhibit to that letter or something? 7 MR. BUCKNER: Yeah, it's Exhibit B to that 8 letter. Sorry, yeah. 9 MR. REISS: B as in boy? 10 MR. BUCKNER: B as in boy. 11 MR. REISS: Okay. And that's Exhibit 7? 12 MR. BUCKNER: That is Exhibit 7. 13 THE WITNESS: Do you know how to read these? 14 MS. RIBERO-AYALA: About as well as you could. 15 THE WITNESS: Chinese. Okay. 16 BY MR. BUCKNER: 17 Q. Take your time. Let me know when you have had 18 a chance to look at it. 19 A. These are all diagrams, right? 20 Q. Well, that's what I want to ask you. My 21 question to you is going to be do you recognize these as 22 the plans for the building at 1349 Dade Boulevard? 23 A. What plans? 24 MR. REISS: Form, predicate. 25 THE WITNESS: Plans for 1349 Dade --</p>
<p style="text-align: right;">Page 107</p> <p>1 know. 2 Q. I am not sure I know either. So -- 3 A. But it's right down the block. All I know is 4 it's across the way -- no. It's on the same block as 5 Beach Towing, yeah. 6 Q. Have you ever had any conversations with Mark 7 Festa about Beach Towing's contract with the City of 8 Miami Beach to tow cars? 9 A. No. When I left, I made sure that it had all 10 the contracts complete for towing. I went up there 11 before I left. I wanted to make sure everything was 12 straight and these fellows took -- were supposed to take 13 over. 14 Q. And when you say you left, are we talking about 15 in 1983 now? 16 A. 1980 -- yeah, about -- I would say close to 17 December or November, something like that. 18 Q. Okay. 19 (Exhibit No. 7 marked.) 20 (Discussion off the record.) 21 BY MR. BUCKNER: 22 Q. Handing you what's been marked as Exhibit 7, 23 Mr. Festa -- and, Allan, Exhibit 7 is -- I will give you 24 a copy in one second. Excuse me. 25 MR. BUCKNER: Exhibit 7, I don't know how it's</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. BUCKNER: 2 Q. Yeah, the architectural plans for the building 3 at 1349 Dade Boulevard. 4 MR. REISS: Form, predicate. 5 THE WITNESS: I don't know anything about that. 6 BY MR. BUCKNER: 7 Q. Okay. Let me ask you this: If you go to the 8 fourth page -- 9 A. Okay. 10 THE WITNESS: There are no numbers on this. 11 BY MR. BUCKNER: 12 Q. Yeah, there's no numbers. I am sorry. If you 13 could count it. 14 A. Okay. 15 Q. Do you see there in the lower right-hand corner 16 there is the Citgo logo? 17 A. Yeah. 18 Q. And your recollection is Citgo was the company 19 that was -- 20 A. We -- I finally came up with a name. Did I 21 say, mention it once? 22 Q. You did. You mentioned it. That was the 23 company -- 24 A. You know, I didn't remember it. 25 Q. Okay. But that was the brand of gasoline that</p>

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<p>1 was being sold --</p> <p>2 A. Right.</p> <p>3 Q. -- at 1349 when you bought it, correct?</p> <p>4 A. No.</p> <p>5 MR. REISS: Form, predicate, mischaracterizes</p> <p>6 the witness' testimony.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. And looking at this picture, I see what I</p> <p>9 think, looking at the top set of drawings, there's what</p> <p>10 looks to be a roll-up garage door there.</p> <p>11 Is that your recollection of the building of</p> <p>12 1349 that it has roll-up doors for putting cars in</p> <p>13 there?</p> <p>14 A. We used to call those bays.</p> <p>15 MR. REISS: Form.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. Bays. Okay.</p> <p>18 A. There was two bays.</p> <p>19 Q. At 1349 Dade Boulevard?</p> <p>20 A. Right.</p> <p>21 Q. And what did you use those bays for?</p> <p>22 A. Well, we did --</p> <p>23 MR. REISS: Form, predicate.</p> <p>24 THE WITNESS: -- we did some mechanical work in</p> <p>25 there, and we did storage of some -- say, if a Cadillac</p>	<p>1 Q. You don't remember having one or --</p> <p>2 A. I don't remember. I don't even remember</p> <p>3 selling gas from there, to tell you the truth.</p> <p>4 Q. No. I am asking about Beach Garage, the</p> <p>5 company.</p> <p>6 MR. REISS: Form, predicate.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. So Beach Garage, the company --</p> <p>9 A. Yes.</p> <p>10 Q. -- did --</p> <p>11 MR. REISS: Form, predicate.</p> <p>12 MR. BUCKNER: I am going to ask the question</p> <p>13 first, Allan, and then you can object.</p> <p>14 MR. REISS: Okay. I thought you were done, but</p> <p>15 there is nothing in the record that there was ever a</p> <p>16 company called Beach Garage.</p> <p>17 Go ahead.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. Well, let's do this. Go back to Exhibit 1 with</p> <p>20 me.</p> <p>21 If you turn with me 1, 2, 3, 4, 5 -- actually,</p> <p>22 these pages are numbered. Do you see there is a number</p> <p>23 in the lower right-hand corner --</p> <p>24 MS. RIBERO-AYALA: Yeah.</p> <p>25 ///</p>
Page 111	Page 113
<p>1 came in, brand-new Cadillac. We would put it in there</p> <p>2 to protect it so nobody touches it or anything.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Got it. And when you say you did mechanical</p> <p>5 work, are you talking about repair of cars?</p> <p>6 A. We had lifts in there, too.</p> <p>7 Q. Lifts for cars?</p> <p>8 A. No. For trucks, for our trucks.</p> <p>9 Q. For your trucks. Okay.</p> <p>10 So you were doing mechanical work on your</p> <p>11 trucks too?</p> <p>12 A. Of course, that's mostly.</p> <p>13 Q. Okay.</p> <p>14 MS. RIBERO-AYALA: What exhibit number is this,</p> <p>15 7?</p> <p>16 MR. BUCKNER: That was 7.</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. Did Beach Garage ever have an agreement or a</p> <p>19 contract with the Shell Oil Company to purchase gasoline</p> <p>20 from Shell?</p> <p>21 MR. REISS: Form, predicate.</p> <p>22 THE WITNESS: I don't remember that.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. You don't remember it?</p> <p>25 A. No.</p>	<p>1 BY MR. BUCKNER:</p> <p>2 Q. -- 6, page 6? Do you see there at the top it</p> <p>3 says, "Planning Division Report, conditional use</p> <p>4 request, Beach Garage, 1349 Dade Boulevard"? Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 MR. REISS: Form, predicate, hearsay.</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. And Beach Garage was a company that operated at</p> <p>10 1349 Dade Boulevard, correct?</p> <p>11 MR. REISS: Form, leading, predicate,</p> <p>12 mischaracterizes the witness' testimony.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. You can answer.</p> <p>15 A. Tell me again.</p> <p>16 Q. I said Beach Garage was a company that operated</p> <p>17 at 1349 Dade Boulevard, correct?</p> <p>18 A. Beach Garage, Beach Towing.</p> <p>19 MR. REISS: Leading, form, predicate,</p> <p>20 mischaracterizes the witness' testimony, misleading;</p> <p>21 you're showing him a document he already told you he</p> <p>22 doesn't remember.</p> <p>23 But you can answer.</p> <p>24 THE WITNESS: Ask me again.</p> <p>25 ///</p>

<p style="text-align: right;">Page 114</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. I said Beach Garage was a company that operated</p> <p>3 at 1349 Dade Boulevard, correct?</p> <p>4 A. Yes, it was Beach Garage --</p> <p>5 MR. REISS: Leading, form, predicate --</p> <p>6 THE WITNESS: -- it was Beach Garage, Beach</p> <p>7 Towing.</p> <p>8 MR. REISS: -- mischaracterizes the record.</p> <p>9 He's already said he doesn't recognize the document.</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. And that was a company that you owned, right?</p> <p>12 A. I own, yeah.</p> <p>13 Q. And you still own it, correct?</p> <p>14 A. Right.</p> <p>15 Q. Okay. And here it says, "The applicant,</p> <p>16 Vincent Festa, owner of Beach Garage," correct? You</p> <p>17 were the owner of Beach Garage, correct?</p> <p>18 MR. REISS: Form, predicate.</p> <p>19 THE WITNESS: At what time?</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. This is -- the date on this document, you can</p> <p>22 see at the bottom, is June 4th, 1980.</p> <p>23 MR. REISS: Form, predicate.</p> <p>24 THE WITNESS: Yes, I owned it.</p> <p>25 ///</p>	<p style="text-align: right;">Page 116</p> <p>1 THE WITNESS: I -- I don't know if that was a</p> <p>2 stipulation, but I was more interested in towing than</p> <p>3 gas.</p> <p>4 BY MR. BUCKNER:</p> <p>5 Q. Okay.</p> <p>6 A. I was tired of gas because I -- we had a gas</p> <p>7 war going on, and we also had rationing.</p> <p>8 Q. Okay. Further in that paragraph it talks</p> <p>9 about -- and the only reason I am showing you this is</p> <p>10 because I want to know -- I want you to know I am not</p> <p>11 just pulling this out of the air.</p> <p>12 A. Okay.</p> <p>13 Q. Further in that paragraph it talks about Shell</p> <p>14 Oil Company, and I had asked you before -- well, strike</p> <p>15 that.</p> <p>16 Do you recall having any kind of an agreement</p> <p>17 or contract or arrangement to purchase gasoline from the</p> <p>18 Shell Oil Company for 1349 Dade Boulevard to sell there?</p> <p>19 A. I don't remember. Did we get it?</p> <p>20 MR. REISS: Form, predicate --</p> <p>21 THE WITNESS: I don't know.</p> <p>22 MR. REISS: -- leading, mischaracterizes the</p> <p>23 document, hearsay, move to strike your statement as to</p> <p>24 why you're showing it to him.</p> <p>25 He can answer.</p>
<p style="text-align: right;">Page 115</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. Okay. And then if you go further down, it</p> <p>3 says, do you see "Past Use"? There is a paragraph that</p> <p>4 says, "Past Use"?</p> <p>5 MS. RIBERO-AYALA: Here.</p> <p>6 MR. REISS: Form, hearsay, predicate.</p> <p>7 THE WITNESS: Go ahead.</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. Okay. Why don't you take a second and read it.</p> <p>10 Again, if you don't remember, it's fine.</p> <p>11 A. I don't.</p> <p>12 Q. Take a second and read it.</p> <p>13 MR. REISS: Form, predicate, hearsay.</p> <p>14 THE WITNESS: Okay. It's telling me that I</p> <p>15 couldn't buy their gasoline for five years; is that what</p> <p>16 they're saying?</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. Well, that's what this says. I am going to ask</p> <p>19 you some questions.</p> <p>20 Do you recall having any kind of a restriction</p> <p>21 from City Services, City Services Oil Company, that you</p> <p>22 couldn't buy their gas for five years after you bought</p> <p>23 the property?</p> <p>24 A. I don't know if that was a stipulation --</p> <p>25 MR. REISS: Form, predicate.</p>	<p style="text-align: right;">Page 117</p> <p>1 MS. RIBERO-AYALA: Where is the reference to</p> <p>2 Shell Oil?</p> <p>3 MR. BUCKNER: If you are in Past Use, the last</p> <p>4 sentence.</p> <p>5 MS. RIBERO-AYALA: Okay. Here.</p> <p>6 THE WITNESS: I don't remember.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. Okay. So -- and I am not -- again --</p> <p>9 A. I understand, I understand, I understand.</p> <p>10 Q. But as you sit -- I just want to make sure the</p> <p>11 record is clear.</p> <p>12 As you sit here now, do you have any</p> <p>13 recollection of any kind of a contract or an agreement</p> <p>14 to purchase gasoline from the Shell Oil Company to sell</p> <p>15 at 1349 Dade Boulevard?</p> <p>16 A. I don't remember.</p> <p>17 Q. You don't remember whether you had a contract</p> <p>18 or you don't remember --</p> <p>19 A. No. I don't remember even having gas there.</p> <p>20 That's --</p> <p>21 Q. Okay.</p> <p>22 A. -- that's weird. I mean, that's weird.</p> <p>23 Q. By the way, Mr. Festa, I am not saying you did.</p> <p>24 A. No, no, no.</p> <p>25 Q. I am just trying to --</p>

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<p>1 A. I am talking to myself. I'm saying, you know, 2 I remember a lot of things, but I just don't remember 3 those things -- that thing. 4 Q. Okay. 5 A. Because there was no money in gas. I didn't 6 want gas except for the trucks. A few pennies that you 7 made, and it wasn't worth the trouble. 8 Now, I remember that at -- on Collins Avenue, we 9 did a lot of business because I remember making credit 10 cards out, you know. 11 Q. A lot of gasoline business? 12 A. Gasoline business, but I don't remember gas -- 13 I honest don't. 14 MS. RIBERO-AYALA: Okay. 15 (Exhibit No. 8 was marked.) 16 BY MR. BUCKNER: 17 Q. I am going to hand you what's been marked as 18 Exhibit 8. 19 MR. BUCKNER: Allan, Exhibit 8 is -- here, 20 Susy, that's your copy -- it's one of the attachments to 21 the report. I can't remember which one it is. It's 22 the -- I want to say it's -- I think it's called a 23 permit card, but I'm not sure. 24 Do you know what I am talking about? It looks 25 like a series -- it looks like a -- I don't know what to</p>	<p>1 but -- 2 MR. REISS: Is it called survey? Is that what 3 it is? 4 MR. BUCKNER: Survey? 5 MS. RIBERO-AYALA: No. 6 MR. BUCKNER: It's not called a survey, but 7 open it and see if that's it. There is nothing -- I 8 don't think there is anything -- 9 MR. REISS: At the top, Orange Dade Oil 10 Company? 11 MR. BUCKNER: Yeah, you got it. You got it. 12 You got it. You got it. 13 We made this Exhibit 8, right? 14 MR. REISS: Thank you. 15 THE WITNESS: Are they saying that I -- they 16 okayed the gas? 17 BY MR. BUCKNER: 18 Q. I am only going to ask you what you remember. 19 MS. RIBERO-AYALA: I can't tell you. 20 BY MR. BUCKNER: 21 Q. I am only going to ask you what you remember. 22 MS. RIBERO-AYALA: Right. 23 BY MR. BUCKNER: 24 Q. Okay. So let's start on the first page. 25 Earlier today I had asked you about Orange State Oil</p>
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<p>1 call it. I think it's -- hang on a second. I'll tell 2 you. 3 I think it's Exhibit A, Allan, to that thing. I 4 think it's called a building card or a permit card. 5 MR. REISS: There is no A in the documents that 6 I was given. 7 MR. BUCKNER: I know it's in there. I just 8 don't know which one it is. It's the one that -- 9 MR. REISS: What does it look like? 10 MR. BUCKNER: It's arranged -- it's ranged in 11 landscape style, not -- you know, long ways, not tall, 12 and it's got, like, all the different permitting 13 approvals that, you know, as permit -- as inspectors 14 sign off on stuff for, like, air-conditioning or 15 mechanical or electrical or plumbing or whatever for 16 1349 Dade Boulevard. 17 THE WITNESS: Are they saying I was selling 18 gas? 19 MS. RIBERO-AYALA: Let him ask the question. 20 MR. REISS: I don't think I have that. 21 MR. BUCKNER: It's in there. 22 MR. REISS: Are you sure that's in the 23 documents? 24 MR. BUCKNER: Yeah, because we scanned my 25 entire set before I came out. So you definitely have it</p>	<p>1 Company. 2 Do you have any recollection about that company 3 at all? 4 A. No. 5 Q. And, by the way, I'll -- if you look in the 6 upper right-hand corner, you see that it says, "1349 7 Dade Boulevard"? 8 A. Uh-huh. I see it. 9 Q. Okay. And below that, a little bit -- five or 10 six lines down, it says, "Use, service station and 11 display building." That's what 1349 Dade Boulevard was 12 when you bought it, correct? 13 MR. REISS: Objection; form, hearsay. 14 MS. RIBERO-AYALA: Okay. Here. 15 BY MR. BUCKNER: 16 Q. That's the use the 1349 Dade Boulevard property 17 was being used for when you bought it, correct? 18 A. Right. 19 MR. REISS: Form, predicate, hearsay. 20 THE WITNESS: But I don't -- I don't know if we 21 were selling gas -- they were selling gas at that time. 22 BY MR. BUCKNER: 23 Q. When you bought it? 24 A. Yes. I don't remember. 25 Q. It's okay. If you don't remember --</p>

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<p>1 A. That's why I don't remember if we even had 2 pumps there. I mean, we had pumps, but we just -- 3 that's what I remember.</p> <p>4 Q. And if you go to the second page down at the 5 bottom where it says, "Planning Board Public Hearing," 6 April 24th, 2000 -- I am sorry, "April 24th, 1980, 7 Vincent J. Festa," and then you see "Thereafter, June 8 4th, 1980, city commission approved with conditions: 9 One, the storage area shall be decreased in size and a 10 masonry wall at least six feet in height shall be 11 constructed around the storage area to conceal vehicles 12 from public view; two, all stored vehicles wrecked or 13 otherwise shall be placed wholly within the storage 14 area; three, additional landscaping shall be provided on 15 the property, and such landscaping shall be properly 16 irrigated. A landscape plan shall be approved by the 17 planning division prior to issuance of a building permit 18 or city license; four, the triangular metal sign shall 19 be removed and a new sign shall be erected which is in 20 compliance with the zoning ordinance; five, the curb cut 21 on Dade Boulevard closest to the intersection of North 22 Bay" -- it actually continues two pages later, "Road 23 shall be closed and landscaped; six, vehicles waiting 24 for gasoline shall be permitted to line up on Dade 25 Boulevard" -- I am sorry, "no vehicles waiting for</p>	<p>1 removed?</p> <p>2 A. I don't think so, no. I think Mark had those 3 removed.</p> <p>4 Q. Would that have been after you retired?</p> <p>5 A. I think so. It would have to be. It would 6 have to be after 1983 December.</p> <p>7 Q. I'm sorry, I am not ignoring you. I'm just 8 trying to see what else I got to cover.</p> <p>9 A. Of course.</p> <p>10 Q. We were talking before about the properties 11 across the way where you used to store cars when you had 12 excess cars. Do you remember that?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. I am not going to use the numbers 15 because I know you don't know them by the numbers, but 16 you understand that the plaintiff in this case now owns 17 those properties, correct?</p> <p>18 MS. RIBERO-AYALA: Objection; form.</p> <p>19 THE WITNESS: You're talking about the people 20 that bought them from Mark?</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. Well, they didn't buy them from Mark, but the 23 plaintiff in this case is Sunset Land Associates.</p> <p>24 A. I am not familiar with that.</p> <p>25 Q. Okay. You understand, though, that the reason</p>
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<p>1 gasoline shall be permitted to line up on Dade 2 Boulevard." And then it has some other conditions.</p> <p>3 Do you have any recollection of any of these 4 conditions at all?</p> <p>5 A. Not at all.</p> <p>6 MR. REISS: Form, hearsay, predicate.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. And do you have any recollection as to whether 9 any -- whether the property at 1349 Dade Boulevard has 10 ever complied with any of these conditions?</p> <p>11 A. No --</p> <p>12 MR. REISS: Form, predicate, hearsay.</p> <p>13 THE WITNESS: -- I don't remember -- I don't 14 remember even selling gasoline there, to tell you the 15 truth.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. But my question was more specific. Has Beach 18 Towing or the property at 1349 Dade Boulevard ever 19 complied with any of those conditions, as far as you 20 know?</p> <p>21 MR. REISS: Form, predicate, hearsay.</p> <p>22 THE WITNESS: Don't remember.</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. Were you present at 1349 Dade Boulevard when 25 the gasoline -- the underground gasoline tanks were</p>	<p>1 why we are here is that my client, the plaintiff, wants 2 to build a building on that property. You understand 3 that, right?</p> <p>4 A. That part I know.</p> <p>5 Q. Got you.</p> <p>6 A. Okay. I knew that all the time, but I didn't 7 understand about the parking.</p> <p>8 Q. Got it. I understand.</p> <p>9 Do you have any concerns about them building a 10 building on that property?</p> <p>11 MR. REISS: Form.</p> <p>12 THE WITNESS: I have a few concerns.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. And what is that?</p> <p>15 A. Well, if they are going to have parking there, 16 it's going to congest it more than it is now. I am 17 having tough times on building in -- the trucks that are 18 towing cars have enough trouble getting in there, and if 19 it's going to be saturated with cars, multiple cars, 20 it's going to -- it's going to hinder my parking or 21 waiting for -- especially if we get a call from the -- 22 what do they call that, the convention center where they 23 are going to haul away 40 cars. How am I going to do 24 that with just me and -- what do you call it -- if I 25 have to worry about cars coming in and out? So</p>

<p style="text-align: right;">Page 126</p> <p>1 that's -- that would be my -- my worry.</p> <p>2 Q. Anything else?</p> <p>3 A. I don't think so.</p> <p>4 MR. REISS: Form.</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. Have you seen any traffic studies that have</p> <p>7 been done of the --</p> <p>8 A. No.</p> <p>9 Q. -- with regard to that property --</p> <p>10 A. No.</p> <p>11 Q. -- or the area around Beach Towing?</p> <p>12 A. No.</p> <p>13 Q. Do you know how -- well, let me ask you</p> <p>14 something: You haven't actually been to the area around</p> <p>15 Beach Towing in, like, 30 years, correct?</p> <p>16 A. Twenty-five or something. I don't remember</p> <p>17 when we went down to Daytona for my son's motorcycle</p> <p>18 convention or whatever they call that.</p> <p>19 Q. Okay. So what do you know about the traffic in</p> <p>20 the area today? Have you seen it?</p> <p>21 A. Well, there's a lot of traffic that's coming</p> <p>22 off of Dade Boulevard, if I remember, because I'm on a</p> <p>23 corner lot, right? So they'd have to go past to get</p> <p>24 into Bay Road and that's -- that will probably be one of</p> <p>25 the first exits from Alton Road.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. But I have eight units on North Miami -- 56th</p> <p>2 Street, and she tells me a lot that's going on.</p> <p>3 Q. Who is she?</p> <p>4 A. The one that's taking care of my apartments.</p> <p>5 Q. I'm sorry, what's her name?</p> <p>6 A. Maria Ricardo.</p> <p>7 Q. Okay. And those apartments, I'm sorry, are</p> <p>8 where?</p> <p>9 A. 159-165 NE 56th Street.</p> <p>10 Q. How -- and, forgive me, I am not that familiar</p> <p>11 with Beach Towing, but how far is that from Beach</p> <p>12 Towing?</p> <p>13 A. Well, that's in Miami.</p> <p>14 Q. Oh, it's not in Miami Beach?</p> <p>15 A. No.</p> <p>16 Q. Okay. So I am asking you when you are talking</p> <p>17 about congestion in the area, traffic congestion in the</p> <p>18 area around Beach Towing, you haven't seen that area in</p> <p>19 over 30 years, correct?</p> <p>20 A. Well, I guess -- I guess I could go online and</p> <p>21 see -- I don't know. Can you see it on the line?</p> <p>22 Q. Have you?</p> <p>23 A. I saw something, but I'm not sure.</p> <p>24 Q. Okay. What I am trying to get at, sir, is what</p> <p>25 the basis is for your assertion that there is going to</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Okay.</p> <p>2 A. Alton Road.</p> <p>3 Q. But you haven't -- you haven't actually laid</p> <p>4 eyes on those streets in 30 years, correct?</p> <p>5 A. I wasn't there.</p> <p>6 Q. Right. So whatever you know about traffic or</p> <p>7 traffic patterns or congestion today you have heard from</p> <p>8 other people, correct?</p> <p>9 MR. REISS: Form.</p> <p>10 THE WITNESS: If I -- I haven't heard much</p> <p>11 because nobody talked to me about traffic.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. Okay. So in terms of what you know about</p> <p>14 traffic and congestion in the area around Beach Towing,</p> <p>15 you haven't personally seen it in 30 years, correct?</p> <p>16 A. Yeah.</p> <p>17 MR. REISS: Form.</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. Right. So anything you know somebody else</p> <p>20 would have had to have told you about it, correct?</p> <p>21 MR. REISS: Form, leading.</p> <p>22 THE WITNESS: Not per se, anybody from Beach</p> <p>23 Towing.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 129</p> <p>1 be more congestion around Beach Towing. If you haven't</p> <p>2 been there, who is telling you that there is more</p> <p>3 congestion around Beach Towing?</p> <p>4 A. Well, because I know --</p> <p>5 MR. REISS: Objection to the form, hearsay,</p> <p>6 argumentative, predicate, leading.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: I know what's happening here. So</p> <p>9 I know Miami is building up, and so more cars are</p> <p>10 coming, and is it the Venetian -- I don't know. Is it</p> <p>11 at the Venetian Causeway that Dade Boulevard goes into</p> <p>12 Venetian Causeway? Is that it?</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. I am going to embarrass myself if I answer</p> <p>15 because I am not sure.</p> <p>16 A. Okay. It's one of those causeways anyway.</p> <p>17 So a lot of traffic has to come from Alton Road</p> <p>18 or any part of Miami to get on the Venetian Causeway. So</p> <p>19 there would be a real traffic jam.</p> <p>20 Q. Okay. Well, let me ask you this: Are you</p> <p>21 familiar with a building called Lofts?</p> <p>22 A. No.</p> <p>23 Q. When that building was built, did you have any</p> <p>24 concerns about congestion caused by people living and</p> <p>25 parking in that building?</p>



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<p>1 A. Which --</p> <p>2 MR. REISS: Form.</p> <p>3 THE WITNESS: Which -- now, which building are</p> <p>4 you talking about?</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. The Lofts.</p> <p>7 MR. REISS: Form, predicate.</p> <p>8 THE WITNESS: The Lofts, you mean the --</p> <p>9 BY MR. BUCKNER:</p> <p>10 Q. The Lofts, a building called The Lofts.</p> <p>11 A. I don't know what that is.</p> <p>12 MR. REISS: Form.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. So as you sit here today, you don't know what</p> <p>15 The Lofts is?</p> <p>16 A. I don't know what The Loft is.</p> <p>17 Q. And you don't know whether the --</p> <p>18 A. I thought that the building was up already, to</p> <p>19 tell you the truth.</p> <p>20 Q. Okay.</p> <p>21 A. I just found out that it still hasn't been</p> <p>22 started.</p> <p>23 Q. Okay. So in terms of what may be happening</p> <p>24 with congestion around Beach Towing, you don't have any</p> <p>25 firsthand knowledge of that, do you?</p>	<p>1 A. -- and that's going to affect the tow truck</p> <p>2 coming in and out too.</p> <p>3 Q. Okay. Well, let me ask you this: The tow</p> <p>4 trucks coming in and out, they are also obviously</p> <p>5 traffic and congestion, right?</p> <p>6 A. Correct.</p> <p>7 Q. So --</p> <p>8 MR. REISS: Form, argumentative.</p> <p>9 BY MR. BUCKNER:</p> <p>10 Q. So -- by the way, do you know when a tow truck</p> <p>11 from Beach Towing brings a car to 1349 Dade Boulevard,</p> <p>12 you're aware it has to back up down the street to back</p> <p>13 the car into the Beach Towing lot, correct?</p> <p>14 MS. RIBERO-AYALA: Object to form.</p> <p>15 MR. REISS: Form, predicate.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. When -- back when you were operating Beach</p> <p>19 Towing --</p> <p>20 A. We could pull right in.</p> <p>21 Q. You could pull right in then. Okay.</p> <p>22 A. Same as the -- and same as the lot across the</p> <p>23 way, just pulled it in.</p> <p>24 Q. The lot across the way where you --</p> <p>25 A. Where I used to lease.</p>
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<p>1 MR. REISS: Form.</p> <p>2 THE WITNESS: I don't know firsthand, but, I</p> <p>3 mean, I may not remember a lot, but I know that when</p> <p>4 there's construction going on and there's parking of</p> <p>5 cars going on, it's going to be congested because that</p> <p>6 street is not that wide --</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. So --</p> <p>9 A. -- coming off Dade Boulevard.</p> <p>10 Q. So would you object to any development of any</p> <p>11 properties in that area because they might increase the</p> <p>12 number of people coming there?</p> <p>13 A. I would have to -- I would have to -- each -- I</p> <p>14 would have to see what the situation is.</p> <p>15 Q. Okay. Well, what have you done -- what have</p> <p>16 you done to see what the situation is with regard to the</p> <p>17 property improvement that my clients have proposed?</p> <p>18 A. Well, if you're going to park --</p> <p>19 MR. REISS: Form, predicate, hypothetical.</p> <p>20 THE WITNESS: -- if there's going to be a</p> <p>21 garage, it's going to have cars --</p> <p>22 BY MR. BUCKNER:</p> <p>23 Q. Right.</p> <p>24 A. -- in and out --</p> <p>25 Q. Right.</p>	<p>1 Q. Right. Okay. But in terms of what's happening</p> <p>2 today, do you have any idea how Beach Towing pulls cars</p> <p>3 that it's towed into 1349 Dade Boulevard?</p> <p>4 A. No, but I think Mark had mentioned something</p> <p>5 about they had put a lip. They reconstructed Dade</p> <p>6 Boulevard. So they added a little lip. And that means</p> <p>7 the tow trucks have to come in a little slower. They</p> <p>8 don't want to damage a 10, 20, \$30,000 car. They may</p> <p>9 have to drop it because of the lip. So I was told that.</p> <p>10 Q. Okay. And that would mean that the tow truck</p> <p>11 and the car it was towing would be on the street even</p> <p>12 longer than before there was a lip, correct?</p> <p>13 A. Possible.</p> <p>14 MR. REISS: Leading, form, hypothetical.</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. And that too could back up traffic, right?</p> <p>17 MR. REISS: Leading, form, hypothetical.</p> <p>18 THE WITNESS: I don't think so because we are</p> <p>19 off -- we are off Dade Boulevard. We are on -- what's</p> <p>20 the name of the street I am on?</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. I don't know what street you are referring to.</p> <p>23 A. Where my shop is, my business.</p> <p>24 Q. You are talking about Beach Towing?</p> <p>25 A. Yeah, Beach Towing, Beach Towing.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. So let me ask you, do you know what street 2 Beach Towing utilizes to pull cars into its property 3 today when it tows them? 4 A. It depends where it's coming from. If it's 5 coming from a shopping center where they had to tow a 6 car because they are illegally parking or a house that 7 somebody parked it there and took off to the beach or 8 something, and it came in from Dade Boulevard or from 9 the other side of -- I even forgot what the name of the 10 street I am on. 11 Q. Okay. I don't know. Sorry. 12 A. Yeah, I should know. 13 Q. No. I don't know -- are you talking about -- I 14 don't know which one it is. I mean, I am not sure what 15 you are referring to. 16 So as you sit here today, you think that there 17 are two entrances to Beach Towing to pull cars onto 1349 18 Dade Boulevard after they tow them? 19 MR. REISS: Hearsay, form, predicate -- 20 THE WITNESS: Say that again. 21 MR. REISS: -- leading. 22 BY MR. BUCKNER: 23 Q. I said as of today, it's your understanding 24 that when Beach Towing tows a car from somewhere, it can 25 enter the 1349 Dade Boulevard property from two</p>	<p style="text-align: right;">Page 136</p> <p>1 THE WITNESS: Dade Boulevard, you mean bringing 2 it into the shop? 3 BY MR. BUCKNER: 4 Q. Yes. 5 A. Yeah, it's possible if the traffic is not too 6 bad on Dade Boulevard. 7 Q. Okay. So it could be both Dade Boulevard and 8 Bay Road -- 9 MR. REISS: Leading, form. 10 BY MR. BUCKNER: 11 Q. -- is that right? 12 A. I think so -- 13 MR. REISS: Leading, form. 14 THE WITNESS: -- it would be out of the way, 15 but I think maybe they could do it. 16 BY MR. BUCKNER: 17 Q. Okay. What effect -- well, what do you know 18 about changes in the roads in the area around Beach 19 Towing in the last years? What construction has 20 happened to those roads, do you know? 21 A. I know Dade Boulevard has a lot of construction 22 and that they, like I said, I mentioned to you a few 23 minutes ago was that they brought the -- the curb up a 24 little higher. So it's a little harder for us to bring 25 a car in so not to destroy the bumper or the tailpipe or</p>
<p style="text-align: right;">Page 135</p> <p>1 different locations, one -- 2 MR. REISS: Form, leading. 3 BY MR. BUCKNER: 4 Q. -- one is on Dade Boulevard and the other is 5 another street, correct? 6 A. Well, the street I am on. 7 MR. REISS: Form, leading. 8 BY MR. BUCKNER: 9 Q. But am I right about that, there is two 10 entrances? 11 MR. REISS: Leading, form. 12 THE WITNESS: Would be two entrances, Dade 13 Boulevard and also -- what street am I on? 14 BY MR. BUCKNER: 15 Q. I don't know. Is it Purdy, is it Bay? 16 A. Bay Road, Bay Road. 17 MR. REISS: Form, leading. 18 BY MR. BUCKNER: 19 Q. Okay. I'm sorry, I just don't know. 20 A. Yeah, I couldn't think. 21 Q. Okay. So your -- so your testimony is that as 22 of today, Beach Towing can tow cars onto 1349 Dade 23 Boulevard from both Dade Boulevard and Bay Road, is that 24 correct? 25 MR. REISS: Leading, form.</p>	<p style="text-align: right;">Page 137</p> <p>1 the gas -- gas tank. 2 Q. So it's -- the car has got to be brought in 3 more slowly? 4 A. Not only slowly but carefully. 5 Q. And that means that the car being towed into 6 the Beach Towing property is going to be out on the 7 street just a little longer as it's pulled in slowly and 8 carefully into the Beach Towing -- 9 MR. REISS: Leading, hypothetical. 10 THE WITNESS: That's possible. 11 BY MR. BUCKNER: 12 Q. Do you recall ever having any conversations 13 with an individual named Brad Colmer? 14 A. Brad Colmer, that sounds familiar. 15 Q. Do you remember having conversations with him? 16 A. Brad Colmer. Was he interested in buying my 17 property? I don't know. 18 Q. At one point I think you and he may have had a 19 discussion about that. Do you recall a conversation 20 like that? 21 A. There was somebody that offered me 13,500,000, 22 but was it -- that was about two years ago. 23 Q. Okay. 24 A. I don't know if that was the name. It doesn't 25 sound familiar, Brad Colmer, but I don't know.</p>

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<p>1 Q. All right. So --</p> <p>2 A. I get offers all the time.</p> <p>3 Q. Okay. As you sit here, do you -- you don't</p> <p>4 recall any specific conversations with Mr. Colmer?</p> <p>5 MR. REISS: Leading.</p> <p>6 THE WITNESS: I don't know. I don't know if</p> <p>7 that's his name. It doesn't sound familiar, but -- and</p> <p>8 then -- it doesn't not sound familiar, but it doesn't</p> <p>9 sound familiar. You know what I am saying?</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. That's okay. Do you recall anything at all</p> <p>12 about Brad Colmer, Bradley Colmer?</p> <p>13 A. I'd have to -- I'd -- no, I don't remember.</p> <p>14 It's been a long time.</p> <p>15 Q. That's okay.</p> <p>16 A. But if that's the same fellow, he offered me</p> <p>17 \$13 and a half million for the property.</p> <p>18 Q. And the property is 1349 Dade Boulevard?</p> <p>19 A. Exactly.</p> <p>20 Q. Did you have any other conversations with him</p> <p>21 that you can recall?</p> <p>22 A. I told him I couldn't do anything because I</p> <p>23 am -- I have a -- it's my nephew, and I have a contract</p> <p>24 with him.</p> <p>25 Q. And what is the -- and what is the nature of</p>	<p>1 Q. Okay. But even after you got papers, has Mark</p> <p>2 Festa asked you to do anything with regard to this</p> <p>3 lawsuit?</p> <p>4 A. What could he tell me? Nothing.</p> <p>5 Q. Okay. Have you had any conversations with</p> <p>6 Ralph Andrade about this lawsuit?</p> <p>7 A. Not at all. I met -- I met Ralph, it feels</p> <p>8 like a hundred years ago, and we just went for pizza,</p> <p>9 and Mark didn't show up that day, and Ralph took me out</p> <p>10 for pizza. That's what I remember. And we had a nice</p> <p>11 conversation.</p> <p>12 Q. Was it about this case or --</p> <p>13 A. No. This was -- this was how many years ago?</p> <p>14 Many, many years ago. But Mark did not show up. I</p> <p>15 remember that.</p> <p>16 Q. Other than your lawyer --</p> <p>17 A. What's that?</p> <p>18 Q. I said other than your lawyer --</p> <p>19 A. Yes.</p> <p>20 Q. -- Ms. Ribero-Ayala, have you spoken to anybody</p> <p>21 else about this lawsuit --</p> <p>22 A. Not at all.</p> <p>23 Q. -- or about the facts underlying this lawsuit?</p> <p>24 A. I don't know anything.</p> <p>25 Q. Okay.</p>
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<p>1 that contract?</p> <p>2 A. That he could stay there.</p> <p>3 Q. And that nephew is Mark Festa?</p> <p>4 A. Yes. That's my sister's son.</p> <p>5 Q. But going back to that conversation, are you --</p> <p>6 are you certain that that conversation was with Brad</p> <p>7 Colmer, or do you know?</p> <p>8 MR. REISS: Form.</p> <p>9 THE WITNESS: I don't remember. It's been a</p> <p>10 long time. I know that I told -- I told my kids that I</p> <p>11 have an offer, but I can't do anything. But I have</p> <p>12 quite a few offers.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. So other people have offered to buy the 1349</p> <p>15 Dade Boulevard property from you over the years?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. And the reason you haven't sold is because of</p> <p>18 your agreement with Mark Festa?</p> <p>19 A. Hey, my sister.</p> <p>20 Q. So that's a yes?</p> <p>21 A. Don't want to break up the family.</p> <p>22 Q. Has Mark Festa asked you to do anything with</p> <p>23 regard to this lawsuit?</p> <p>24 A. No. I didn't even know about it until I got</p> <p>25 papers.</p>	<p>1 A. I didn't get anything from her either.</p> <p>2 Q. Believe me, you're not alone. I have been</p> <p>3 trying to get information from her forever, and she</p> <p>4 plays it very close to the vest.</p> <p>5 Do you know -- are you -- well, strike that.</p> <p>6 I don't have any further questions. Thank you,</p> <p>7 Mr. Festa.</p> <p>8 A. Thank you.</p> <p>9 MR. REISS: All right. I have a few.</p> <p>10 THE WITNESS: Tell him can he wait because I</p> <p>11 have prostate trouble.</p> <p>12 MR. REISS: All right. Mr. Festa, can you hear</p> <p>13 me?</p> <p>14 MR. BUCKNER: Hang on. Allan, he needs to use</p> <p>15 the bathroom. We're going to take a break so he can use</p> <p>16 the bathroom.</p> <p>17 MR. REISS: Okay.</p> <p>18 THE VIDEOGRAPHER: We are off the record at</p> <p>19 12:55 p.m.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: We are back on the record at</p> <p>22 1:08 p.m.</p> <p>23 EXAMINATION</p> <p>24 BY MR. REISS:</p> <p>25 Q. Hi, Mr. Festa. My name is Allan Reiss. Can</p>

<p style="text-align: right;">Page 142</p> <p>1 you hear me okay?</p> <p>2 A. Yes, Allan.</p> <p>3 Q. Okay. I represent Mark and Maureen Festa and</p> <p>4 Beach Towing in this litigation. I have a few</p> <p>5 questions.</p> <p>6 First, I think you testified, and correct me if</p> <p>7 I am wrong, that when you left Miami, it was around</p> <p>8 1983, right? I think you said November or December --</p> <p>9 A. Yeah, December.</p> <p>10 Q. -- you retired to California, is that right?</p> <p>11 A. -- yeah, if I remember, December, yeah, right,</p> <p>12 December '83, correct.</p> <p>13 Q. Okay. And you -- when you left, I think you</p> <p>14 said you left Beach Towing Services, Inc., with all the</p> <p>15 contracts with the City of Miami Beach; do you remember</p> <p>16 that?</p> <p>17 A. Right, yeah --</p> <p>18 Q. Right --</p> <p>19 A. -- everything -- everything was taken care of,</p> <p>20 because --</p> <p>21 Q. Right. So when -- I'm sorry, go ahead.</p> <p>22 A. No. Go ahead, because, you know, Mark was new,</p> <p>23 and I wanted to make sure we had all the contracts that</p> <p>24 I had with the City for a long time.</p> <p>25 Q. Right. And so Beach Towing Services, Inc., was</p>	<p style="text-align: right;">Page 144</p> <p>1 sitting across from you, Mr. Buckner, on behalf of his</p> <p>2 client, Sunset Land Associates, LLC, claims that Beach</p> <p>3 Towing Services, LLC --L -- Beach -- strike that.</p> <p>4 Are you aware that the attorney sitting across</p> <p>5 from you, Mr. Buckner, on behalf of his client, Sunset</p> <p>6 Land Associates, has filed papers in this case claiming</p> <p>7 that Beach Towing Services, Inc., is illegally</p> <p>8 conducting towing business at 1349 Dade Boulevard?</p> <p>9 A. Yeah, I guess so, because contrary to -- he</p> <p>10 seems like a nice guy to me. I know he is just doing a</p> <p>11 job for somebody. So --</p> <p>12 Q. Okay.</p> <p>13 A. -- if I needed legal help, I think I'd hire</p> <p>14 him.</p> <p>15 MS. RIBERO-AYALA: What about me?</p> <p>16 THE WITNESS: You, I got. But anyway -- but</p> <p>17 anyway --</p> <p>18 BY MR. REISS:</p> <p>19 Q. As far as -- as far as you're concerned, when</p> <p>20 you left Miami in 1983, Beach Towing Services, Inc., had</p> <p>21 all the permission it needed from the City of Miami</p> <p>22 Beach to conduct towing services at 1349 Dade Boulevard,</p> <p>23 is that correct?</p> <p>24 A. Correct. I was one of the few --</p> <p>25 MR. BUCKNER: I'm sorry. I got to make my</p>
<p style="text-align: right;">Page 143</p> <p>1 the entity that was running the towing service at 1349</p> <p>2 Dade Boulevard when you left, right?</p> <p>3 A. Right.</p> <p>4 Q. And you left -- left Beach Towing Services,</p> <p>5 Inc., with a contract -- strike that.</p> <p>6 You left Beach Towing Services, Inc., with a</p> <p>7 permit issued by the entire city commission and the</p> <p>8 mayor for conducting towing services for the City of</p> <p>9 Miami Beach at 1349 Dade Boulevard, correct?</p> <p>10 MR. BUCKNER: Objection; leading, speculation.</p> <p>11 THE WITNESS: Should I answer?</p> <p>12 MR. BUCKNER: You can answer.</p> <p>13 THE WITNESS: Yes, I wasn't going to leave --</p> <p>14 Mark was new even though Pete Knight knew everything,</p> <p>15 and so did John Morejon, because they were in the</p> <p>16 business for a while. They knew everything. So I</p> <p>17 checked with them, we talked about it and I went down to</p> <p>18 City Hall and got everything they need -- I needed. I</p> <p>19 wasn't --</p> <p>20 BY MR. REISS:</p> <p>21 Q. And --</p> <p>22 A. -- going to -- I wasn't going to leave these</p> <p>23 two -- these new owners -- not -- yeah, well, they were</p> <p>24 owners. They were 24 percent owners.</p> <p>25 Q. Okay. And are you aware that the lawyer</p>	<p style="text-align: right;">Page 145</p> <p>1 objection.</p> <p>2 Objection; leading, calls for a legal</p> <p>3 conclusion.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: Yes. The only other person that</p> <p>6 was towing was Tremont.</p> <p>7 BY MR. REISS:</p> <p>8 Q. Okay. You mean towing for the City of Miami</p> <p>9 Beach?</p> <p>10 A. Exactly, prior to --</p> <p>11 Q. Anybody could tow, anybody could call AAA on</p> <p>12 the beach and get towed from point A to point B, right?</p> <p>13 They can tow on the beach, right?</p> <p>14 MR. BUCKNER: Objection; leading.</p> <p>15 THE WITNESS: Clarify yourself on that. I</p> <p>16 don't understand that.</p> <p>17 BY MR. REISS:</p> <p>18 Q. Well, you were talking about the only other</p> <p>19 company that was towing on the beach that was on behalf</p> <p>20 of the City of Miami Beach, right? That's what you were</p> <p>21 referring to?</p> <p>22 A. Oh, yeah, Tremont --</p> <p>23 MR. BUCKNER: Leading.</p> <p>24 THE WITNESS: -- and Beach Towing.</p> <p>25 ///</p>

<p style="text-align: right;">Page 146</p> <p>1 BY MR. REISS:</p> <p>2 Q. Other companies do towing on Miami Beach, just</p> <p>3 not for the City, correct?</p> <p>4 MR. BUCKNER: Leading.</p> <p>5 THE WITNESS: Not for the City, and I didn't</p> <p>6 see too many because we did Triple A too. So there was</p> <p>7 no need for anybody to come on the beach to do it unless</p> <p>8 a person knew somebody was in the towing business and</p> <p>9 called them.</p> <p>10 BY MR. REISS:</p> <p>11 Q. Okay. But the business being operated -- the</p> <p>12 business being operated at 1349 Dade Boulevard when you</p> <p>13 left was Beach Towing Services, Inc., correct?</p> <p>14 A. I'm confused on that. Beach Towing -- I'm</p> <p>15 getting confused now on Beach Towing, Beach Garage and</p> <p>16 whatever they are coming up with. I don't know.</p> <p>17 Q. All right. So you don't -- you're not -- you</p> <p>18 don't know one way or the other because --</p> <p>19 A. I'm confused.</p> <p>20 Q. -- it's been a lot of years? Huh?</p> <p>21 A. I'm confused.</p> <p>22 Q. All right. And were you confused when you were</p> <p>23 answering Mr. Buckner's questions and referring to Beach</p> <p>24 Garage as well?</p> <p>25 MR. BUCKNER: Objection; leading.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. And you referred --</p> <p>2 A. And we did --</p> <p>3 Q. -- to that as City Hall, right?</p> <p>4 A. Excuse me, what was that?</p> <p>5 Q. That was called City Hall, right?</p> <p>6 A. City Hall Garage, right.</p> <p>7 Q. Right. And now today when Mr. Buckner asked</p> <p>8 you about Alton and Collins and the 1349 property, you</p> <p>9 called them all Beach Garage, right?</p> <p>10 A. They were all -- the City Hall garage was the</p> <p>11 name of the garage that I bought, but it was still</p> <p>12 Beach --</p> <p>13 Q. Okay.</p> <p>14 A. -- Towing was doing the towing and plenty of it</p> <p>15 because at that time I was the only one that was doing</p> <p>16 all the towing for Beach Police Department.</p> <p>17 Q. Okay. And then -- well, do you know what the</p> <p>18 name of the entity is that had the permit in 1983 with</p> <p>19 the City of Miami Beach to do towing at 1349 Dade</p> <p>20 Boulevard?</p> <p>21 A. I don't understand the question. Excuse me, go</p> <p>22 ahead. Ask it again.</p> <p>23 Q. Isn't it true that the entity that had the</p> <p>24 permit from the City of Miami Beach in 1983 to do towing</p> <p>25 for the City was called Beach Towing Services, Inc.?</p>
<p style="text-align: right;">Page 147</p> <p>1 THE WITNESS: Yeah. I am still confused.</p> <p>2 Beach Garage I thought was the same as Beach Towing.</p> <p>3 BY MR. REISS:</p> <p>4 Q. Okay. But you're not sure?</p> <p>5 MR. BUCKNER: Objection; leading.</p> <p>6 THE WITNESS: Well, if you asked me thirty</p> <p>7 years ago, I'd say yeah, sure, or I'm not sure, but</p> <p>8 right now --</p> <p>9 BY MR. REISS:</p> <p>10 Q. Okay.</p> <p>11 A. -- I'm telling you that I thought it was.</p> <p>12 Q. All right. Are you -- are you confused about</p> <p>13 that?</p> <p>14 MR. BUCKNER: Objection; leading, asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Am I confused about Beach Towing</p> <p>17 and Beach Garage?</p> <p>18 BY MR. REISS:</p> <p>19 Q. Yes, sir.</p> <p>20 A. Well, as far as I'm concerned, it's the same</p> <p>21 thing.</p> <p>22 Q. Okay. Have you ever -- let me ask you this:</p> <p>23 When you did business at 1150 Collins, you had a -- you</p> <p>24 had -- what business did you have there?</p> <p>25 A. It was a gas station and towing.</p>	<p style="text-align: right;">Page 149</p> <p>1 MR. BUCKNER: Objection; leading.</p> <p>2 THE WITNESS: Okay. Mark may have changed it</p> <p>3 or what. I don't know. I wasn't there.</p> <p>4 BY MR. REISS:</p> <p>5 Q. You don't know one way or the other?</p> <p>6 A. No, I don't, really.</p> <p>7 Q. All right. So and then let me ask you this:</p> <p>8 Beach Towing Services, Inc., never applied for a</p> <p>9 conditional use to install gas pumps at 1349 Dade</p> <p>10 Boulevard, did it?</p> <p>11 MR. BUCKNER: Objection; leading --</p> <p>12 THE WITNESS: I --</p> <p>13 MR. BUCKNER: -- calls for speculation.</p> <p>14 THE WITNESS: I don't remember pumps. I swear,</p> <p>15 I don't remember the pumps on the 1349. I know on -- on</p> <p>16 Collins Avenue at City Hall Garage and also at -- let's</p> <p>17 see, on Alton Road Gulf station. I also had -- I also</p> <p>18 had property on 5th Street that I put cars in. It was a</p> <p>19 big Mancraft -- they used to do big displays for</p> <p>20 conventions, and they had this big property they got rid</p> <p>21 of. I rented it for a long time. So we put a lot of</p> <p>22 cars down there too.</p> <p>23 BY MR. REISS:</p> <p>24 Q. Okay. As far as you can recall, Beach Towing</p> <p>25 Services, Inc., never applied to the City to install gas</p>

<p>Page 150</p> <p>1 pumps at 1349 Dade Boulevard, correct?</p> <p>2 MR. BUCKNER: Objection; leading.</p> <p>3 THE WITNESS: I swear, I don't remember. I</p> <p>4 don't remember selling gas there. Okay? I was tired of</p> <p>5 gas because of the long lines when they had the shortage</p> <p>6 and when they had -- whatever they had.</p> <p>7 I mean, I remember --</p> <p>8 BY MR. REISS:</p> <p>9 Q. Okay.</p> <p>10 A. -- one story that I tell everybody, and that is</p> <p>11 a doctor came up to me one day, I knew him well, and he</p> <p>12 said Vince, I can't get on that line. Can you give me</p> <p>13 some gas? I said look, I tell you, come back at</p> <p>14 so-and-so, so-and-so. When I close up, I will give you</p> <p>15 all you want. If I let you in there, they'll hang me.</p> <p>16 Okay? I don't want to get killed. I'm too young.</p> <p>17 So I know that -- I know that I was -- it was</p> <p>18 tough to get gas in those years.</p> <p>19 Q. Understood. When Mark Festa came down to</p> <p>20 Miami, you said it was, like, 1980, right?</p> <p>21 A. Yeah, about 1980, right. He was working for my</p> <p>22 brother who had an auto parts place in Astoria, New</p> <p>23 York, and he couldn't take the winters anymore. So he</p> <p>24 came down, and he asked for a job, and I put him to</p> <p>25 work.</p>	<p>Page 151</p> <p>1 Q. All right. And you gave him a job at 1349 Dade</p> <p>2 Boulevard at Beach Towing Services, Inc., correct?</p> <p>3 MR. BUCKNER: Object to form, leading.</p> <p>4 THE WITNESS: It could have been -- it could</p> <p>5 have been, I am not sure, but it could have been City</p> <p>6 Hall Garage too when he first came down. I'm not sure.</p> <p>7 I'm guessing.</p> <p>8 BY MR. REISS:</p> <p>9 Q. Okay.</p> <p>10 A. I'm guessing.</p> <p>11 Q. But as we sit here today, you don't recall</p> <p>12 Beach Towing Services, Inc., ever applying to the City</p> <p>13 of Miami Beach to install gas pumps at 1349 Dade</p> <p>14 Boulevard, correct?</p> <p>15 MR. BUCKNER: Objection; leading, asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: I -- I mentioned -- I mentioned</p> <p>18 that in the deposition that I don't remember. I don't</p> <p>19 remember selling gas at that place --</p> <p>20 BY MR. REISS:</p> <p>21 Q. Okay.</p> <p>22 A. -- okay? I just don't remember.</p> <p>23 Q. I understand you don't -- I understand you</p> <p>24 don't recall selling gas there. My question is a little</p> <p>25 different, and I think we're on the same page, but let</p>
	<p>Page 152</p> <p>1 me just make sure.</p> <p>2 You also don't recall ever applying on behalf</p> <p>3 of Beach Towing Services, Inc., for a conditional use to</p> <p>4 install gas pumps at 1349 Dade Boulevard, correct?</p> <p>5 MR. BUCKNER: Objection; leading, asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: I don't. I don't remember. I</p> <p>8 really don't.</p> <p>9 BY MR. REISS:</p> <p>10 Q. Okay. So as far as you know, Beach Towing</p> <p>11 Services, Inc., never applied for a conditional use to</p> <p>12 install --</p> <p>13 A. I'm not saying that.</p> <p>14 Q. -- gas pumps -- to install gas pumps at 1349</p> <p>15 Dade Boulevard, correct?</p> <p>16 A. I am not saying that. I am not saying that.</p> <p>17 I am saying that I don't remember. I am trying</p> <p>18 as hard as I can to remember, but hey, I am 90 years old.</p> <p>19 I'm glad I am here.</p> <p>20 MR. BUCKNER: And we are too.</p> <p>21 BY MR. REISS:</p> <p>22 Q. Okay. You don't remember one way or the other?</p> <p>23 A. I don't remember pumps, pumping gas there --</p> <p>24 Q. Okay. You do remember that --</p> <p>25 A. -- because --</p>
	<p>Page 153</p> <p>1 Q. You remember the name Alton -- do you remember</p> <p>2 the name Alton Gulf Service, Inc.?</p> <p>3 A. Say that again. I'm sorry, I didn't hear that.</p> <p>4 Alton --</p> <p>5 Q. Alton -- Alton Gulf Service, Inc., do you</p> <p>6 remember that name?</p> <p>7 A. Yeah, sure, that was on Alton Road.</p> <p>8 Q. All right. And that was -- and that was formed</p> <p>9 around 1973 by you, that company, right?</p> <p>10 A. Right. But that's not -- no, no, no. I was</p> <p>11 just -- I was just leasing. I didn't own it. I was</p> <p>12 leasing it.</p> <p>13 Q. Right. But you formed -- you formed a</p> <p>14 corporation, Alton Gulf Service, Inc., on February 19,</p> <p>15 1973, isn't that correct?</p> <p>16 MR. BUCKNER: Objection; leading.</p> <p>17 THE WITNESS: I guess so. Somebody told me to</p> <p>18 do it, and I did it.</p> <p>19 BY MR. REISS:</p> <p>20 Q. Okay. And it was several years later in 1977</p> <p>21 that you served -- that you formed a separate entity</p> <p>22 called Beach Towing, Services, Inc., correct?</p> <p>23 MR. BUCKNER: Objection; leading.</p> <p>24 THE WITNESS: What year?</p> <p>25 ///</p>

<p style="text-align: right;">Page 154</p> <p>1 BY MR. REISS:</p> <p>2 Q. 1977.</p> <p>3 A. Okay.</p> <p>4 Q. Is that correct?</p> <p>5 A. I guess so. If you got it -- if you got it</p> <p>6 written down, it's -- I guess so. I don't remember.</p> <p>7 Q. Is that consistent with your recollection that</p> <p>8 you formed Alton Gulf Service, Inc., in about 1973?</p> <p>9 A. Yes, I remember that. It was a Gulf station,</p> <p>10 Alton Road, that's right, and we did AAA towing and</p> <p>11 towing from Miami Beach. I remember that. And we did</p> <p>12 not buy it. We did not buy it.</p> <p>13 Q. All right. And about three years later, you</p> <p>14 formed a separate company called Beach Towing Services,</p> <p>15 Inc., in 1977, correct?</p> <p>16 MR. BUCKNER: Objection; leading, asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: Okay. All right. If you say so,</p> <p>19 if that's true -- I don't remember. I'm sure I did. If</p> <p>20 it's on paper, I did it, I guess.</p> <p>21 BY MR. REISS:</p> <p>22 Q. Okay. Is it consistent with your recollection</p> <p>23 that you formed Beach Towing Services, Inc., about three</p> <p>24 years after Alton Gulf Services, Inc.?</p> <p>25 MR. BUCKNER: Objection; leading.</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. BUCKNER: Objection; leading.</p> <p>2 THE WITNESS: -- I'm sure a lawyer did. I</p> <p>3 didn't do it, but I'm sure I had a lawyer do it.</p> <p>4 BY MR. REISS:</p> <p>5 Q. And that was a separate company from Alton Gulf</p> <p>6 Service, right?</p> <p>7 MR. BUCKNER: Objection; leading.</p> <p>8 THE WITNESS: No. Do we have to -- it was</p> <p>9 all -- it was all one company. I owned everything</p> <p>10 there. I owned that --</p> <p>11 BY MR. REISS:</p> <p>12 Q. All right.</p> <p>13 A. I didn't own --</p> <p>14 Q. So in your mind --</p> <p>15 A. -- Alton Road. I owned City Hall Garage and</p> <p>16 Beach Garage.</p> <p>17 Q. All right. So in your mind, even though they</p> <p>18 were all separate companies, since you owned them all,</p> <p>19 they were all one company, is that correct?</p> <p>20 MR. BUCKNER: Objection; leading.</p> <p>21 THE WITNESS: Definitely, definitely, one</p> <p>22 company.</p> <p>23 MR. BUCKNER: Objection; leading.</p> <p>24 BY MR. REISS:</p> <p>25 Q. All right. Even though they were formed as</p>
<p style="text-align: right;">Page 155</p> <p>1 THE WITNESS: Say it again.</p> <p>2 BY MR. REISS:</p> <p>3 Q. Is it consistent with your recollection that</p> <p>4 you formed Beach Towing Services, Inc., about three</p> <p>5 years after Alton Gulf Services, Inc.?</p> <p>6 MR. BUCKNER: Objection.</p> <p>7 THE WITNESS: Okay. What year was that?</p> <p>8 BY MR. REISS:</p> <p>9 Q. Alton Gulf Service, Inc., was 1973.</p> <p>10 A. Yeah, but when -- when did I sign the new thing</p> <p>11 you're saying?</p> <p>12 MR. BUCKNER: I'm going to object. Just</p> <p>13 because he says it --</p> <p>14 BY MR. REISS:</p> <p>15 Q. Is it consistent with your recollection that</p> <p>16 you formed Beach Towing Services, Inc., in 1977?</p> <p>17 A. I don't know. I don't remember that.</p> <p>18 Q. Was it a few years after Alton Gulf?</p> <p>19 A. I don't remember. I mean -- I guess.</p> <p>20 Q. Okay. You did form -- you do remember forming</p> <p>21 Beach Towing Services, Inc., right?</p> <p>22 A. Say that again.</p> <p>23 Q. You do remember forming Beach Towing Services,</p> <p>24 Inc., correct?</p> <p>25 A. Yeah, I'm sure I did --</p>	<p style="text-align: right;">Page 157</p> <p>1 separate corporations, since you owned them all, you</p> <p>2 considered them the same, all one company?</p> <p>3 MR. BUCKNER: Objection; leading.</p> <p>4 THE WITNESS: If the attorney said to do it</p> <p>5 this way, I did it. What did I know about it?</p> <p>6 BY MR. REISS:</p> <p>7 Q. Okay.</p> <p>8 A. Okay?</p> <p>9 Q. All right. So you don't know the difference</p> <p>10 between a separate company and various companies that</p> <p>11 you own, is that correct?</p> <p>12 MR. BUCKNER: Objection; leading, misstates</p> <p>13 testimony.</p> <p>14 THE WITNESS: No, I don't.</p> <p>15 BY MR. REISS:</p> <p>16 Q. If you own them, they are all the same company</p> <p>17 in your mind, correct?</p> <p>18 MR. BUCKNER: Objection; leading.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. REISS:</p> <p>21 Q. All right. So you don't really know the</p> <p>22 difference between Beach Garage and Beach Towing</p> <p>23 Services, Inc., do you?</p> <p>24 A. No --</p> <p>25 MR. BUCKNER: Objection; leading.</p>

<p style="text-align: right;">Page 158</p> <p>1 THE WITNESS: -- I don't. I thought it was all 2 one all these years. 3 BY MR. REISS: 4 Q. All right. Okay. But they could be separate, 5 distinct companies, correct? 6 MR. BUCKNER: Objection; leading. 7 THE WITNESS: Well, no, because I own both. 8 BY MR. REISS: 9 Q. Okay. Do you know when you formed any company 10 called Beach Garage? 11 A. It's all the same, Beach Garage, Beach Towing, 12 Beach -- it's all the same. Okay? I don't know -- 13 Q. Do you know if there ever -- 14 A. -- I don't know if Mark changed it while I was 15 gone. Don't forget now, I was gone 40 years -- more, 16 30 -- since 1985 -- '83. 17 Q. Do you -- so in your mind, Beach Garage is the 18 same as Alton Gulf Service, Inc., is that correct? 19 A. Forget -- forget about Alton Gulf, Inc. Alton 20 Gulf was released, and I didn't -- I didn't -- it was 21 owned by Gulf station. I got out of that place, went to 22 City Hall Garage and then Beach Garage. 23 Q. Okay. And City Hall is the same as Beach 24 Garage? 25 A. Same. It's all one. Now, I don't know what</p>	<p style="text-align: right;">Page 160</p> <p>1 records -- the only one I found was a Beach Garage that 2 was formed in, like, 1952. So I don't know what -- what 3 you're referring to. That's what I am trying to figure 4 out. 5 A. 1952? I wasn't even in Miami until '55. 6 Q. Right. So my question is do you know if there 7 was ever a legal entity formed called Beach Garage? 8 A. I don't know. No, I don't know. I don't know. 9 Q. So when you -- when you used the words "Beach 10 Garage," you were really referring to Vincent Festa, 11 correct? 12 MR. BUCKNER: Objection; leading. 13 THE WITNESS: Yeah, I am Vincent Festa, yes. 14 BY MR. REISS: 15 Q. No. But my question is when you use the term 16 "Beach Garage," you're referring to Vincent J. Festa, 17 correct? 18 A. Well, yeah, at the time I owned it. I owned it 19 with Steve Venezia who passed away. Okay? We both 20 owned it, we both owned all the places, and I wanted to 21 retire, and I gave him notice. I wanted to retire to go 22 to California, and he says well, I am going to retire 23 first. So I had to buy him out. So I bought him out on 24 all the stuff. 25 So as for the -- what's the word, the correct</p>
<p style="text-align: right;">Page 159</p> <p>1 the attorneys did. They may have done it to protect 2 something. I don't know. 3 All I know is that Beach Garage, Beach Towing 4 was Vincent J. Festa, the owner, until I took in in 19 -- 5 I forget the year -- no. It had to be -- I think it was 6 1983, that's when I came. I took in three partners. 7 Q. Okay. So you don't know if there is a legal 8 difference between Beach Garage and Beach Towing 9 Service, Inc., correct? 10 A. I don't know -- 11 MR. BUCKNER: Objection; leading. 12 THE WITNESS: -- I don't know. I don't know. 13 I don't know. 14 BY MR. REISS: 15 Q. Was there actually ever a company called Beach 16 Garage formed? 17 A. I don't know that. I thought I -- we were on 18 the beach and I had a garage -- and there was a garage. 19 So we called it Beach Garage. 20 Q. Okay. And for you, Beach Garage -- 21 A. Let me -- can I ask you a question? What year 22 was -- 23 Q. Sure. 24 A. What year was Beach Garage formed? 25 Q. Well, I don't know. I found in the public</p>	<p style="text-align: right;">Page 161</p> <p>1 wording of companies from one to another, it wasn't a 2 shelter or anything like that. It was -- I thought it 3 was Beach Garage, Beach Towing was the same thing. 4 Q. You thought it was Vincent J. Festa? 5 MR. BUCKNER: Objection; leading -- 6 THE WITNESS: Yeah, but I never -- 7 MR. BUCKNER: -- mischaracterizing the 8 testimony, form. 9 THE WITNESS: -- I never, never, I never said 10 to anybody that it's the Vincent Festa company. It was 11 either Beach or Beach Towing. 12 BY MR. REISS: 13 Q. Right, but you always considered them the same 14 as Vincent Festa because you owned them, right? 15 A. Exactly. I wish you had asked me 30 years ago. 16 I'd give you better answers. 17 Q. Your memory was better 30 years ago about 18 events that happened in 1983, correct? 19 A. Right. 20 Q. Is that correct, sir? 21 A. What's that? What's the question? 22 Q. Your memory about events that happened 30 years 23 ago were -- was better 30 years ago, right? 24 MR. BUCKNER: Objection; leading. 25 THE WITNESS: That's a definite. I think --</p>



<p style="text-align: right;">Page 162</p> <p>1 yeah. It was better yesterday too.</p> <p>2 BY MR. REISS:</p> <p>3 Q. I hear you.</p> <p>4 Now, at the -- at the -- at 1150 Collins Avenue</p> <p>5 were there cars parked there --</p> <p>6 A. Excuse me?</p> <p>7 Q. -- when you operated that business?</p> <p>8 A. Excuse me?</p> <p>9 Q. When you operated the business -- I am sorry.</p> <p>10 When you operated the business --</p> <p>11 A. You are coming in broken.</p> <p>12 Q. I'm sorry. Let me try again.</p> <p>13 When you operated the business at 1150 Collins</p> <p>14 Avenue, were there cars stored there?</p> <p>15 A. Yes, all over. I was all over.</p> <p>16 Q. I am sorry?</p> <p>17 A. I was all over the place. I was the only one</p> <p>18 that was towing. That's before -- before Tremont came</p> <p>19 in.</p> <p>20 Q. Right. And when you operated the business at</p> <p>21 1150 Collins Avenue, was there cars parked there?</p> <p>22 A. Cars? Yeah, inside --</p> <p>23 Q. Yeah.</p> <p>24 A. -- on my property and everything, yes.</p> <p>25 Q. Okay. And when you operated the -- when you</p>	<p style="text-align: right;">Page 164</p> <p>1 would call us, and we'd have to tow 30 cars, 40 cars</p> <p>2 away. Okay? And we had to put them somewhere. So I put</p> <p>3 them where it was legal to put them.</p> <p>4 Now, Gulf may not thought it was legal there,</p> <p>5 but, you know, it didn't happen every 24 hours. I did it</p> <p>6 when I could.</p> <p>7 BY MR. REISS:</p> <p>8 Q. Okay. And when you operated Beach Towing at</p> <p>9 1349 Dade Boulevard, there was cars parked there too,</p> <p>10 right?</p> <p>11 A. Definitely, and across the street I had leased</p> <p>12 out a big lot across the street, and I also had on 8020</p> <p>13 North Miami Avenue I had a big lot, actually, six lots</p> <p>14 there on -- off 79th Street and Miami Avenue, and I</p> <p>15 could park them there too, and they weren't -- the</p> <p>16 police weren't worried about it. They just wanted them</p> <p>17 out of the convention center.</p> <p>18 Q. All right. Do you remember, you said that</p> <p>19 Beach Towing Services, Inc., when you left in 1983 had</p> <p>20 the city permit for the city tows? Do you remember we</p> <p>21 talked about that?</p> <p>22 MR. BUCKNER: Objection; leading.</p> <p>23 THE WITNESS: Yeah, we -- of course, we had the</p> <p>24 towing. I didn't leave -- I wouldn't leave without</p> <p>25 getting the permits before --</p>
<p style="text-align: right;">Page 163</p> <p>1 leased at the Alton Gulf, did cars get parked there?</p> <p>2 A. Well, that's before -- that's before we went</p> <p>3 heavy into -- into towing because it wasn't --</p> <p>4 Q. But there was cars parked -- there was cars</p> <p>5 parked there as part of the business, right?</p> <p>6 MR. BUCKNER: Objection; leading.</p> <p>7 THE WITNESS: Yeah. We towed -- we towed from</p> <p>8 everywhere and parked them on there. Even Gulf -- Gulf</p> <p>9 used to say to us you can't park those cars there. I</p> <p>10 said well, they're going to pick them up in 15 minutes.</p> <p>11 Why are you getting nervous? As long as people can get</p> <p>12 to the pumps and get the Gulf gas or --</p> <p>13 BY MR. REISS:</p> <p>14 Q. So you parked cars -- you parked cars -- I am</p> <p>15 sorry.</p> <p>16 A. Excuse me?</p> <p>17 Q. So you parked cars at the Alton station as</p> <p>18 well, correct?</p> <p>19 A. Every place --</p> <p>20 MR. BUCKNER: Leading.</p> <p>21 THE WITNESS: -- every place I could find a</p> <p>22 spot.</p> <p>23 Now, don't forget, when there used to be a</p> <p>24 convention at the convention center, the fire department</p> <p>25 would call the police department, the police department</p>	<p style="text-align: right;">Page 165</p> <p>1 BY MR. REISS:</p> <p>2 Q. How many years when you left in 1983 had Beach</p> <p>3 Towing Services, Inc., had the city permit for towing</p> <p>4 vehicles with respect to the property located at 1349</p> <p>5 Dade Boulevard?</p> <p>6 MR. BUCKNER: Objection; leading.</p> <p>7 THE WITNESS: I don't understand that question.</p> <p>8 Say it again.</p> <p>9 BY MR. REISS:</p> <p>10 Q. For how many years before your departure in</p> <p>11 1983 did Beach Towing Services, Inc., have the city</p> <p>12 permit for towing on behalf of the City of Miami Beach?</p> <p>13 MR. BUCKNER: Objection; leading.</p> <p>14 THE WITNESS: Forever, since I bought the --</p> <p>15 since I bought the property -- I got to think a minute</p> <p>16 even though I mentioned it today -- was it '79 I bought</p> <p>17 the property? That's what I bought the property for.</p> <p>18 I didn't buy it to sell gas. I bought the property to</p> <p>19 park cars there and the rental lot across the way.</p> <p>20 BY MR. REISS:</p> <p>21 Q. And do you remember when you first obtained the</p> <p>22 permit from the City of Miami Beach for Beach Towing</p> <p>23 Services, Inc., to conduct towing services on behalf of</p> <p>24 the City of Miami Beach at 1349 Dade Boulevard?</p> <p>25 MR. BUCKNER: Objection; leading.</p>

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1 THE WITNESS: As soon -- as soon as I towed one  
2 car, I did it.  
3 BY MR. REISS:  
4 Q. Beach Towing --  
5 A. I wasn't going to do anything -- what was your  
6 question?  
7 Q. Beach Towing Services, Inc., had the permit,  
8 correct?  
9 MR. BUCKNER: Object to form.  
10 THE WITNESS: Yes, we always had permits.  
11 BY MR. REISS:  
12 Q. And you believe that goes back to 1977,  
13 correct?  
14 MR. BUCKNER: Objection; mischaracterizes the  
15 testimony.  
16 THE WITNESS: I think it goes back to earlier  
17 than that when I was at Gulf station. We've always had  
18 the permits.  
19 Listen, if I didn't have the permits, they  
20 wouldn't let me tow. Okay? They called me. I didn't  
21 call them.  
22 BY MR. REISS:  
23 Q. Now, you were talking to -- today about a  
24 contract with your nephew, Mark Festa.  
25 Do you remember those questions and answers

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1 today, sir?  
2 A. What kind of a contract?  
3 Q. That's what I was about to ask you. Do you  
4 recall those questions and answers about a contract with  
5 your nephew?  
6 A. No. Refresh my memory.  
7 Q. All right. The Vincent Festa Trust has a lease  
8 with Beach Towing Services, Inc., for the use of the  
9 property at 1349 Dade Boulevard, right?  
10 MR. BUCKNER: Leading.  
11 THE WITNESS: Vincent Festa Trust has a what?  
12 No. They own the property.  
13 BY MR. REISS:  
14 Q. Right, and they leased it to Dade -- and  
15 Vincent Festa Trust leased the 1349 Dade property to  
16 Beach Towing Services, Inc., correct?  
17 A. Yeah, that was my company.  
18 MR. BUCKNER: Objection; leading.  
19 BY MR. REISS:  
20 Q. Okay. Which has been operating, based on your  
21 last answer, towing cars for the City at 1349 Dade  
22 Boulevard since at least 1977, right?  
23 MR. BUCKNER: Objection; leading.  
24 THE WITNESS: I don't remember the year, but --  
25 you have to tell me. If you can tell me when I -- I

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1 don't even remember when I signed up with Alton Gulf,  
2 the Gulf station. I don't remember that. But I know it  
3 had to be -- it had to be in the '70s, I think. I'm not  
4 sure.  
5 BY MR. REISS:  
6 Q. I think you said that when Beach Towing  
7 Services, Inc., repaired vehicles at 1349 Dade  
8 Boulevard, that was mostly its own trucks. That's your  
9 recollection, correct?  
10 A. Yeah. We, you know, being the only ones that  
11 would tow, we didn't have time for repairs. I mean,  
12 maybe we did it for a friend or something or -- or  
13 somebody's mother, we would do something like that for  
14 people that we know, but, otherwise, we just -- we had  
15 so many trucks we had to just take care of bring in --  
16 bringing the cars in, putting at 1349 and across the  
17 street from 1349 Dade Boulevard, which we had a big lot  
18 there.  
19 Q. All right. I'm almost done. Let me take a  
20 short break and go over my notes. Give me five minutes.  
21 Okay? Everybody take a short five-minute break?  
22 THE WITNESS: Sure. Okay.  
23 MS. RIBERO-AYALA: Okay.  
24 THE WITNESS: Please, come back.  
25 THE VIDEOGRAPHER: We are off the record at

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1 1:37 p.m.  
2 (Recess.)  
3 THE VIDEOGRAPHER: We are back on the record at  
4 1:43 p.m.  
5 MR. REISS: Thank you, Mr. Festa. I have no  
6 other questions at this time.  
7 MS. RIBERO-AYALA: I have no questions.  
8 MR. BUCKNER: I have no questions.  
9 THE VIDEOGRAPHER: We are off the record.  
10 MS. RIBERO-AYALA: You have a right to waive  
11 reading your deposition or to read it. What would you  
12 like to do? Would you like to read it?  
13 THE WITNESS: Yes. Okay.  
14 MS. RIBERO-AYALA: He will read his deposition.  
15 (Deposition concluded at 1:45 p.m.)  
16  
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<div>Exhibits</div> <div>EX 0001 Vincen t Festa 111017</div> <div>EX 0002 Vincen t Festa 111017</div> <div>EX 0003 Vincen t Festa 111017</div> <div>EX 0004 Vincen t Festa 111017</div> <div>EX 0005 Vincen t Festa 111017</div> <div>EX 0006 Vincen t Festa 111017</div> <div>EX 0007 Vincen t Festa 111017</div> <div>EX 0008 Vincen t Festa 111017</div> <div>\$</div> <div>\$13 138:17</div> <div>\$15,000 62:5</div> <div>\$30,000 133:8</div> <div>-</div> <div>--L 144:3</div> <div>1</div> <div>1 25:14 26:14,18 27:1,4,20 28:9,10 37:9, 10 112:19,21</div> <div>10 6:2 97:18 133:8</div> <div>100 77:9</div> <div>10:09 6:2,10</div> <div>10th 6:10</div> <div>1150 43:2,8, 13 44:15 147:23 162:4, 13,21</div>	<div>11:45 96:23</div> <div>11th 32:2</div> <div>12 62:3 97:18</div> <div>12,000 61:22</div> <div>12:08 97:1</div> <div>12:55 141:19</div> <div>12th 22:9 32:2</div> <div>13 39:2 47:20 96:4</div> <div>13,500,000 137:21</div> <div>1349 17:12,16 18:20 19:17 20:15 21:19 22:21 23:24 24:2,18 28:23 29:19 30:5,14 31:17 32:8,21 33:21 34:16 35:13 37:5, 14,25 40:7 46:8 47:19 48:4,14,19,23 49:3,13 50:2, 21,24 51:4,7, 20 52:3,9,12, 15,18 56:8, 11,21 57:3 58:7 60:5,12 63:15 66:2,21 67:17 68:3,11 69:14,20 70:13,21 74:7 75:18 80:17 82:12 88:24 98:14,18 102:7 105:1 108:2,22,25 109:3 110:3, 12,19 113:4, 10,17 114:3 116:18 117:15 119:16 121:6, 11,16 123:9, 18,24 132:11 133:3 134:17, 25 135:22</div>	<div>138:18 139:14 143:1,9 144:8,22 146:12 148:8, 19 149:9,15 150:1 151:1, 13 152:4,14 164:9 165:4, 24 167:9,15, 21 168:7,16, 17</div> <div>135 45:3 46:5 47:17,22</div> <div>14,000 61:22</div> <div>14th 18:14</div> <div>15 51:1 97:18 163:10</div> <div>15,000 62:7 65:4</div> <div>159-165 128:9</div> <div>16 51:1</div> <div>1718 101:2</div> <div>1724 103:5</div> <div>1738 79:5 103:16 104:5</div> <div>1743 103:8</div> <div>1747 79:5 103:15 104:5</div> <div>1759 79:5 103:15 104:5</div> <div>19 15:25 52:21 153:14 159:4</div> <div>1950s 12:2</div> <div>1952 160:2,5</div> <div>1955 13:17 15:1</div> <div>1955-ish 14:17</div> <div>1960 15:25 16:13</div> <div>1960s 16:15</div> <div>1965 16:2</div> <div>1970 16:13,22 17:18</div> <div>1970s 17:16 20:24 51:20</div>	<div>52:21</div> <div>1973 153:9,15 154:8 155:9</div> <div>1975 15:2 51:13</div> <div>1977 153:20 154:2,15 155:16 166:12 167:22</div> <div>1980 24:16 25:1,2,8 27:10,15 28:14 29:6 30:4 41:5,19 42:13 46:10 48:2,22 49:2 66:14 107:16 114:22 122:6, 8 150:20,21</div> <div>1983 10:14,16 11:6 52:6,9, 12,19 57:23 58:2,4,12 59:19 107:15 124:6 142:8 144:20 148:18,24 159:6 161:18 164:19 165:2, 11</div> <div>1985 158:16</div> <div>1:08 141:22</div> <div>1:37 169:1</div> <div>1:43 169:4</div> <div>1:45 169:15</div> <div>2</div> <div>2 26:14,18 27:5,10 37:9 38:9 39:25 40:16,17 65:23 112:21</div> <div>20 133:8</div> <div>200 45:3,4 46:5,6 47:17, 22 48:1,23</div>
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**yourself**  
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# **EXHIBIT “C”**

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IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 2016-004547 CA 01

SUNSET LAND ASSOCIATES, LLC,  
Plaintiff,

vs.

MARK FESTA, individually and  
as trustee, MAUREEN FESTA,  
VINCENT J. FESTA, individually  
and as trustee, BARBARA A.  
FESTA, individually and as  
trustee, THE FESTA TRUST, and  
BEACH TOWING SERVICES, INC.,  
BEACH TOWING SERVICES OF MIAMI,  
INC., CONSOLIDATED STORAGE  
YARDS, INC., GOOFE PARTNERS,  
INC., MIAMI AVENUE PROPERTIES,  
INC., 1718 BAY ROAD CORPORATION,  
FESTA TRANSPORT AND STORAGE,  
INC., and CORONA STORAGE, LLC,  
Defendants.

and

THE LOFTS AT SOUTH BEACH  
CONDOMINIUM ASSOCIATION, INC.,  
Intervenor-Defendant.

-----X

1700 Convention Center Drive  
4th Floor  
Miami Beach, Florida  
Friday, August 24, 2018  
Scheduled: 9:00 a.m.  
Commenced: 9:11 a.m.

DEPOSITION

OF

THOMAS R. MOONEY

1 APPEARANCES:

2

On behalf of the Plaintiff:

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Miami, Florida 33133  
(305) 964-8003

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By: DAVID M. BUCKNER, ESQ.  
By: BRETT E. VON BORKE, ESQ.

6

7

On behalf of the Plaintiff:

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701 Brickell Avenue  
Suite 3300

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Miami, Florida 33131  
(305) 789-7642

10

By: TRACY R. SLAVENS, ESQ.

11

12

On behalf of the Defendants, Mark Festa,  
Maureen Festa, Beach Towing Services, Inc.,  
Beach Towing Services of Miami, Inc.,  
Consolidated Storage Yards, Inc., Goofe  
Partners, Inc., Miami Avenue Properties, Inc.,  
1718 Bay Road Corporation, Festa Transport and  
Storage, Inc., and Corona Storage, LLC:

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LEVINE & PARTNERS, P.A.

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By: ALLAN S. REISS, ESQ.

18

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On behalf of Touch of Class Paint & Body Shop,  
Inc. and Rudolf Budja Gallery, LLC:

20

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Miami, Florida 33131  
(305) 503-5054

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By: BENJAMIN H. BRODSKY, ESQ.

23

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25

1 APPEARANCES:

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On behalf of Thomas R. Mooney:

3

CITY OF MIAMI BEACH

CITY ATTORNEY'S OFFICE

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Miami Beach, Florida 33133

(305) 673-7000

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By: ALEKSANDR BOKSNER, ESQ.

By: NICK KALLERGIS, ESQ.

7

8 ALSO PRESENT:

9

Daniel Marinberg

Bradley Colmer

10

W. Tucker Gibbs, Esq.

Rafael E. Andrade, Esq.

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## 1 I N D E X

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1 THEREUPON:

2 THOMAS R. MOONEY,  
3 having been duly sworn, was examined and testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. REISS:

7 Q Good morning, Mr. Mooney. My name is  
8 Allan Reiss. I represent Beach Towing Services,  
9 Inc., Mark Festa, Maureen Festa, and others in a  
10 lawsuit filed by Sunset Land Associates.

11 Could you please state your name?

12 A Thomas Mooney.

13 Q Is that your full legal name?

14 A Thomas R. Mooney.

15 Q Have you ever been known by any other  
16 names?

17 A Tom.

18 Q I'm going to -- you're represented by very  
19 fine counsel. Briefly, have you ever been deposed  
20 before?

21 A Yes.

22 Q Generally, I ask questions. If you  
23 understand the question and you have information  
24 responsive to the question, you answer the question.

25 A Okay.



1           Q     You should answer out loud, yes, no, and  
2     then if you need to explain, whatever. But uh-huh,  
3     uh-uh, nods of the head are really hard for the  
4     court reporter to take down.

5                 We have a room full of people. From time  
6     to time Mr. Boksner or Mr. Buckner may object to the  
7     form of a question. The court reporter can only  
8     take down one person speaking at a time. So if you  
9     could let them get their objection out and then  
10    answer the question, unless your lawyer tells you  
11    not to. It's unlikely. I'm not going to ask about  
12    any privileged communications.

13                But those are generally the rules. If you  
14    want to -- do you understand the rules so far?

15           A     Yes.

16           Q     If you want to take a break at any time,  
17    just let me know. We'll take a break. I just ask  
18    that you wait until after you answer any pending  
19    question and not talk about the case during any  
20    break. Okay?

21           A     Okay.

22           Q     Mr. Mooney, where are you currently  
23    employed?

24           A     The City of Miami Beach.

25           Q     And what is your job position?

1 A Planning director.

2 Q Is that the full name of the title?

3 A Yes.

4 Q And how long have you been the City of  
5 Miami Beach planning director?

6 A Since January of 2014.

7 Q Okay. Have your job duties changed  
8 between January of 2014 and today?

9 A No.

10 Q And could you describe for me your job  
11 duties?

12 A I oversee the Planning Department, which  
13 is charged with enforcing the city's Land  
14 Development Regulations of the city code, as well as  
15 four major land use boards, the Design Review Board,  
16 the Historic Preservation Board, the Planning Board,  
17 and the Board of Adjustment. We also provide  
18 professional support to the City Commission and to  
19 the Land Use and Development Committee.

20 Q When you said city code, enforcing the  
21 city code, what did you mean by "city code"?

22 A The Land Development Regulations of the  
23 city code. And the Land Development Regulations of  
24 the city code are all of the -- it's basically the  
25 zoning code.

1 Q Do you know off the top of your head what  
2 chapters of the city code that encompasses?

3 A It's Chapters 114 through 142.

4 Q And as a planning director, to whom do you  
5 report?

6 A I report directly to the city manager.

7 Q And who is that?

8 A Jimmy Morales.

9 Q And has Mr. Morales been the city manager  
10 since January of 2014?

11 A Yes.

12 Q Were you employed by the City of Miami  
13 Beach prior to January of 2014?

14 A Yes.

15 Q And what position did you hold?

16 A I was design and preservation manager.

17 Q From when to when?

18 A I was design and preservation manager from  
19 roughly 2001 to 2014.

20 Q And did your job duties change as a design  
21 and preservation manager between 2001 and 2014?

22 A Yes. I was staffed -- I was the primary  
23 staff person to the city's Design Review Board and  
24 Historic Preservation Board from 2001 until  
25 approximately the middle of 2012. And then between

1 2012 and when I was appointed director, I oversaw  
2 the Planning Board and the Board of Adjustment.

3 Q From 2012 to 2014 when you oversaw the  
4 Planning Board and the Board of Adjustment, what  
5 were your job duties?

6 A I was the chief staff person to the  
7 Planning Board and to the Board of Adjustment. I  
8 reviewed drafts, the staff reports prepared by the  
9 senior planners. I met with applicants. I assisted  
10 the planning director at the time with zoning  
11 interpretations and drafting, zoning appeals.

12 Q From 2004 to 2012, I think you told me --  
13 I'm sorry -- 2001 to 2012 you were the design and  
14 preservation manager. You were the primary staff  
15 person. And, I'm sorry, I didn't get the rest of  
16 your answer.

17 A To the Historic Preservation Board and the  
18 Design Review Board.

19 Q And what were your duties during that  
20 period?

21 A It was to also review staff reports  
22 prepared by the senior planners, to attend the  
23 meetings of the Design Review Board and the Historic  
24 Preservation Board, and to meet with members of the  
25 public and property owners regarding historic

1 preservation and design review related issues.

2 Q Prior to 2001 where were you employed?

3 A The City of Miami Beach.

4 Q And doing what?

5 A I was a principal planner from 1998 to  
6 2001.

7 Q I'm sorry. Primary planner you said?

8 A Principal planner.

9 Q And what were your job duties from 1998 to  
10 2001?

11 A I was also staffing the city's Design  
12 Review Board and Historic Preservation Board. And  
13 my role was more hands-on in terms of actually  
14 drafting reports and doing more of the legwork. It  
15 was a little less supervisory.

16 Q From 1998 to 2001, what did the Design  
17 Review Board at the City of Miami Beach do?

18 A The Design Review Board reviewed all  
19 requests and applications outside of local historic  
20 districts that involved new construction, additions  
21 to existing buildings, and larger right-of-way  
22 projects.

23 Q What's a larger right-of-way project?

24 A A large bridge. If they're redoing the  
25 right-of-way to create medians and street trees.

1           Q     Did the Design Review Board have any  
2     different function from 2001 to 2012 when you were  
3     primary staff person?

4           A     No.

5           Q     From 1998 to 2014 when you were on the  
6     Design Review Board, did the Design Review Board  
7     consider with respect to new construction what  
8     impact it would have on traffic on Miami Beach?

9                     MR. BUCKNER: Object to form.

10          A     At that time the Design Review Board was  
11     not reviewing traffic studies.

12          Q     It wasn't something that would be  
13     considered when it looked at a design for a new  
14     project?

15          A     They would look at circulation elements,  
16     but they weren't looking at traffic studies per se.

17          Q     Okay. What are circulation elements as  
18     you just used the term?

19          A     Access to a site where driveway cuts might  
20     be located, where pedestrian entrance points and  
21     other access points would be located.

22          Q     Okay. And why were the circulation  
23     elements an issue for the Design Review Board to  
24     consider from 1998 to 2014?

25          A     It had to do -- a lot to do with the

1 placement of curb cuts and driveway cuts in relation  
2 to the surrounding area. It had to do with the  
3 impact of circulation and entrance points on the  
4 overall architecture of the building.

5 Q Why was circulation an issue?

6 A Because the circulation points and access  
7 to the building were important components of getting  
8 into the building, both in and out of the building,  
9 as well as on the architecture of the building.

10 Q Did those access points you discussed have  
11 an impact on the traffic flow around the building?

12 A It would depend upon the application. It  
13 would depend upon whether or not the project was  
14 just at drop-off or whether or not it had a large  
15 number of parking spaces. It would depend upon the  
16 size of the project. It was very project specific.

17 Q Was the reason why it was considered is  
18 because it could have an impact on the circulation  
19 at or about the new project?

20 A Yes.

21 Q And the impact on the circulation, does  
22 that continue to be an issue throughout the City of  
23 Miami Beach today for the Design Review Board?

24 A Yes.

25 Q And does traffic circulation -- has the

1 consideration of traffic circulation for  
2 developments continue to be an issue through today  
3 for new projects?

4 A Yes.

5 Q And is that because it affects the  
6 citizens of Miami Beach having access to the streets  
7 and being able to get around?

8 A It affects area residents. It affects  
9 more globally the larger area of the city. It  
10 affects both people that would be using the  
11 development. It would affect the immediate area,  
12 neighbors. And it could potentially affect a more  
13 global area.

14 Q Okay. And are all of those considerations  
15 with respect to traffic circulation that you just  
16 articulated also true for the specific area of  
17 Sunset Harbour?

18 A Yes.

19 Q So traffic circulation is an issue for new  
20 developments in Sunset Harbour; is that correct?

21 A Yes.

22 Q And because of the impacts on the public  
23 that you've just described, correct?

24 A Correct.

25 Q And has a consideration for developments



1 in Sunset Harbour changed as far as the City of  
2 Miami Beach is concerned between 2003 and the  
3 present?

4 MR. BUCKNER: Object to form.

5 A I'm not sure I understand completely the  
6 question.

7 Q Well, you told me that traffic circulation  
8 is an issue for new developments in the City of  
9 Miami Beach and specifically Sunset Harbour,  
10 correct?

11 A Yes.

12 Q And that consideration as an issue has  
13 existed continuously from 2003 to the present,  
14 correct?

15 A Correct.

16 Q And the consideration from 2003 to the  
17 present has existed not only for the City of Miami  
18 Beach, but also specific to the Sunset Harbour  
19 neighborhood?

20 A Correct.

21 Q So despite any change in uses of the  
22 property in Sunset Harbour for new projects from  
23 2003 to the present, traffic circulation continues  
24 to be an issue for the City of Miami Beach?

25 A Yes.

1           Q     Do you foresee as the -- as the planning  
2     director -- and I don't want to be presumptuous, but  
3     planning to me connotes you're looking into future.  
4     Am I wrong about that? That's what planning is  
5     about?

6           A     That's correct.

7           Q     Okay. I was being presumptuous?

8           A     No.

9           Q     I was correct? My statement was correct?

10          A     Your statement was correct.

11          Q     You agree with me. All right. Humor  
12     comes out bad in depos. I'm sorry.

13          A     That's all right.

14          Q     I can't help myself.

15                 So as the planning director, do you  
16     foresee that at some point traffic circulation at  
17     Sunset Harbour is no longer going to be something  
18     that the City of Miami Beach is concerned with?

19          A     That's difficult to speculate.

20          Q     Okay. Do you foresee a period of time in  
21     the future when you can say in X amount of time we  
22     don't think it will be an issue anymore?

23                 MR. BUCKNER: Object to form.

24                 Speculation.

25          A     I couldn't speculate to that, either.

1           Q     Into the foreseeable future, do you  
2     believe that traffic circulation will continue to be  
3     an issue throughout the City of Miami Beach?

4           A     For "foreseeable" do you mean --

5           Q     Whatever period of time --

6           A     -- couple of years?

7           Q     -- you're comfortable saying you think it  
8     will continue to be an issue.

9                     MR. BUCKNER: Object to form.

10                    Speculation.

11           A     Certainly within the next couple of years  
12     it will continue to be an issue.

13           Q     And is that also true for the Sunset  
14     Harbour neighborhood?

15           A     Yes.

16           Q     I think we went back -- you were -- we  
17     went back to 2001. You were working - I Googled  
18     you - for the City of Miami Beach since 1993, right?

19           A     Correct.

20           Q     So what were you doing for the City of  
21     Miami Beach prior to 2001?

22           A     Between 1993 and 1998 I was a senior  
23     planner. And I also staffed the city's Design  
24     Review and Historic Preservation Boards. And the  
25     role was similar to my role as a principal planner

1     between 1998 and 2001.

2           Q     You anticipated my next question. Thank  
3     you. All right. So where were you before 1993? I  
4     mean work-wise, not specifically your location.

5           A     I was working for the City of North Miami  
6     Beach between July of 1989 and April of 1993 when I  
7     started with the City of Miami Beach.

8           Q     And what did you do for the City of North  
9     Miami?

10          A     At the City of North Miami Beach I started  
11     out as an unpaid management intern and then became a  
12     paid management intern and then eventually an  
13     assistant planner.

14          Q     Okay. And where did you work before 1998?

15          A     Before -- or before 1989?

16          Q     I'm sorry. I wrote it down. I have  
17     dyslexia. Before 1989.

18          A     Before 1989 I was a full-time student.

19          Q     Can you give me the benefit of your post  
20     high school education, please?

21          A     Sure. I have an undergraduate degree in  
22     political science from Florida International  
23     University. And that was obtained in 1989. And I  
24     have a Master's degree in public administration,  
25     also from FIU, that I got in 1991.

1           Q     Okay. I also noted an AICP next to your  
2     name. What is that?

3           A     AICP stands for the American Institute of  
4     Certified Planners. And I've been a member of AICP  
5     since 1995.

6           Q     Okay. Can you tell me what that is?

7           A     It's a certification issued by the  
8     American Planning Association. You have to take an  
9     exam. And if you pass the exam and you're  
10    certified, there's continuing education credits that  
11    you have to do every two years during two-year  
12    reporting periods. And it certifies you as a  
13    professional planner.

14          Q     So if you have an AICP, you're an expert  
15    in planning; is that correct?

16          A     I don't think I would say expert, but  
17    perhaps proficient.

18          Q     Is there any other formal certification  
19    and planning other than AICP that you're aware of?

20          A     There's a fellow of the American Institute  
21    of Certified Planners.

22          Q     That's after --

23          A     Yes.

24          Q     -- certification?

25          A     Yes.

1           Q     But it's also by the same organization,  
2     AICP?

3           A     It's through the American Planning  
4     Association, APA.

5           Q     And when you say you're proficient by  
6     virtue of that certification, can you just -- I  
7     don't mean to be redundant, but can you tell me what  
8     you would be proficient in by virtue of having that  
9     certification as you understand it?

10          A     Land use and development issues,  
11     comprehensive planning, urban design.

12          Q     Are you aware of what this dispute is  
13     about?

14          A     My understanding is that the dispute  
15     involves a covenant that exists on the Sunset  
16     property across the street from Beach Towing.

17          Q     Do you understand that the plaintiff in  
18     this case is part of a group that wants to develop  
19     some property across the street from Beach Towing at  
20     1349 Dade Boulevard?

21          A     Yes.

22                     MR. BUCKNER:  Objection.

23                     MR. REISS:  What's the matter with it?

24                     MR. BUCKNER:  The way you asked the  
25     question sounded like we wanted to develop 1349

1 Dade Boulevard.

2 BY MR. REISS:

3 Q With that objection, did you understand I  
4 was talking about across the street from 1349 Dade  
5 Boulevard?

6 A Yes. My understanding of the question was  
7 you were referring to the property across the street  
8 from 1349 Dade boulevard.

9 Q Thank you. I won't go into minutia, but  
10 in order to develop a project, it's my understanding  
11 that there's a series of applications that meet --  
12 let's talk about developing the property; that's the  
13 property across the street from 1349 Dade Boulevard.  
14 That's what I'm talking about unless I say  
15 otherwise. Are we together?

16 A Okay.

17 Q It's my understanding there's a series of  
18 applications and processes that the developer of  
19 that property will have to go through to develop the  
20 property.

21 A That's correct.

22 Q Okay. Now, there's a covenant running  
23 with the land, it's our position, on the property.  
24 Does the city care about the covenant in passing  
25 upon any of those processes to develop the property?

1           A     My understanding is that the city does not  
2     enforce private covenants.

3           Q     So the developer would be free to make  
4     whatever application they wanted and the covenant  
5     wouldn't be something the city would consider in  
6     those processes, correct?

7           A     Not to the best of my knowledge.

8           Q     To the best of my knowledge I'm wrong or  
9     to the best of my knowledge my statement's true?

10          A     To the best of my knowledge, the developer  
11     could make their application.

12          Q     Without a concern that the covenant would  
13     somehow impact the city's view of their project?

14          A     Correct.

15          Q     When I said "the city," I meant to include  
16     the Design Review Board, the Planning Board. Did  
17     you understand when I said "the city" that I meant  
18     the city's boards, including those?

19          A     Yes.

20          Q     And including any other boards the  
21     developer would have to get the approval of for the  
22     project?

23          A     Correct.

24          Q     What did you do to prepare for your  
25     deposition today, if anything? And I don't want to



1 know anything you talked to any city attorney about.  
2 That's privileged. Please don't go there.

3 A Nothing in particular. I read through  
4 some documents and that was it.

5 Q What documents did you read through?

6 A I read through some documents that were  
7 provided by Mr. Andrade.

8 Q Were they helpful?

9 A Yeah. Yes. Sorry.

10 Q Now, I'm going to talk about Beach Towing  
11 Services, Inc. And I may refer to them as just  
12 Beach Towing unless otherwise noted. Are you okay  
13 with that?

14 A Yes.

15 Q Okay. Are you familiar with Beach Towing?

16 A Yes.

17 Q In what respect?

18 A They're a towing company that is located  
19 at 1349 Dade Boulevard.

20 Q And do you know how long Beach Towing has  
21 been providing towing services at 1349 Dade  
22 Boulevard?

23 A I don't know the exact day that they  
24 started their operations at that site.

25 Q Do you have any reason to believe that it

1 is not accurate to say that Beach Towing has been  
2 providing towing services at 1349 Dade Boulevard  
3 since at least 1979?

4 MR. BUCKNER: Object to form.

5 A I couldn't confirm whether or not they've  
6 been providing towing services since 1979 or not.

7 Q Right. And I'm sorry. Again, I don't  
8 mean to be into minutia, but the question is a  
9 little different. The question is, do you have  
10 knowledge of any facts to indicate that it is not  
11 accurate to say that Beach Towing has been rendering  
12 towing services at 1349 Dade Boulevard since at  
13 least 1979?

14 MR. BOKSNER: Objection to form.

15 MR. BUCKNER: Join.

16 A I don't have any knowledge that they have  
17 not been providing towing services since 1979.

18 Q To your knowledge, does Beach Towing  
19 Services currently have any other place of business  
20 on Miami Beach other than 1349 Dade Boulevard?

21 A I'm not aware of any other place of  
22 business.

23 Q Are you aware of any storage facilities  
24 that Beach Towing has on Miami Beach other than 1349  
25 Dade Boulevard?

1           A     No.

2           Q     Are you aware that the City of Miami Beach  
3     Code requires any company providing towing services  
4     under a police and parking permit to have storage  
5     facilities within the boundaries of the City of  
6     Miami Beach?

7           A     I'm aware that there's a section of the  
8     code pertaining to that. I don't know the specifics  
9     of that section of the code offhand.

10                   (Defendant's Exhibit A was marked for  
11     Identification.)

12     BY MR. REISS:

13           Q     I show you Exhibit A.

14                   MR. REISS: Mr. Boksner. Mr. Buckner, I'm  
15     going to slide you one. Okay?

16                   MR. BUCKNER: That's fine.

17                   MR. REISS: I have one more if anybody --  
18     I didn't expect such a big crowd, so I don't  
19     have copies for everybody. I apologize.

20     BY MR. REISS:

21           Q     I can represent to you that this is a  
22     document that we received from the City of Miami  
23     Beach. And you probably have not seen it before.  
24     But just for the record, it's a document that says  
25     "Police Department Contracts" at the top. And then

1     there's a date. And then there's a card in the  
2     middle; it says "Police Department Contracts." And  
3     there's a date, "7/18/79." It says, "Commissioner  
4     Weinstein asked administration to investigate  
5     quality of service rendered by Beach Towing Service,  
6     holder of current city contract, review contract in  
7     an effort to seek alternatives, and determine  
8     appropriate action city may take to require them to  
9     maintain their 1349 Dade Boulevard property clear of  
10    disabled vehicles." Did I read that paragraph  
11    correctly?

12           A     Yes.

13           Q     Do you have any reason to believe that  
14    Beach Towing did not have a current city contract  
15    for towing at 1349 Dade Boulevard on July 18, 1979?

16           A     No.

17           Q     Was this one of the documents Mr. Andrade  
18    provided you?

19           A     I don't recall.

20           Q     Are you aware of any facts that indicate  
21    that Beach Towing perpetrated a fraud on the City of  
22    Miami Beach at any time?

23           A     No.

24           Q     Now, I saw a video online of a commission  
25    meeting on July 25, 2018. Do you recall being

1 before the City Commission on July 25, 2018?

2 A Yes.

3 Q And I saw that there was a vote, five to  
4 two in favor of the city preparing an amicus brief  
5 supporting the position that Beach Towing's use of  
6 the 1349 Dade Boulevard property to render towing  
7 services was a -- is a legal nonconforming use. Do  
8 you remember that?

9 A Yes.

10 MR. BOKSNER: Objection to form.

11 MR. REISS: I'm sorry. What's the matter  
12 with the form?

13 MR. BOKSNER: Because that's not what was  
14 said. So you're interpreting that.

15 BY MR. REISS:

16 Q Do you remember something different being  
17 said?

18 A I don't remember the exact wording of the  
19 motion. I recall that the commission directed the  
20 city attorney to prepare an amicus brief.

21 Q Now, have you ever discussed with  
22 Commissioner Aleman whether or not Beach Towing's  
23 use of the property located at the 1349 Dade  
24 Boulevard property is a legal nonconforming use?

25 A I had a telephone conversation with

1 Commissioner Aleman regarding the use of Beach  
2 Towing.

3 Q Of the 1349 Dade Boulevard property?

4 A Yes.

5 Q For towing?

6 A Yes.

7 Q And what did you discuss?

8 A She said that she had been reached out to  
9 by the owner and by the attorneys for Beach Towing  
10 and wanted to know what the status of the use was.  
11 And I had explained to her that it was a use that  
12 was -- that we had not seen anything that would  
13 indicate that they were operating illegally. And  
14 that there was litigation between Beach Towing and  
15 the property across the street. And that she should  
16 also speak to the city attorney.

17 Q Did you tell her that Beach Towing's use  
18 of the 1349 Dade Boulevard property during that  
19 conversation is a legal nonconforming use?

20 A I told Commissioner Aleman that there was  
21 nothing to indicate that Beach Towing was operating  
22 illegally, and that any determination as to the  
23 property's legal nonconforming status is something  
24 that I would have to put in writing either at the  
25 request of the property owner or through some other

1 court mechanism if so ordered by the court.

2 Q Have you ever made that determination?

3 A No.

4 Q As of today do you believe that Beach  
5 Towing Services' use of the 1349 Dade Boulevard  
6 property for towing services is a legal  
7 nonconforming use?

8 MR. BUCKNER: Object to form.

9 A I believe that they are operating in a  
10 manner -- that they're not operating in a manner  
11 that is illegal. But I have not yet made a  
12 determination as to the legal nonconforming status  
13 of Beach Towing.

14 Q Has anybody asked you to make that  
15 determination?

16 A The City Commission requested that I make  
17 that determination as part of the amicus brief.

18 Q And as of this moment you have not made  
19 that determination? Is that your testimony?

20 A Correct.

21 Q When do you expect to make that  
22 determination?

23 A I expect to make it prior to the city  
24 attorney issuing the amicus brief. And my  
25 understanding is that the city attorney wants to

1 issue the amicus brief no later than August 30th.

2 Q I don't want to know your communications  
3 with the city attorney, but have you communicated  
4 with the city attorney regarding the amicus brief?

5 A Yes.

6 Q Do you expect to have additional  
7 communications?

8 A Yes.

9 Q Are you currently waiting for any  
10 additional information to make your determination?

11 A I'm evaluating information that I have.  
12 I'm not waiting for any additional information.

13 Q What information are you currently  
14 evaluating?

15 A I am evaluating the Occupational License  
16 and Business Tax Receipt history of Beach Towing.  
17 I'm evaluating the previous zoning code where Beach  
18 Towing is located.

19 Q What else?

20 A And I'm evaluating correspondence that was  
21 sent to me by Mr. Andrade.

22 Q Anything else?

23 A That's all I can think of now. There  
24 might be other things, but those are the main things  
25 that I'm looking at now.



1           Q     Is there any other additional information  
2     that you believe to -- that you need to make -- to  
3     reach a conclusion?

4           A     At the moment I don't believe that there's  
5     anything additional that I need.

6           Q     Have you ever discussed the issue of  
7     whether Beach Towing's use of the 1349 Dade  
8     Boulevard property for towing was a legal  
9     nonconforming use with Commissioner Gongora?

10          A     I did discuss that with Commissioner  
11     Gongora.

12          Q     Okay. And what did you tell him?

13                 MR. BOKSNER: Objection. Don't answer  
14     that. He was represented by counsel during  
15     that meeting.

16     BY MR. REISS:

17          Q     How many conversations have you had with  
18     Mr. Gongora regarding whether or not Beach Towing's  
19     use of the property at 1349 Dade Boulevard is a  
20     legal nonconforming use?

21          A     I had two. One was the meeting that  
22     Mr. Boksner just referred to. And the other one was  
23     a phone conversation prior to that meeting.

24          Q     Who was on the phone during that phone  
25     conversation?

1           A     Just myself and Commissioner Gongora.

2           Q     What did you discuss?

3           A     He also asked about the legal  
4 nonconforming status of Beach Towing.

5           Q     And what did you tell him?

6           A     I told him that there was nothing to  
7 indicate that Beach Towing was operating illegally.  
8 But that until we receive a request from the  
9 property owner, in light of the pending litigation,  
10 that I was not able to actually issue a formal  
11 written interpretation of any kind. And that he  
12 should speak to the city attorney as well.

13          Q     Did you tell Commissioner Gongora during  
14 that telephone conversation that Beach Towing's use  
15 of the 1349 Dade Boulevard property for towing  
16 services was a legal nonconforming use?

17          A     No.

18                     (Defendant's Exhibit B was marked for  
19 Identification.)

20 BY MR. REISS:

21          Q     I show you Exhibit B.

22                     MR. REISS: Mr. Boksner. Mr. Buckner.

23                     MR. BUCKNER: Did you call that 2 or B?

24                     I'm sorry.

25                     MR. REISS: I thought I wrote B. And I

1           thought I said B. Did I miswrite or misspeak?

2           MR. BUCKNER: No. I didn't hear you.

3           MR. REISS: I'm just looking if I have  
4           another copy that's not written on. I don't  
5           think I do. I'm sorry.

6           MR. BUCKNER: Okay. Whenever you're  
7           ready. I don't have a copy. That's all right.

8 BY MR. REISS:

9           Q     You know Mr. Andrade sitting to my right,  
10          correct?

11          A     Yes.

12          Q     Have you ever had any conversations with  
13          Mr. Andrade concerning whether or not Beach Towing's  
14          use of the property located at 1349 Dade Boulevard  
15          is a legal nonconforming use?

16          A     Yes.

17          Q     Did you tell Mr. Andrade that Beach Towing  
18          Services' use of the 1349 Dade Boulevard property  
19          for towing services is a legal nonconforming use?

20          A     No.

21          Q     Did you ever have any conversation with  
22          Commissioner Gonzalez concerning Beach Towing  
23          Services' use of the 1349 Dade Boulevard property?

24          A     Commissioner Rosen Gonzalez?

25          Q     I'm sorry. Yes.

1           A     Yes.

2           Q     And who was present during that meeting?

3           A     Just me. It was a phone call.

4           Q     Okay. And during that phone conversation,  
5 did you tell Commissioner Gonzalez that Beach Towing  
6 Services' use of the 1349 Dade Boulevard property is  
7 a legal nonconforming use?

8           A     No.

9           Q     Did you ever discuss Beach Towing  
10 Services' use of the 1349 Dade Boulevard property  
11 with Bradley Colmer?

12          A     Yes.

13          Q     And what did you discuss?

14          A     I don't recall. It was a discussion that  
15 was part of a meeting pertaining to his development  
16 project. But I don't recall exactly what was said.

17          Q     Who was present at that meeting?

18          A     I believe it was Michael Belush from my  
19 staff. And there may have been another staff  
20 person.

21          Q     When you said "his project," we're talking  
22 about the Sunset Harbour project?

23          A     Yes.

24          Q     Did you tell Mr. Colmer during that  
25 conversation that Beach Towing Services' use of the

1 1349 Dade Boulevard property for towing services is  
2 a legal nonconforming use?

3 A No.

4 Q Did you tell him that Beach Towing  
5 Services -- let me restate it. I apologize.

6 Did you tell Mr. Colmer during that  
7 conversation that Beach Towing Services' use of the  
8 1349 Dade Boulevard property is illegal?

9 A No.

10 Q Have you ever told anybody that Beach  
11 Towing Services' use of the 1349 Dade Boulevard  
12 property is illegal?

13 A No.

14 Q Did you ever tell anybody that Beach  
15 Towing Services' use of the 1349 Dade Boulevard  
16 property is a violation of the City of Miami Beach  
17 Code?

18 A No.

19 Q Have you ever spoken to Mr. Buckner about  
20 Beach Towing Services' use of the 1349 Dade  
21 Boulevard property?

22 A No.

23 Q Have you ever spoken to Ms. Slavens? Do  
24 you know Ms. Slavens down there?

25 A Yes.

1           Q     Have you ever spoken to Ms. Slavens about  
2     Beach Towing Services' use of the 1349 property?

3           A     Not that I recall.

4           Q     Have you ever spoken to Graham Penn about  
5     Beach Towing Services' use of the 1349 Dade  
6     Boulevard property?

7           A     Yes.

8           Q     And what did you discuss?

9           A     Mr. Penn asked me for a letter as to the  
10    legal nonconforming status of Beach Towing. And I  
11    told Mr. Penn that I could not issue that letter  
12    because it was not coming from the property owner.

13          Q     Okay. Did you discuss with him whether or  
14    not Beach Towing Services' use of the 1349 Dade  
15    Boulevard property is a legal nonconforming use?

16          A     No.

17          Q     Did you have any conversation with -- did  
18    you have any other conversations with Mr. Penn  
19    regarding Beach Towing other than the one you just  
20    recited?

21          A     After that conversation, he then asked for  
22    a letter that was more general to the CD-2 zoning  
23    district and whether or not towing would be  
24    permitted in a CD-2 zoning district.

25          Q     I'll get back to Exhibit B, but since you

1 brought that up.

2 (Defendant's Exhibit C was marked for  
3 Identification.)

4 BY MR. REISS:

5 Q I show you Exhibit C. We'll get back to  
6 B. Do you recognize Exhibit C?

7 A Yes.

8 Q Is that a true copy of a letter you wrote?

9 A Yes, it is.

10 Q And is that your signature on it?

11 A Yes.

12 Q Did you intend by writing this to mean  
13 that somehow Beach Towing's use of the 1349 Dade  
14 Boulevard property for towing is illegal?

15 A No.

16 Q When you wrote this letter, did you mean  
17 to say that towing is not permitted in CD-2?

18 A Yes.

19 Q That's under the current code?

20 A Correct.

21 Q Because it's not listed as a permitted or  
22 a conditional use in the code?

23 A Correct.

24 Q Is this the letter that you were referring  
25 to when you said Mr. Penn asked you for a letter?

1 Is this the letter you gave him in response to that  
2 request?

3 A Yes.

4 Q Going back to Exhibit B.

5 Backing up before I get to B. The  
6 commission meeting that we talked about earlier was  
7 July 25th, and today is August 24th. So almost a  
8 month has passed and you have not reached your  
9 conclusion. But you expect to sometime between now  
10 and the time the brief is finished. Can you tell me  
11 why 30 days have passed, there's four days left  
12 before the brief is going to be published, and  
13 there's still no decision?

14 MR. BOKSNER: Objection. Don't answer  
15 that. It calls for attorney/client privileged  
16 communications.

17 BY MR. REISS:

18 Q I don't want any communications with your  
19 attorney. I want to know your understanding of  
20 why --

21 MR. BOKSNER: The understanding will  
22 result in attorney/client communication;  
23 therefore, he will not answer the question.  
24 You can certify it if you want.

25 MR. REISS: I'm not here to argue.



1 BY MR. REISS:

2 Q Are you aware as to whether or not Beach  
3 Towing currently has a Business Tax Receipt for  
4 towing at the 1349 Dade Boulevard property?

5 A They do have a current Business Tax  
6 Receipt for their property.

7 Q And as part of the process to obtain the  
8 Business Tax Receipt, do you ever make a  
9 determination as to whether the use of the property  
10 is a legal nonconforming use?

11 A Specific to this property?

12 Q Well, let's start with this property.

13 A The Business Tax Receipt is renewed every  
14 year. So it's not routed to the Planning Department  
15 for an approval.

16 Q Okay. So in general, if somebody applies  
17 for a Business Tax Receipt, do you ever make a  
18 determination whether the use of the property would  
19 fall into the category of a legal nonconforming use?

20 A It would depend upon the circumstances.

21 Q Okay. Under what circumstances would you  
22 make a determination upon the application for a BTR  
23 as to whether the use of the property is a legal  
24 nonconforming use?

25 A If it was requested by the property owner.

1           Q     There would have to be a specific request  
2     aside from the application for the Business Tax  
3     Receipt?

4           A     Yes.

5           Q     Is there a section of code that says that?

6           A     They're under section -- under Chapter 118  
7     under Nonconformances there's a section that  
8     pertains to what would establish and constitute a  
9     legal nonconforming use.

10          Q     My question was a little different. Are  
11     you aware of a code section that says that in order  
12     to make a determination there has to be a written  
13     request from the property owner?

14          A     No.

15          Q     That seems to be your position, though.

16          A     That's the position that we've taken with  
17     regard to requests for determinations on legal  
18     nonconforming uses.

19          Q     And that's simply a position that's not  
20     supported by any particular section of the code; is  
21     that correct?

22          A     There is no specific code section that  
23     addresses that.

24          Q     Are you aware of any determinations of  
25     legal nonconformity that have been made where there

1 was not a specific written request by a property  
2 owner?

3 A Can you repeat that?

4 Q Are you aware of any instances where a  
5 determination has been made that the use of a  
6 property was a legal nonconforming use in the  
7 absence of a written request by the owner of the  
8 property for that determination?

9 A No.

10 Q Do you recognize Exhibit B?

11 A Yes.

12 Q What's your understanding of this  
13 document?

14 A This is a Notice of the Taking of  
15 Deposition. And it has some backup material.

16 Q Okay. And you're here pursuant to this  
17 Notice?

18 A Yes.

19 Q And you're here as the corporate  
20 representative of the City of Miami Beach listed on  
21 the attached Schedule A?

22 A Yes.

23 Q Going to Schedule A, looking at Roman  
24 numeral 7, it says, "All reasons why or why not  
25 Beach Towing Services, Inc.'s use of the real

1 property located at 1349 Dade Boulevard is or is not  
2 a permitted use under the City of Miami Beach Zoning  
3 Code." Did I read that accurately?

4 A Yes.

5 Q Are you prepared to testify to that  
6 subject here today?

7 A I'm prepared to answer any questions  
8 regarding that subject.

9 Q Is Beach Towing Services, Inc. use of the  
10 real property located at 1349 Dade Boulevard a  
11 permitted use under the City of Miami Beach Zoning  
12 Code?

13 MR. BUCKNER: Object to form.

14 MR. BOKSNER: Join.

15 A Under the CD-2 zoning district, towing  
16 services are not currently permitted under the  
17 current code.

18 Q But they are towing there?

19 A Yes.

20 Q And they have a BTR?

21 A Correct.

22 Q And there's a police and parking towing  
23 permit issued by the city commission for towing  
24 there?

25 A I believe so.

1           Q     So is there towing permitted at that  
2     location today --

3                     MR. BUCKNER:  Object to form.

4           Q     -- in fact?

5                     MR. BOKSNER:  Join.

6           A     They have a current BTR for towing  
7     services and they are engaged in towing there.

8           Q     And is it illegal?

9                     MR. BUCKNER:  Object to form.

10          A     I have not seen anything that would  
11     indicate that what they are doing there is illegal.

12          Q     Have you seen a letter attached to the  
13     Notice of Taking Deposition dated April 15, 2016?

14          A     Yes.

15          Q     When was the first time you saw that  
16     letter?

17          A     I believe I saw it shortly after the date  
18     that it was delivered.  I don't recall the exact  
19     date.

20          Q     And did the city take any action in --  
21     well, I'm sorry.

22                     Did you discuss this letter with  
23     Mr. Morales at or about that time?

24          A     Yes.

25          Q     And what was discussed?

1 THE WITNESS: At that meeting Raul was  
2 there.

3 MR. BOKSNER: I'm going to object. That's  
4 a point in time he was represented by counsel  
5 and that is protected.

6 BY MR. REISS:

7 Q The conversation your attorney was  
8 present?

9 A Yes.

10 Q Okay. Did you have any conversations with  
11 Mr. Morales concerning this letter outside the  
12 presence of counsel?

13 A No.

14 Q Okay. Other than the meeting where your  
15 counsel was present, did anybody ask you to  
16 investigate the allegations contained in the April  
17 15, 2016 letter?

18 A Not that I recall, no.

19 Q Did you undertake to investigate the  
20 allegations contained in the April 15, 2016 letter?

21 A No.

22 Q Are you aware of anybody at the City of  
23 Miami Beach undertaking to investigate the  
24 allegations in the April 15, 2016 letter?

25 A No.

1           Q     Do you have any expectation, without  
2     telling me any communications with the attorney, of  
3     having further communications with the City  
4     Attorney's Office related to Beach Towing Services'  
5     use of the property located at 1349 Dade Boulevard  
6     between now and August 30th?

7           A     Yes.

8           Q     What will be your process to determine  
9     whether Beach Towing Services' operation at 1349  
10    Dade Boulevard is a legal nonconforming use?

11          A     I will evaluate all of the relevant  
12    background for the use.

13          Q     And I think you've already told me what  
14    you've evaluated, right? You told me the BTR  
15    history, the previous zoning code, the Andrade  
16    correspondence. Is there anything else?

17          A     As of right now, no.

18          Q     Is there anything else that you've asked  
19    for that you have not received?

20          A     No.

21          Q     Is there anything else that you need?

22          A     As of right now, there's nothing else that  
23    I need.

24          Q     So why haven't you made a determination in  
25    your mind?

1                   MR. BOKSNER: Objection. Don't answer  
2                   that. Calls for attorney/client privileged  
3                   communications.

4   BY MR. REISS:

5           Q     In your mind have you made a  
6           determination?

7                   MR. BOKSNER: I have no objection.

8                   THE WITNESS: Okay.

9           A     I have not made up my mind. I evaluated  
10          what the background is. But I still need to do  
11          additional evaluation before I reach a final  
12          conclusion.

13          Q     But you've got all the material you need?

14          A     As of right now I do, yes.

15          Q     So you don't think you're missing any  
16          pieces to the puzzle?

17          A     As of right now, no.

18          Q     So it's just a matter of you putting the  
19          pieces together in your head, which you have not  
20          completed yet?

21          A     Correct.

22          Q     As we sit here today, you can't think of  
23          any additional information that you need?

24          A     No.

25          Q     And you've had 29 days, but in 5 days then



1 it will all come together and you'll have a  
2 determination; is that correct?

3 A I expect to have the determination by  
4 August 30th.

5 Q And that's the day the brief will be  
6 completed, as you understand it?

7 A As I understand it, yes.

8 Q How much time do you think you still need  
9 for the pieces of the puzzle to come together in  
10 your mind?

11 A I will need until next week, until the  
12 30th.

13 Q What do you expect to change between now  
14 and the 30th with respect to your analysis?

15 A At this point I don't know. I couldn't  
16 answer that.

17 Q Looking at Exhibit 1 to Exhibit B, the  
18 April 15th letter. On the page 2 of 14, the bottom,  
19 the last paragraph says, "The Beach Garage years  
20 1975 to 1980." Do you see that?

21 A This is page 2?

22 Q I think so, sir. Up in the top left-hand  
23 corner --

24 A Okay. And which paragraph?

25 Q The one that's underlined. The second one

1     underlined, the last paragraph says, "The Beach  
2     Garage years 1975 to 1980." Do you see that?

3             A     Yes.

4             Q     And then on the next page, still within  
5     that heading, in the second paragraph, it says,  
6     "Based on the available records, it is clear that  
7     towing was occurring at 1349 Dade Boulevard during  
8     that period." Do you see that?

9             A     Yes.

10            Q     Do you have any reason to believe that  
11     there was not towing at 1349 Dade Boulevard during  
12     the 1975 to 1980 time frame?

13            A     I have not seen anything to indicate that  
14     there was not towing there.

15            Q     Are you aware of any facts that indicate  
16     that Beach Towing has not been uninterruptedly  
17     conducting towing services at 1349 Dade Boulevard --  
18     at the 1349 -- strike that.

19                   Are you aware of any facts that indicate  
20     to you that Beach Towing has not been  
21     uninterruptedly conducting towing services at 1349  
22     Dade Boulevard since 1980?

23            A     No.

24            Q     Is there any period since 1980 that you're  
25     aware of that six months or more has gone by that

1 Beach Towing was not conducting towing services at  
2 1349 Dade Boulevard?

3 A Not that I'm aware of.

4 Q Has anybody ever said that to you,  
5 presented evidence to you of that, represented that  
6 to you?

7 A No.

8 Q Looking at Mr. Larkin's letter dated April  
9 15, 2016, why is it that -- strike that.

10 Did the city take any action in response  
11 to this letter?

12 A No.

13 Q Do you know why?

14 A The -- it was determined that --

15 MR. BOKSNER: Objection. If you're going  
16 to testify to any attorney/client  
17 communication, then don't.

18 A I can't answer because -- for that reason.

19 Q Well, I'm not asking for the  
20 communication. I'm asking for why no action was  
21 taken.

22 MR. BOKSNER: Again, I'm going to instruct  
23 you not to answer. You can certify the  
24 question. Was that determination made while  
25 counsel was present?

1 THE WITNESS: Yes.

2 MR. BOKSNER: Okay.

3 BY MR. REISS:

4 Q Was the determination made -- Who was the  
5 determination made by?

6 MR. BOKSNER: Was it made in consultation  
7 with the City Attorney's Office?

8 THE WITNESS: Yes.

9 MR. BOKSNER: Okay.

10 BY MR. REISS:

11 Q By whom?

12 MR. BOKSNER: Was Raul Aguila present?

13 THE WITNESS: Yes.

14 MR. BOKSNER: Okay.

15 BY MR. REISS:

16 Q Who made the determination? The name of  
17 the person, not the communication.

18 A The determination that we were not going  
19 to respond?

20 Q Yes.

21 A Okay.

22 THE WITNESS: Can I answer that?

23 MR. BOKSNER: Yes.

24 A Okay. The manager.

25 Q Mr. Morales?

1           A     Yes.

2           Q     Did he tell you why no response would be  
3     made?

4                     THE WITNESS:   That was --

5                     MR. BOKSNER:   That's a yes or no question.

6           A     Okay.   I'm sorry.   Can you repeat?

7           Q     Did Mr. Morales tell you why there would  
8     be no response?

9           A     Yes.

10          Q     Okay.   And what were the reasons why no  
11     response would be made?

12                    MR. BOKSNER:   Objection.   Attorney/client  
13     privileged communication.   Don't answer that.

14     BY MR. REISS:

15          Q     Is it your obligation under the code to  
16     investigate zoning violations?

17          A     If they are presented to me.

18          Q     And this was presented to you?

19          A     This was sent to the city manager.

20          Q     And you, you're copied on it, correct?

21          A     Yes.

22          Q     Did you investigate it?

23          A     We only discussed it internally.   I did  
24     not investigate it.

25          Q     Why not?

1           MR. BOKSNER: Objection. Calls for  
2           attorney/client privileged communications.

3   BY MR. REISS:

4           Q     Going to subsection --

5           MR. REISS: And, Mr. Boksner, I'm not  
6           going to argue with you. You're not going to  
7           take the position, because I didn't debate it  
8           with you, that I'm waiving the right to attack  
9           your assertion of privilege, right? I just  
10          don't want to have an argument on that.

11          MR. BOKSNER: No. I assume you'll do  
12          whatever you're going to do.

13          MR. REISS: Okay. And that's for the  
14          whole depo, right? We don't have to do any  
15          back and forth to preserve any --

16          MR. BOKSNER: No.

17          MR. REISS: Okay.

18   BY MR. REISS:

19          Q     Going to Subsection 3. Are you aware that  
20          after --

21          A     Which page is that? I'm sorry.

22          Q     I'm still on the same page. I'm sorry. I  
23          think I did switch pages. I'm looking at Schedule A  
24          of Exhibit B.

25          A     Okay.

1           Q     I think you said today that you're aware  
2     that Beach Towing has a current Business Tax Receipt  
3     for towing at 1349 Dade Boulevard, correct?

4           A     Correct.

5           Q     And are you aware that they've had a  
6     renewal of that license every year since you've been  
7     with the city?

8           A     Yes.

9           Q     As the planning director now, if you were  
10    aware of a zoning violation, would Beach Towing's  
11    license continue to be renewed every year?

12                   MR. BUCKNER: Object to form.

13                   MR. BOKSNER: Join.

14           A     I couldn't speculate to that because  
15    anytime a zoning violation is presented, we look at  
16    that particular violation.

17           Q     Okay. So in this case you were presented  
18    with this letter claiming there was a zoning  
19    violation, right?

20           A     Correct.

21           Q     And then Beach Towing Services' BTR was  
22    renewed twice since then, or maybe three times at  
23    least, right?

24           A     Correct.

25           Q     So if you were aware of a zoning

1 violation, would the city have continued to renew  
2 Beach Towing's Business Tax Receipt every year?

3 MR. BUCKNER: Object to form.

4 MR. BOKSNER: Join.

5 A If we were aware of a zoning violation,  
6 depending upon the nature of that violation, we  
7 would then take appropriate action.

8 Q In this case you took no action?

9 A Correct.

10 Q Instead, the city continued to renew Beach  
11 Towing Services' Business Tax Receipt every year?

12 A Correct.

13 Q And some determination as to the  
14 disposition of that letter was made; you just can't  
15 tell me why because your attorney's telling you not  
16 to, right?

17 A Correct.

18 Q What the city did do was continue to renew  
19 Beach Towing Services' license?

20 MR. BUCKNER: Object to form.

21 A Correct.

22 Q And what the city did do is by vote of the  
23 commission continue to renew Beach Towing Services'  
24 police and towing -- police and parking towing  
25 permit to act as one of the two towing companies to



1 render towing services to the city at 1349 Dade  
2 Boulevard?

3 A I believe so, but I'm not a hundred  
4 percent sure because I wasn't involved with that.

5 Q As the planning director, if there was a  
6 violation of the zoning code by Beach Towing's use  
7 of the 1349 Dade Boulevard property for towing  
8 services, would you put a stop to it?

9 MR. BUCKNER: Object to form.

10 MR. BOKSNER: Join.

11 A I would -- as is the case with any zoning  
12 violation, I would have Code Compliance issue a  
13 violation.

14 Q And you did not do that in this case?

15 A No, I did not have a -- ask for a zoning  
16 violation to be issued.

17 Q If Beach Towing Services' use of the 1349  
18 Dade Boulevard property was not a legal  
19 nonconforming use, would you continue to renew its  
20 Business Tax Receipt for towing at 1349 Dade  
21 Boulevard?

22 MR. BUCKNER: Object to form.

23 MR. BOKSNER: Join.

24 A We have not made a formal determination on  
25 the legal nonconforming status. We have not seen

1 anything that would indicate that Beach Towing is  
2 operating illegally. And the BTRs have been renewed  
3 yearly.

4 Q Why?

5 A Why?

6 Q Why did you continue to renew it every  
7 year?

8 A They're renewed automatically by the  
9 Finance Department.

10 Q But you were made aware of an allegation  
11 the use of the property was illegal; is that  
12 correct?

13 A We received a letter, I think the letter  
14 that we're discussing here. But we did not take any  
15 action on that letter.

16 Q How is Beach Towing Services' use of 1349  
17 Dade Boulevard property for towing services not  
18 illegal?

19 A They have an active BTR.

20 Q Any other reasons?

21 A There's none that I'm aware of.

22 Q How about the fact that they've been  
23 uninterruptedly rendering towing services there  
24 since -- at 1349 Dade Boulevard since at least 1979?

25 A That would likely explain why their BTRs

1 have been renewed.

2 Q Under what section of the code would that  
3 explain why their BTRs have been renewed?

4 A That's a section of the code outside the  
5 LDRs with regard to BTR issuance and I'm not  
6 familiar with that section of the code offhand.

7 (Defendant's Exhibit D was marked for  
8 Identification.)

9 BY MR. REISS:

10 Q Let me show you Exhibit D. We'll come  
11 back to B.

12 MR. REISS: Mr. Buckner, I'm going to  
13 slide it. Is that okay?

14 MR. BUCKNER: Yes.

15 BY MR. REISS:

16 Q I'm showing you Exhibit D, which is a  
17 Resolution of the City of Miami Beach, 2015-28918.  
18 And you were the planning director at this time,  
19 correct?

20 A Let's see. Yes, I was.

21 Q And you reported to Mr. Morales, the city  
22 manager, when this Resolution was passed, correct?

23 A Correct.

24 Q And this, if I understand this permit,  
25 this is a permit to Beach Towing and Tremont Towing

1 to render towing services to the Police and Parking  
2 Departments of the City of Miami Beach, correct?

3 A Correct.

4 Q And at this time the City of Miami Beach  
5 had issued a Business Tax Receipt to Beach Towing  
6 Services to render towing services at 1349 Dade  
7 Boulevard, correct?

8 A Let's see. That's on the attachment, yes.  
9 Police Department and Parking Department Towing  
10 Permit issued to Beach Towing Services, 1349 Dade  
11 Boulevard.

12 Q And going to the third -- on the first  
13 page, the third to last paragraph says, "Whereas,  
14 the permittees are the only two service providers  
15 which satisfy all the requirements in the Miami  
16 Beach City Code and Administrative Rules and  
17 Regulations for Police and Parking Towing Permits,  
18 including the requirement to provide vehicle storage  
19 facilities within the city limits." Did I read that  
20 correctly?

21 A Yes.

22 Q And do you understand the Miami Beach City  
23 Code to include the Zoning Ordinances?

24 A The Miami Beach City Code does include the  
25 Zoning Ordinances.

1           Q     Okay. And then if you go to the attached  
2     City of Miami Beach Administrative Rules and  
3     Regulations for Police and Parking Towing Permits,  
4     do you see that?

5           A     Which page?

6           Q     As part of the -- it says "Attachment 1."  
7     It's page one, two, three, four, five in.

8           A     Okay.

9           Q     And then it says, "A permittee's failure  
10    to comply may result in suspension or revocation of  
11    a permit by the city manager."

12          A     And where is that exactly?

13          Q     It's the second paragraph.

14          A     It's on page 5, right?

15          Q     I have it on page 2. Page 5 counting from  
16    the beginning --

17          A     Oh, I'm sorry. I'm sorry.

18          Q     It's a lot of documents.

19          A     Okay. All right. So under "No. 1,  
20    Qualifications of Applicant"?

21                   MR. ANDRADE: "Introduction."

22    BY MR. REISS:

23          Q     "Introduction."

24          A     "Introduction." Okay. Sorry.

25          Q     You see that?

1 (Witness reviews document.)

2 A Okay.

3 Q Did I read that correctly?

4 A Yes.

5 Q And you would consider that to include the  
6 zoning code, correct?

7 A Yes.

8 Q Okay. And going back to Exhibit B-1, the  
9 letter from Mr. Larkin, that went to Mr. Morales,  
10 right?

11 A Yes.

12 Q And Mr. Morales got this letter. And if  
13 he wanted to, under the permit if there was a zoning  
14 violation, he could have gone ahead and revoked the  
15 permit, right?

16 MR. BUCKNER: Object to form.

17 A Under the Administrative Rules and  
18 Regulations the manager has the authority to suspend  
19 or revoke the permit for zoning violations.

20 Q And that action was not taken?

21 A Correct. It was not taken.

22 Q Instead, the actions that the city took  
23 were to renew Beach Towing's Business Tax Receipt  
24 repeatedly, correct?

25 A The city did renew the Business Tax

1 Receipt, yes.

2 (Defendant's Exhibit E was marked for  
3 Identification.)

4 BY MR. REISS:

5 Q And I show you Exhibit E. Are you  
6 familiar with this Resolution?

7 A This is the first time I've seen it.

8 Q Okay. So the city not only did not revoke  
9 the BTR, the Business Tax Receipt, but it also voted  
10 and the mayor and the city manager issued a new --  
11 and extended Beach Towing's towing permit for towing  
12 at 1349 Dade Boulevard.

13 A Okay.

14 Q Is that correct?

15 MR. BUCKNER: Object to form.

16 A Pursuant to this Resolution, that appears  
17 to be correct.

18 Q And another finding was made on  
19 February 14, 2018, that at the last "Whereas" clause  
20 on Exhibit E, "Whereas, the permittees are the only  
21 two service providers which satisfy all the  
22 requirements in the Miami Beach City Code and  
23 Administrative Rules and Regulations for the Police  
24 and Parking Towing Permits, including the  
25 requirement to provide vehicle storage facilities

1 within the city limits." Did I read that correctly?

2 A Where is that? I'm sorry.

3 Q The last "Whereas" clause on the first  
4 page. I'm sorry.

5 (Witness reviews document.)

6 A That's correct.

7 Q And as you previously testified, you  
8 understand Miami Beach City Code to include the  
9 zoning code?

10 A Correct.

11 Q So if Beach Towing's use -- and at this  
12 time you also, I believe, testified that it was your  
13 understanding that Beach Towing only had the  
14 facilities at 1349 Dade Boulevard, correct?

15 A Correct.

16 Q Okay. And as your letter to Mr. Penn  
17 said, it was the city's position that towing is not  
18 a permitted use under CD-2. What is the legal  
19 theory under which at this time Beach Towing's use  
20 at 1349 Dade Boulevard was -- satisfied the  
21 requirements of the City of Miami Beach Code which  
22 you've said also includes the zoning code?

23 A They had an active BTR.

24 Q And that complies with the zoning code?

25 A Yes.



1 Q That makes their operation legal?

2 A Yes.

3 Q What section of the code, zoning code says  
4 if you have a BTR you've complied with the zoning  
5 code?

6 A That's -- I don't believe that that's  
7 listed anywhere in the code.

8 Q But that's your interpretation?

9 A Yes.

10 Q And as it applies to Beach Towing?

11 A Yes.

12 Q So since Beach Towing currently has a BTR,  
13 it's in compliance with the zoning code based upon  
14 the planning director's interpretation of the zoning  
15 code?

16 A They --

17 MR. BUCKNER: Object to form.

18 A They are legal to operate under the code.

19 Q Well, you just told me that since they had  
20 a BTR, they're in compliance with the zoning code.  
21 Isn't that what you just said?

22 MR. BUCKNER: Object to form.

23 A They are -- they're in compliance with the  
24 code in terms of the -- this type of -- of police  
25 towing permit. And by having an active BTR, they're

1     legally operating.  So they can continue to have  
2     their towing permit renewed.

3           Q     You told me that under the -- that if they  
4     have a BTR, that makes them in compliance with the  
5     zoning code.  Remember that a couple seconds ago?

6                   MR. BUCKNER:  Object to form.

7     BY MR. REISS:

8           Q     You remember that?

9           A     A BTR would mean that they're operating  
10    legally.  And if they're operating legally, then  
11    there would be nothing in the code that would  
12    require that they stop operating.

13          Q     Well, if they're in violation of the  
14    zoning code, would that have a different result?

15          A     If they were in violation of the code,  
16    yes.

17          Q     So there is no current violation of the  
18    zoning code?

19                   MR. BUCKNER:  Object to form.

20          A     No.

21          Q     No, I'm wrong or no, there is not?

22          A     No, there is not a current zoning  
23    violation for the property.

24          Q     There's no current -- strike that.

25                   So I know no violation has been issued.

1 My question is whether, in fact, the fact that  
2 they're continually operating for 30 years at that  
3 location and they've been continually issued BTRs  
4 means to you as the planning director that there's  
5 no zoning violation in fact?

6 A There's no zoning violation that I'm aware  
7 of.

8 Q Okay. Regarding the use of the 1349  
9 property for towing services.

10 A Correct.

11 Q When Beach Towing initially applied for a  
12 Business Tax Receipt to conduct towing services at  
13 the 1349 Dade Boulevard property, would the Planning  
14 Department have reviewed that application?

15 MR. BUCKNER: Object to form.

16 Speculation.

17 A That I couldn't answer because I was not  
18 with the city when that happened.

19 Q You've been the planning director how long  
20 now?

21 A Since January of 2014.

22 Q Is it the policy of the City of Miami  
23 Beach when an application is made for a use  
24 initially at a property, does that go by the  
25 Planning Department?

1           A     Any application for a new use is routed to  
2     the Planning Department, yes.

3           Q     So if the city's policy was then what it  
4     is now and was followed, it would be your  
5     understanding that when Beach Towing initially  
6     applied for a BTR to conduct towing at 1349 Dade  
7     Boulevard, it would have gone by the Planning  
8     Department?

9                     MR. BUCKNER:  Objection.  Speculation.

10           BY MR. REISS:

11           Q     Is that your understanding of the policy  
12     of the city?

13           A     If that was the policy back in -- whenever  
14     the BTR was initially issued then, yes, it would  
15     have gone to the Planning Department.

16           Q     Do you have any reason to believe the  
17     policy changed?

18                     MR. BUCKNER:  Objection.  Speculation.

19           A     I couldn't speculate to that.

20           Q     I'm not asking you to speculate because  
21     that's not appropriate.  My question is, are you  
22     aware of any facts that indicate to you that the  
23     policy that you just described has changed?

24           A     No.

25           Q     Are you aware that Richard Lorber, the

1 previous planning director, determined that Beach  
2 Towing's use of the 1349 Dade Boulevard property is  
3 a legal nonconforming use?

4 A No.

5 Q Are you aware of any facts to indicate  
6 that Richard Lorber did not make a previous  
7 determination that Beach Towing's use of the 1349  
8 Dade Boulevard property is a legal nonconforming  
9 use?

10 A No.

11 Q Looking at, back to Exhibit D.

12 A The Resolution?

13 Q Yes, sir. The second to last "Whereas"  
14 says, "The removal of improperly parked and disabled  
15 vehicles from the public way are a necessary tool  
16 for the Police Department and Parking Department to  
17 properly manage traffic and parking throughout the  
18 city." Did I read that correctly?

19 A Yes.

20 Q Do you believe that to be true?

21 A Yes.

22 MR. BUCKNER: Allan, could we take a break  
23 at some point? You can do whatever you want.

24 I just --

25 MR. REISS: You need a break?

1 MR. BUCKNER: Yes.

2 MR. REISS: We'll take a break.

3 MR. BUCKNER: Whenever you want.

4 MR. REISS: Is that okay with you guys?

5 MR. BOKSNER: Yes.

6 THE WITNESS: I'm fine whenever you guys  
7 want a break.

8 MR. REISS: Okay.

9 (There was a recess taken from 10:40 a.m.  
10 To 10:56 a.m.)

11 BY MR. REISS:

12 Q You understand you're still under oath,  
13 sir?

14 A Yes.

15 Q Looking at Exhibit D, page -- it's the  
16 numbered page 8, but not the eighth page of the  
17 exhibit.

18 A Okay.

19 Q It's probably 10, 11 or 12. See page 8?

20 A Is this -- what would the number be on  
21 that --

22 Q Eight.

23 A Oh, eight.

24 Q That's what I'm referring to. Page 8 of  
25 the attachment --

1 A Okay.

2 Q -- entitled --

3 A Yes. Under "Storage Area/Storage  
4 Facilities."

5 Q Yes. It says on the second sentence,  
6 "Said storage area will be enclosed in accordance  
7 with applicable zoning requirements." Did I read  
8 that sentence correctly?

9 A Yes.

10 Q And this is referring to Beach Towing's  
11 place of operations, 1349 Dade Boulevard, correct?

12 A Correct.

13 Q And we talked about -- so after this  
14 Resolution was issued, we looked at Exhibit E, which  
15 incorporates the same rules; the city determined  
16 that the base of operations met all applicable  
17 zoning requirements, correct?

18 MR. BUCKNER: Object to form.

19 BY MR. REISS:

20 Q You can answer.

21 A Correct.

22 Q And on that same document, Exhibit D, but  
23 page 3 --

24 A Under "Competency of Applicants"?

25 Q Yes, sir. It says, "Permit applications

1 shall only be considered from firms with proven  
2 experience in the towing business which have an  
3 established and satisfactory record of performance,  
4 and have available the required equipment,  
5 facilities and storage space, and personnel  
6 sufficient to ensure that they can properly execute  
7 the work/services required." Did I properly read  
8 that?

9 A Yes.

10 Q And you understand the storage space to  
11 mean the facility within the City of Miami Beach to  
12 store cars that have been towed, correct?

13 MR. BUCKNER: Object to form.

14 A Correct.

15 Q And the city made a determination that  
16 Beach Towing's storage of vehicles at 1349 Dade  
17 Boulevard complied with the applicable zoning  
18 sections when it issued this permit, correct?

19 MR. BUCKNER: Object to form.

20 A Correct.

21 Q And it made that determination again when  
22 it reissued the permit?

23 A Correct.

24 Q And it made that determination again when  
25 it renewed Beach Towing's Business Tax Receipt,



1 correct?

2 A Correct.

3 Q And if at any time the city manager had a  
4 different opinion under these Resolutions, he had  
5 the authority to revoke this permit, correct?

6 A Correct.

7 Q And the BTR, he could have -- those could  
8 have been revoked as well?

9 A The city manager does have the authority  
10 to revoke a BTR.

11 Q For any zoning violation, correct?

12 A I don't know the specific procedural  
13 requirements for revoking the BTR because it's very  
14 specific. But my understanding is that it is for  
15 violations of the city code, which would include  
16 zoning violations.

17 Q We talked earlier in your deposition about  
18 circulation, traffic circulation. You remember  
19 that?

20 A Yes.

21 Q Do parking lots have an impact on traffic  
22 circulation?

23 A Yes.

24 Q And do storage facilities have an impact  
25 on traffic circulation?

1 A Vehicular storage facilities?

2 Q Yes, sir.

3 A Yes.

4 Q And do tow companies have an affect on  
5 vehicular circulation?

6 A Yes.

7 Q And do parking lots in the Sunset Harbour  
8 neighborhood have an impact on traffic circulation?

9 A Yes.

10 Q And do storage, vehicle storage facilities  
11 have an impact on vehicular circulation in the  
12 Sunset Harbour neighborhood?

13 A Yes.

14 Q Do parking garages in the Sunset Harbour  
15 neighborhood have an impact on vehicular  
16 circulation?

17 A Yes.

18 Q And I apologize if I already asked this.

19 A That's okay.

20 Q I need to cover my bases.

21 Do tow companies in the Sunset Harbour  
22 neighborhood have an affect on vehicular  
23 circulation?

24 A Yes.

25 Q And is it a goal of a planning director to

1 keep vehicular circulation at a maximum, that is,  
2 make it as easy as possible?

3 A No. The goal is to have efficient  
4 circulation.

5 Q What does "efficient" mean in that context  
6 to you?

7 A That the vehicles can circulate in and out  
8 of a private property.

9 Q Just in and out or in and out smoothly, in  
10 and out --

11 A In and out without -- with causing minimal  
12 disruption to surrounding streets and sidewalks.

13 Q Does the efficiency of traffic circulation  
14 near facilities like a police station get different  
15 attention than other areas, from a planning  
16 perspective?

17 A Public safety buildings will be looked  
18 at -- or circulation around public safety buildings  
19 such as police and fire stations will oftentimes be  
20 looked at differently to ensure that public safety  
21 buildings don't have traffic queueing in front of  
22 them.

23 Q So near public safety buildings efficient  
24 circulation is even more important than the rest of  
25 the city?

1           A       That would be a correct statement.

2                       (Defendant's Exhibit F was marked for  
3   Identification.)

4   BY MR. REISS:

5           Q       Exhibit F is a City of Miami Beach Code of  
6   Ordinances, Section 106-257. It says, "This City  
7   Commission finds and determines that the  
8   unauthorized parking of vehicles that cannot be  
9   removed constitutes a public nuisance and a public  
10   emergency affecting the property, public safety and  
11   welfare of the citizens and residents of the city."  
12   Did I read that correctly?

13          A       Yes.

14          Q       Are you familiar with this section of the  
15   city code?

16          A       This is the first time that I believe I've  
17   seen it.

18          Q       Well, according to the city code, towing  
19   is a public safety issue, correct?

20          A       This section of the code talks about how  
21   unauthorized vehicles constitute a public nuisance  
22   if they can't be removed.

23          Q       And it relates to public safety, correct?

24          A       Yes. It doesn't -- I don't see the word  
25   "towing" in here.

1           Q     Well, to your knowledge as the planning  
2     director, how do you remove unauthorized parked --  
3     cars that are unauthorized parked -- unauthorizedly  
4     parked, if that's a word?

5           A     You would tow them.

6           Q     Okay. So would the operation of a tow  
7     company be a public safety issue, upon review of  
8     this section of the code?

9           A     Pursuant to this section of the code, yes.

10          Q     Okay. So the heightened concern regarding  
11     traffic circulation near tow companies as a planning  
12     director would apply, correct?

13                 MR. BUCKNER: Object to form.

14          A     I would not put tow yards and vehicle  
15     storage areas in the same category as public safety  
16     buildings like police stations and fire stations in  
17     terms of the absolute need for efficient  
18     circulation.

19          Q     Okay. But you agree with me that the  
20     legislative intent of this relates that -- indicates  
21     that towing is a public safety issue, correct?

22                 MR. BUCKNER: Object to form. Outside the  
23     witness' competence.

24          A     This section of the code talks about the  
25     public safety issues involved with the need to

1 remove unauthorized vehicles, including the towing  
2 of those vehicles.

3 Q As the planning director, is the removal  
4 of accident vehicles from the public right-of-way a  
5 public safety issue?

6 A Yes.

7 Q And vehicles involved in accidents that  
8 are blocking the right-of-way, in your experience,  
9 how are they removed?

10 A They are typically towed.

11 Q And specifically going back to Exhibit D,  
12 Beach Towing and Tremont have been issued a permit  
13 to act as "a necessary tool for the Police  
14 Department and Parking Department to properly manage  
15 traffic and parking throughout the city," correct?

16 A Correct.

17 Q So the tow company's ability to fulfill  
18 that function is a public safety issue?

19 A The ability -- the tow company's ability  
20 to remove unauthorized vehicles is a public safety  
21 function.

22 Q And it would be -- it would be -- to  
23 remove the vehicle, the tow truck needs to get out  
24 of its place of business and get to the scene of the  
25 incident, right?

1 MR. BUCKNER: Object to form.

2 Speculation.

3 A Correct.

4 Q So the tow company would need to be able  
5 to promptly arrive at the scene of an accident to  
6 assist the Police Department under this permit,  
7 correct?

8 MR. BUCKNER: Object to form.

9 Speculation.

10 A That I couldn't speculate to. I don't  
11 know what the procedures are for the expedited  
12 removal of vehicles.

13 Q Does it stand to reason as a planning  
14 director that the longer the accident vehicles are  
15 in the public right-of-way, the longer there's a  
16 public safety issue?

17 A I couldn't answer that on a general basis.

18 Q Would you agree with me that the longer  
19 there's accident vehicles blocking the public  
20 right-of-way, the greater risk there is to public  
21 safety?

22 A Yes.

23 Q Are you aware that Beach Towing current --  
24 I think Beach Towing -- are you aware that Beach  
25 Towing currently accesses the streets through Bay

1 Road?

2 A Yes.

3 Q And I believe Tremont Towing also accesses  
4 the streets through Bay Road, right?

5 A I believe so, yes.

6 Q And those are the only two tow companies  
7 that provide police and parking towing services to  
8 the City of Miami Beach, correct?

9 A Correct.

10 (Defendant's Exhibit G was marked for  
11 Identification.)

12 BY MR. REISS:

13 Q I show you Exhibit G. Have you seen  
14 Exhibit G before?

15 A I have not.

16 Q Well, it's my understanding that this is  
17 the plaintiff's most recent design for its project  
18 across the street from Beach Towing. And my  
19 question is, when this project -- and you can look  
20 through it. You want a minute to look through it  
21 and then I'll ask questions?

22 A Sure.

23 Q Go ahead. I'll wait until you look at it.  
24 (Witness reviews document.)

25 A Okay.



1           Q     If you look at -- it's a page marked  
2     A-2.10.    It shows a diagram.   It shows access to  
3     this project on Bay Road.

4           MR. BUCKNER:   What page are you on?

5           MR. REISS:    It says A-2.10.

6           MR. BUCKNER:   Got it.

7     BY MR. REISS:

8           Q     You've got it?

9           A     I've got it.

10          Q     So my question is, in reviewing this  
11     project, will the city consider the affect on  
12     traffic circulation on Bay Road given that its only  
13     two tow companies providing towing services to the  
14     Police Department and the Parking Department are  
15     also on Bay Road?

16          MR. BUCKNER:   Object to form.   Compound.

17          A     As part of the review process at the  
18     Planning Board, the city will review the traffic  
19     circulation elements for the entire street.

20          Q     And will the effect that its only two tow  
21     companies providing police and parking services to  
22     the city be given consideration upon that review?

23          A     I'm not aware of any special consideration  
24     given to towing, storage or services.   But with that  
25     said, our Transportation Department is the one that

1 would be spearheading the circulation analysis.

2 They would be better equipped to answer that.

3 Q Based upon your prior testimony that  
4 removal of vehicles relates to public safety, is  
5 that something as the planning director that should  
6 be given consideration in analyzing access to Bay  
7 Road?

8 MR. BUCKNER: Object to form.

9 A In this particular project, the  
10 circulation of the entire street should be looked  
11 at.

12 Q And does the affect that that circulation  
13 has on the public safety function of the tow  
14 companies have any impact on that analysis as the  
15 planning director?

16 A That analysis should take into  
17 consideration the circulation attributes of all  
18 surrounding properties, towing and otherwise.

19 Q Would the analysis be different if the  
20 neighbors on Bay Road were not rendering a public  
21 safety function?

22 MR. BUCKNER: Object to form.

23 A Meaning Beach Towing --

24 Q And Tremont.

25 A -- across the street. And Tremont.

1 That's something I would have to defer to our  
2 Transportation Department on.

3 Q As the planning director, do you think  
4 that's something that should be considered?

5 A I think --

6 MR. BUCKNER: Object to form.  
7 Speculation.

8 A -- all uses should be considered as part  
9 of the circulation analysis.

10 (Defendant's Exhibit H was marked for  
11 Identification.)

12 BY MR. REISS:

13 Q I show you Exhibit H.

14 (Witness reviews document.)

15 BY MR. REISS:

16 Q Have you ever seen Exhibit H before?

17 A No.

18 Q It's a document produced by the City of  
19 Miami Beach. And actually, if you look on the last  
20 page, it was certified by Mr. Granado. In any  
21 event, this indicates that Beach Towing Services at  
22 1349 Dade Boulevard was awarded a towing permit for  
23 police and parking services to conduct towing back  
24 on October 1, 1985. Do you see that?

25 MR. ANDRADE: First page.

1 BY MR. REISS:

2 Q First page.

3 A Yes.

4 Q Do you have any reason to believe that's  
5 not accurate?

6 A No.

7 Q Do you have any reason to believe that  
8 Beach Towing Services, Inc. has not been conducting  
9 towing services uninterruptedly at 1349 Dade  
10 Boulevard since October 1, 1985?

11 A No.

12 Q Is that something you have considered in  
13 your analysis back to Beach Towing's legal  
14 nonconforming use of the 1349 Dade Boulevard  
15 property?

16 A I have not looked at this document as of  
17 yet.

18 Q Will you?

19 A It's something that I can look at.

20 Q Do you need to?

21 A If it's left for me, I can certainly look  
22 at it, sure.

23 Q I'll leave you copies of whatever you  
24 want.

25 (Defendant's Exhibit I was marked for

1 Identification.)

2 BY MR. REISS:

3 Q I show you Exhibit I.

4 (Witness reviews document.)

5 BY MR. REISS:

6 Q Have you seen Exhibit I before?

7 A Yes, I have.

8 Q It's Beach Towing's Occupational License  
9 issued October 1, 1987 for towing services at 1349  
10 Dade Boulevard?

11 A Yes.

12 Q Is it your understanding that the City of  
13 Miami Beach issued Beach Towing an Occupational  
14 License on or about October 1, 1987 for towing  
15 services at 1349 Dade Boulevard?

16 A This was issued by the city. I'm not sure  
17 if this is the actual issued license or a renewal of  
18 a license that had already been issued.

19 Q Okay. Fair enough. But it's your  
20 understanding it was issued either as a renewal or  
21 as -- at least as a renewal?

22 A Yes. Correct.

23 Q And is it your understanding that since  
24 that time, the city has reissued Beach Towing an  
25 Occupational License for towing services at 1349

1 Dade Boulevard every year to the present?

2 A Yes.

3 MR. REISS: Off the record for a second.

4 (Discussion off the record)

5 (Defendant's Exhibit J was marked for  
6 Identification.)

7 BY MR. REISS:

8 Q I show you Exhibit J.

9 (Witness reviews document.)

10 BY MR. REISS:

11 Q Looking at Exhibit J, it's a certified  
12 copy of a record. Actually, it was produced by the  
13 plaintiff this case. It's also marked SLA-12448 to  
14 12470. And it relates to a commission meeting on  
15 June 4, 1980. And the Section C says, "Commission  
16 Memorandum No. 8205, Planning Board recommendation  
17 regarding conditional use application for the  
18 operation of a filling station at 1349 Dade  
19 Boulevard." You see that?

20 A Yes.

21 Q And then turning to the page that's marked  
22 SLA-12456.

23 A Okay.

24 Q And it says, "Meyerson, Meyerson, David,  
25 Meyerson." It says, "Vincent J. Festa." Do you see

1     that?

2           A     Yes.

3           Q     It says, "Yes. My name is Vincent J.  
4     Festa and I'm the owner of the property at 1349 Dade  
5     Boulevard. And all I'm trying to do is put four  
6     pumps back in the exact spot that they were when we  
7     took them off." Did I read that correctly?

8           A     Yes.

9           Q     Any reason to believe Mr. Festa wasn't  
10    testifying truthfully that day?

11          A     No.

12               MR. BUCKNER: Object to form. Outside the  
13    witness' competence.

14   BY MR. REISS:

15          Q     Going to SLA-12460, it says -- there's  
16    "Festa, Meyerson, Falk, Festa, Falk, Festa, Falk,  
17    Festa, Falk." And then Festa says, and I'll read  
18    it, "Okay. I'm going to comply. I won't mention  
19    any names now, but I'm one of the few towing  
20    services that is -- has a C-6 and C-6 is what you  
21    need for towing." You see where Mr. Festa says  
22    that?

23          A     Yes.

24          Q     Do you have any reason to believe that  
25    Mr. Festa's statement on June 4, 1980 was not

1 accurate?

2 A No.

3 Q And do you have any reason to believe that  
4 on June 4, 1980 Beach Towing was not conducting  
5 towing services at 1349 Dade Boulevard?

6 A No.

7 Q Do you have any reason to believe 1349  
8 Dade Boulevard was not what was then the C-6 zoning  
9 district?

10 A No.

11 Q Is it consistent with your knowledge that  
12 1349 Dade Boulevard on June 4, 1980 was, in fact, in  
13 the C-6 district?

14 A Yes, that is my understanding.

15 Q And is it your understanding at that time  
16 the city permitted towing services in the C-6 as a  
17 permitted use?

18 A That, I would need to refer to that  
19 section of the code, the C-6 section of the code.

20 Q Well, we can do that. As we sit here  
21 right now, do you have any reason to believe that  
22 the city did not allow towing in the C-6 zoning  
23 district during 1980?

24 MR. BUCKNER: Object to form.

25 A No.



1           Q     And then if you turn to SLA-12462. Let me  
2 know when you're there.

3           A     Okay.

4           Q     You're there?

5           A     Uh-huh. Yes.

6           Q     Okay. "Daoud, Meyerson, Festa, Meyerson,  
7 Festa, Meyerson, Festa, Meyerson, Festa, Meyerson,  
8 Festa, Daoud, Meyerson, Daoud." And then Festa  
9 says, "Yes. In the past I was open all night  
10 because I had the police towing and I also had  
11 Triple A." Do you have any reason to believe that  
12 Beach Towing did not have the police towing permit  
13 for 1349 Dade Boulevard on June 4, 1980, as  
14 Mr. Festa indicates in his testimony?

15                   MR. BUCKNER: Objection. Mischaracterizes  
16 the document.

17 BY MR. REISS:

18           Q     You can answer the question.

19           A     No.

20           Q     And if there was a police towing permit  
21 issued, would that indicate the city's  
22 acknowledgment that -- to you as the planning  
23 director now that towing was a permitted use in C-6  
24 at that time?

25           A     It would indicate to me that they had

1 authorized towing there, but I couldn't address  
2 whether or not it was permitted under C-6.

3 Q That would be up to the planning director  
4 to determine whether it was authorized, correct?

5 A At that time under that ordinance, I  
6 believe the planning and zoning director did make  
7 that interpretation.

8 Q He interpreted that C-6 was permitted --  
9 that towing was permitted in C-6 in 1980?

10 A The planning director would be the one to  
11 make that interpretation.

12 Q Do you have knowledge that, in fact, he  
13 made that interpretation?

14 A No.

15 Q Is the planning director the person at the  
16 city today that determines whether a specific use is  
17 permitted in a particular zoning district?

18 A Yes.

19 Q And to your knowledge, has that always  
20 been the case at the City of Miami Beach?

21 A To my knowledge, yes.

22 Q In 1980 was it the planning director who  
23 made the determination as to whether a particular  
24 use was allowed in a particular zoning district?

25 A I would need to check that section of the

1 code to see. I'm not aware of it not being the  
2 case. But because I wasn't here, I couldn't answer  
3 that for sure.

4 Q Okay. But as you far as you know, in  
5 1980, just like today, it would be the planning  
6 director who would determine whether a particular  
7 use was permitted in a particular zoning district in  
8 the City of Miami Beach, correct?

9 A Correct, unless there was something in the  
10 code at that time that said differently.

11 (Defendant's Exhibit K was marked for  
12 Identification.)

13 BY MR. REISS:

14 Q Let me show you Exhibit K.

15 MR. REISS: I'm going to slide this to  
16 you, Mr. Buckner.

17 MR. BUCKNER: That's all right.

18 MR. REISS: Thank you, sir.

19 (Witness reviews document.)

20 BY MR. REISS:

21 Q Do you recognize any of these documents?

22 A The front one I don't.

23 Q You wouldn't know of something I wrote.

24 A Let's see.

25 Q Or at least I signed.

1           A       The attached exhibits I do recognize.

2           Q       You want to take a minute -- Have you seen  
3 all of these documents? You want to take a minute  
4 to review them?

5                   (Witness reviews documents.)

6           A       Yes, I've seen all of these.

7           Q       Okay. It's my understanding that from  
8 these documents - and since you're a planning  
9 director, these are City of Miami Beach records, you  
10 may be better at interpreting them than me, so I  
11 want to make sure my understanding is the same as  
12 yours - that there was a tow company called Magnum  
13 Towing or a company that wanted to do towing, and  
14 that the city -- and it was in C-5. And the city  
15 granted a BTR. And then one of the neighbors  
16 complained and objected. And there was an appeal of  
17 the -- there was a hearing. And it was a  
18 determination that the towing was allowed in C-5.  
19 It was appealed and the appeal was denied. Is that  
20 correct?

21          A       That's correct.

22          Q       And that's your understanding of these  
23 records?

24          A       Yes.

25          Q       And is that your understanding of the

1 facts having reviewed these records?

2 A Yes.

3 MR. BUCKNER: Object to form.

4 BY MR. REISS:

5 Q And when the appeal was denied, my  
6 understanding of the impact of that is the city made  
7 a determination that the decision that during 1987  
8 that towing was a permitted use in C-5 was a correct  
9 determination.

10 A That's correct.

11 Q And do you have any knowledge of any facts  
12 that indicate today that that was not a correct  
13 determination?

14 A No.

15 Q And then as part of that appeal process,  
16 there was a hearing. And the transcript's attached.  
17 It's going to be difficult because these aren't  
18 marked with page numbers. So I apologize for that.  
19 Let me see when it was certified. Let me see if  
20 there's a page. No, there's not. Maybe it will be  
21 easier if you hand me yours and I'll --

22 A Okay.

23 Q -- hand it back to you with the pages I  
24 want to reference, instead of having you try to flip  
25 through.

1                   MR. REISS:  Guys, I apologize that these  
2                   aren't numbered, but this is how they were  
3                   produced to me.

4  BY MR. REISS:

5           Q       Well, first of all, just looking at the  
6           first page of the hearing transcript --

7                   MR. REISS:  Can you guys get to that or  
8           you want me to wait or --

9                   MR. BUCKNER:  Yes.

10 BY MR. REISS:

11          Q       It's my under -- Have you seen this  
12          transcript before?

13          A       Yes.

14          Q       And this is -- it's my understanding of  
15          this document that it's a transcript of an appeal  
16          for the determination -- File No. 1850, where there  
17          was a determination that in the C-5 towing was a  
18          permitted use.  And this is the transcript of the  
19          appeal proceedings, correct?

20          A       Correct.

21                   MR. BUCKNER:  Object to form.

22                  Mischaracterizes the document.

23 BY MR. REISS:

24          Q       Did I mischaracterize the document to your  
25          knowledge as the planning director?

1 A No.

2 Q I'm sorry. My copy's a little different.

3 A That's okay.

4 MR. REISS: Maybe, Mr. Boksner, can I use  
5 your copy to help direct him?

6 MR. BOKSNER: Sure.

7 MR. REISS: And I'll give it back to you  
8 when I'm done. I'm sorry. Thank you. I  
9 should have had myself an identical copy.

10 BY MR. REISS:

11 Q There's a page in the transcript that  
12 starts with the words, "Not to mention."

13 MR. REISS: You guys want me to wait a  
14 minute until you get caught up? I think it's  
15 like 17 from the back.

16 MR. BUCKNER: Seventeen from the back?

17 MR. REISS: Yes.

18 MR. BUCKNER: Seventeen transcript pages  
19 you mean?

20 MR. REISS: Yes, sir.

21 MR. BUCKNER: It's not 17.

22 MR. REISS: It's not. I miscounted? Can  
23 you find it? It starts with, "Not to mention."

24 BY MR. REISS:

25 Q While he's looking for that, do you

1 recognize the name Kurlancheek?

2 A Yes.

3 Q Do you know that he was the planning  
4 director for the City of Miami Beach back in 1987?

5 A Yes.

6 Q Do you know that from your own personal  
7 knowledge?

8 A I know that from my own personal  
9 knowledge.

10 MR. REISS: Did you find the page yet,  
11 Mr. Buckner?

12 MR. BUCKNER: I didn't. You said it was  
13 17 transcript pages or 17 actual pages?

14 MR. REISS: I counted 17, but let me try  
15 again.

16 MR. BUCKNER: No, no, no, no. I'm asking  
17 you to clarify.

18 MR. REISS: I'm sorry.

19 MR. BUCKNER: Seventeen physical pages or  
20 17 transcript pages?

21 MR. REISS: Physical pages.

22 MR. BUCKNER: What words am I looking for  
23 now? I got it. Okay. Thank you.

24 BY MR. REISS:

25 Q Okay. So we're on the same page. And



1     there's some conversation between Goldberg, Holtz,  
2     Goldberg, Holtz, and then Kurlancheek. And  
3     Mr. Kurlancheek states, "We permit towing services  
4     in a C-6 area." Do you see that?

5           A     Yes.

6           Q     Do you have any knowledge of any facts  
7     that indicate that on the date of this hearing, an  
8     appeal from the decision of the board on December 4,  
9     1987, that the planning director's determination  
10    that the City of Miami Beach permits towing services  
11    in the C-6 area was not correct?

12          A     No.

13          Q     Or that it was an improper determination?

14          A     No.

15          Q     Or that it was contrary to the city's  
16    zoning code?

17          A     No.

18          Q     Do you agree with it?

19          A     I would need to evaluate the C-6 zoning  
20    ordinance language before I could reach that  
21    determination.

22          Q     Well, was that part of your analysis so  
23    far in determining whether Beach Towing's current  
24    use of 1349 Dade Boulevard is a legal nonconforming  
25    use?

1           A     That's one of the things that I'm looking  
2     at.

3           Q     And does the prior planning director's  
4     determination influence your decision in that  
5     regard?

6           A     It's something that I would look at.

7           Q     Okay. Is that binding on you?

8           A     What was said in the transcript?

9           Q     The prior planning -- the planning  
10    director's determination and the denial of the  
11    appeal when it was appealed, the decision that it  
12    was permitted, is that binding on you?

13                   MR. BUCKNER: Object to form.

14   BY MR. REISS:

15           Q     In your opinion?

16           A     It would be binding on me as it pertains  
17    to the property that was subject to the appeal.

18           Q     Okay. What about the determination that  
19    the C-6 was a permitted -- that towing was permitted  
20    in C-6 on December 4, 1987?

21                   MR. BUCKNER: Form.

22           A     This appeal had to do with a specific  
23    property. It wasn't specific to the C-6 area.

24           Q     The property was located in the C-6 area.  
25    I'm sorry. The property is located in C-5, correct?

1           A     Yeah, this property was located in C-5.

2           Q     Okay. So is it binding as to C-5?

3           A     So his statement in the record would not  
4 necessarily be binding.

5           Q     As to C-5 you mean?

6           A     Well, it would be binding as it pertains  
7 to C-5 because that's the subject of this appeal.

8           Q     Okay. So then this is to you binding  
9 precedent that on December 4, 1987 towing was  
10 permitted in the C-5 zoning district?

11          A     As it pertains to this particular  
12 application -- or to this particular appeal.

13          Q     Okay. Do you have any knowledge of any  
14 facts that indicate that this determination would  
15 not be applicable to the entire C-5 zoning district?

16          A     No.

17          Q     Is there anything, to your knowledge,  
18 about that property that makes it unique as opposed  
19 to any other property in the C-5 district on  
20 December 4, 1987?

21          A     You're referring to the property that was  
22 the subject of the appeal?

23          Q     Yes, sir.

24          A     No.

25          Q     And then turning three physical pages, at

1 the top of the page it says, "to stop having  
2 automobile storage lots."

3 A Okay.

4 Q And then Mr. Kurlancheek, your  
5 predecessor, states, "We have interpreted the city's  
6 zoning ordinance to allow for storage and towing  
7 facilities in the C-6 area." You see where he says  
8 that?

9 A Yes.

10 Q Do you have knowledge of any facts that  
11 indicate that that is not a correct interpretation  
12 of the code of the City of Miami Beach on  
13 December 4, 1987?

14 A No.

15 Q And then Mr. Goldberg says, "Well, we have  
16 also said in the C-5 area." Do you agree with that  
17 statement?

18 MR. BUCKNER: Object to form.

19 A Do I agree that he said it?

20 Q All right. Withdrawn.

21 And then Mr. Goldberg says, "Well, we have  
22 also said in the C-5 area." And then  
23 Mr. Kurlancheek, your predecessor, says, "As well as  
24 the C-5 area." Do you see that?

25 A Yes.

1           Q     Do you have knowledge of any facts to  
2     indicate that that is not a proper interpretation of  
3     the City of Miami Beach Code on December 4, 1987?

4           A     No.

5           Q     And I think we earlier established that  
6     it's your understanding that Beach Towing was -- at  
7     1349 Dade Boulevard was conducting towing services  
8     in the C-6 area as of this date, correct?

9           A     That's correct.

10          Q     And based upon this, you have no knowledge  
11     of any facts that that was not a permitted use under  
12     the then existing code, correct?

13                     MR. BUCKNER: Object to form.

14          A     Correct.

15                     MR. REISS: What's the matter with the  
16     form?

17                     MR. BUCKNER: You said based on this. I  
18     don't know what "this" is.

19                     MR. REISS: Okay.

20     BY MR. REISS:

21          Q     Based on the statements of Mr. Kurlancheek  
22     in this transcript, you have no knowledge of any  
23     facts that indicate that Beach Towing's use of the  
24     1349 Dade property in the C-6 area in 1987 was not a  
25     permitted use under the City of Miami Beach Code,

1 correct?

2 A Correct.

3 Q What is the policy among planning  
4 directors regarding adhering to a prior planning  
5 director's decisions about interpretation of the  
6 zoning code in the City of Miami Beach?

7 A It depends upon the interpretation and how  
8 it was issued.

9 Q You've read Mr. Kurlancheek's  
10 interpretation of the code at that time. What  
11 policy would you apply or should be applied by you  
12 as a planning director in considering his  
13 determinations back in 1987?

14 A I would certainly take anything that he  
15 may have said into consideration.

16 Q Do you have any reason to reject any of  
17 the things that he said that we just went over?

18 A No.

19 Q Is there any policy that you're aware of  
20 that says let's try to stick to what the previous  
21 planning director's opinions were concerning his  
22 interpretation of the code?

23 A There's nothing that I'm aware of in the  
24 code that pertains to that.

25 Q So as far as you're concerned, one

1 planning director to the next, the interpretation of  
2 the city code could be completely opposite?

3 A That would be a fair statement.

4 Q But in this case, you see no reason to  
5 reject any of these statements of Mr. Kurlancheek?

6 A I haven't seen anything to reject those,  
7 no.

8 Q How much time since July 25 to the  
9 present, since the commission -- and I have the  
10 transcript. We can go over what the motion and the  
11 vote was. Since that determination was made and an  
12 amicus is going to be issued, how much time have you  
13 spent in analyzing the issue?

14 A I haven't kept track. So, hours.

15 Q Let me ask you this. Do you feel like  
16 most of your -- most of the time you were going to  
17 spend on the issue has already been spent or is  
18 going to be spent in the next five days?

19 A I would say that I've spent probably half  
20 the time I was going to spend.

21 Q Has the plaintiff in this case or anybody  
22 operating on behalf of the plaintiff or acting on  
23 behalf of the plaintiff provided you any materials  
24 to consider with respect to this issue?

25 A I have not received anything from the

1 plaintiff.

2 Q Other than the letter that we went over  
3 attached to the Notice, right?

4 A Correct.

5 Q And have you looked at that and considered  
6 it with respect to your determination?

7 A And just so I'm clear, which letter was  
8 that again?

9 Q The one.

10 A Oh, the original letter.

11 Q Yes.

12 A I have not received anything but that from  
13 the plaintiff.

14 Q And did you consider that so far in your  
15 thoughts about the issue?

16 A I have not looked at that as of yet.

17 Q Has anybody tried to -- from the  
18 plaintiff -- strike that.

19 Anybody who's acting on behalf of the  
20 plaintiff, to your knowledge, tried to convince you  
21 of a position as to the -- whether Beach Towing's  
22 use of the property at 1349 Dade Boulevard is a  
23 legal nonconforming use?

24 A No.

25 Q And just to clarify, Exhibit B-1, the



1 April 15, 2016 letter, you looked at this over two  
2 years ago. You just didn't feel the need to look at  
3 it again as part of your contemplation of the  
4 present issue, correct?

5 A Correct.

6 (Defendant's Exhibit L was marked for  
7 Identification.)

8 BY MR. REISS:

9 Q I show you Exhibit L.

10 (Witness reviews document.)

11 BY MR. REISS:

12 Q You had a chance to look at Exhibit L?

13 A This is the first time I've seen this.

14 Q I think this relates to -- I think it --  
15 if you look at Exhibit J.

16 A Okay.

17 Q As a planning director, you're probably  
18 better at reading these documents than me. Can you  
19 tell how L relates to J, if at all? They're both  
20 File No. 8205.

21 A So J is -- looks to me like it's an after  
22 action for the June 4, 1980 agenda. And item C,  
23 which is Commission Memorandum 8205, Planning Board  
24 recommendation from a filling station. The only  
25 thing is the date on Exhibit L is May 7, 1980. So I

1 don't know if this commission memorandum here is the  
2 same one that was used for this after action use for  
3 the June 4th agenda.

4 Q Okay. But they relate to the same subject  
5 matter from what you can see?

6 A Yes.

7 Q Now, it looks like to me that -- I think  
8 we earlier said that it looks like from the records  
9 that we've seen today that Beach Towing was  
10 performing towing services back in 1979. Remember  
11 that?

12 A Yes.

13 Q And you have no reason to dispute that,  
14 right?

15 A No.

16 Q And this looks like a conditional use  
17 application related to the gas pumps, correct?

18 A Correct.

19 Q And does the fact that the conditional use  
20 permit for reinstalling the pumps mean to you that a  
21 fraud was committed on the city?

22 MR. BUCKNER: Object to form.

23 A No.

24 Q Somebody can get a conditional use permit  
25 and then they can decide not to use it, right?

1           A     Sure.

2           Q     And that doesn't mean it was a fraud?

3           A     No.

4           Q     And as far as we know, as of May 7, 1980  
5     the premises at 1349 Dade Boulevard were already  
6     being used to conduct towing services, correct?

7                     MR. BUCKNER:  Objection.  Outside the  
8     witness' knowledge.

9     BY MR. REISS:

10          Q     Based on what you've seen here today?

11          A     Based on what I've seen here today.

12          Q     And you have no reason to doubt that?

13          A     No.

14          Q     And since, as far as you know, towing was  
15     already going on in 1979, the fact that no one ever  
16     acted on this conditional use permit does not  
17     undermine the possibility that you may ultimately  
18     determine that towing at 1349 Dade Boulevard is a  
19     legal nonconforming use, correct?

20          A     Correct.

21                     MR. REISS:  I've got 11:58.  Let's take  
22     that half hour break.  Come back at 12:30.

23                     (There was a lunch recess taken from  
24     11:58 p.m. to 12:52 p.m.)

25                     (Defendant's Exhibit M was marked for

1 Identification.)

2 BY MR. REISS:

3 Q I show you M as in Mary.

4 Mr. Mooney, you understand you're still  
5 under oath, correct?

6 A Correct.

7 Q I don't want to ask, but I have to. Are  
8 you familiar with Exhibit M?

9 A Yes.

10 Q What is it?

11 A This was a previous zoning ordinance that  
12 was in effect from October 1971 through October of  
13 1989.

14 Q And I think we earlier established that  
15 1349 Dade Boulevard in 1985 was located in the C-6  
16 zoning district, correct?

17 A That's correct.

18 Q And is it your understanding that even as  
19 far back as 1979 when Beach Towing was conducting  
20 towing services at 1349 Dade Boulevard, it was also  
21 in the C-6 zoning district?

22 MR. BUCKNER: Object to form.

23 A That's my understanding.

24 Q And as part of your occupation as the  
25 planning director, do you have occasion to review

1 previous versions of the code like Exhibit M?

2 A Yes.

3 Q Have you yet looked at this in  
4 consideration of the issues that we've been  
5 discussing today?

6 A I've reviewed the portions related to C-5  
7 and C-6.

8 Q Okay. Tell me what it meant to you as far  
9 as your determination.

10 A I haven't made the formal determination  
11 yet. But the C-5 and C-6 sections of the code  
12 talked about what the permitted uses were in each  
13 district.

14 Q Okay. There's been towing in the City of  
15 Miami Beach at least since 1970, right?

16 A I don't know the specific date, but --

17 Q There's been tow companies located in the  
18 city since at least 1970, as far as you know, right?

19 A As far as I know.

20 Q In fact, as far as we know, we know Beach  
21 Towing was conducting towing at 1349 Dade Boulevard  
22 as early as 1979, to your knowledge, right?

23 A Correct.

24 Q And in the code in front of you, do you  
25 find anywhere where the word "tow company" is

1 actually referenced?

2 A I did not see tow companies.

3 Q Does that in any way mean to you that  
4 towing is prohibited everywhere in the city under  
5 this version of the code?

6 A No.

7 Q And that's your interpretation as the  
8 current planning director of the City of Miami  
9 Beach, right?

10 A I have not made any formal interpretation  
11 on this code.

12 Q Well, you -- I think I just -- I'm not  
13 trying to put words in your mouth, but you just said  
14 you read it and you did not, after reading it, feel  
15 that this -- that the code in effect at least  
16 through 1985, although it doesn't mention towing --  
17 tow companies specifically, in your opinion does not  
18 preclude towing because the words are absent from  
19 the document?

20 A That's correct.

21 Q All right. And then looking at page 6.26.

22 A Okay.

23 Q It talks about "C-6 Intensive Commercial  
24 District." And then it says, "District Purpose.  
25 This is a utilitarian district characterized by

1 sales, storage, repair, processing, wholesaling and  
2 trucking activities and shall not include any  
3 residential uses." Did I read that correctly?

4 A Yes.

5 Q And this is where 1349 Dade Boulevard is  
6 located, correct?

7 A That's correct.

8 Q And do trucking activities, in your mind,  
9 include towing services?

10 MR. BUCKNER: Object to form.

11 A Where would that be? Are you reading from  
12 the code or --

13 Q It says, "District Purpose." Trucking  
14 activities is one of the listed --

15 MR. BUCKNER: Object to form.

16 BY MR. REISS:

17 Q -- one of the listed characterized  
18 activities.

19 MR. BUCKNER: Object to form.

20 A I don't know if I would characterize  
21 towing as trucking per se.

22 Q Would you say it's per se not included?

23 A I wouldn't say that towing is not included  
24 in the district purpose.

25 Q And then it lists the permitted uses. And

1 one of them is Subsection B-1, "Any nonresidential  
2 use permitted in C-5 district except those uses  
3 listed as conditional uses," correct?

4 A That's correct.

5 Q All right. So if you look under  
6 Subsection 20, towing is not listed there as a  
7 conditional use, is it?

8 A No.

9 Q So it's not excluded in C-6 as a  
10 conditional use, correct?

11 MR. BUCKNER: Object to form.

12 A Correct.

13 Q Let me restate it. Towing is not excluded  
14 as a permitted use in C-6 by virtue of the fact that  
15 it's listed as a conditional use because it's not  
16 listed as a conditional use, correct?

17 A That's correct.

18 Q And then under permitted uses, if you look  
19 at C-5, and so anything in C -- if I understand this  
20 correctly, anything that's allowed in C-5 is allowed  
21 in C-6 unless it's a conditional use in C-6, right?

22 A Pursuant to B-1, that's correct.

23 Q Okay. And then if we look at -- all  
24 right. And then earlier in your deposition I think  
25 you said that you had no reason to disagree with



1 Mr. Kurlancheek's interpretation that C-5 -- towing  
2 was permitted in C-5 and, therefore, based upon your  
3 reading of B-1, it would be permitted in C-6,  
4 correct?

5 MR. BUCKNER: Form.

6 A Any nonresidential use permitted in the  
7 C-5 district, except those listed as conditional  
8 uses, would be permitted in the C-5.

9 Q Okay. Towing is not a residential use,  
10 right?

11 A That's correct.

12 Q So, therefore, it would be permitted in  
13 C-6 under the code?

14 MR. BUCKNER: Object to form.

15 A So you're saying that pursuant to Section  
16 6-13, B-1, that any nonresidential use permitted in  
17 the C-5 district except those listed as conditional  
18 uses.

19 Q Right. And I think earlier in your  
20 deposition you said that you did not disagree with  
21 Mr. Kurlancheek's interpretation under this code  
22 that towing was a permitted use under C-5.

23 A I didn't disagree with his conclusions in  
24 his -- in the transcript.

25 Q Do you disagree with the Board of

1 Adjustment's holding on the Magnum Towing matter  
2 that we discussed earlier today?

3 A No.

4 Q So looking at this then and  
5 Mr. Kurlancheek's decision and looking at the code,  
6 towing is permitted under this version of the code  
7 in the C-6 and C-5 Districts, correct?

8 MR. BUCKNER: Object to form.

9 A That I couldn't answer per the code  
10 because towing is not listed as a specific use in  
11 C-6 or C-5.

12 Q Okay. But it was interpreted by the city  
13 and we went over the Magnum Towing case and Board of  
14 Adjustment's opinion back in 1987 as allowing towing  
15 in C-5, right?

16 MR. BUCKNER: Object to form.

17 BY MR. REISS:

18 Q That was the interpretation?

19 A That was the conclusion reached by the  
20 planning director as part of the transcript.

21 Q And you don't disagree with that?

22 A And, no, I don't disagree with that.

23 Q And do you see anything in the code that  
24 negates that determination?

25 A No.

1           Q     And you have in front of you C-5, if you  
2     turn to page 6.24, I think those are the permitted  
3     uses in C-5, right?

4           A     That's correct.

5           Q     Well, they start on 6.23.

6           A     That's correct. B, under 6-12 B, "Uses  
7     Permitted."

8           Q     All right. And one of the uses is number  
9     20, "Storage garages, automobile and truck storage  
10    within an area enclosed by an opaque masonry wall or  
11    structural wood fence not less than 6 feet in  
12    height." Other than the exchange of money in return  
13    for parking the vehicle, is that generally analogous  
14    to what towing services are about?

15                   MR. BUCKNER: Object to form.

16           A     Number 20 would be consistent with the  
17    towing operation.

18                   MR. REISS: What was the matter with the  
19    form?

20                   MR. BUCKNER: I think you're  
21    mischaracterizing.

22    BY MR. REISS:

23           Q     Did I mischaracterize something?

24           A     Not to me.

25           Q     Thank you. So looking at the permitted

1 uses in C-5, do you see anything in the code that  
2 negates the idea that towing was a permitted use in  
3 C-6, under this version of the code marked as  
4 Exhibit M, which is effective through the end of  
5 January 18, 1985?

6 A No.

7 Q So, just so I'm clear then, just because  
8 the word "towing" is not listed as a permitted use  
9 in C-5 or C-6, to you looking at the code, based on  
10 what you know, does not make towing an illegal  
11 unpermitted use, correct?

12 A In C-5 or C-6, correct.

13 Q It's my understanding that after Exhibit  
14 M, the next time the code -- there was a major  
15 amendment to the code was the '89 code, right?

16 A That's correct.

17 (Defendant's Exhibit N was marked for  
18 Identification.)

19 BY MR. REISS:

20 Q I show you Exhibit N as in Nancy.

21 MR. REISS: I'm one short.

22 MR. ANDRADE: Are you?

23 MR. REISS: I've got mine, but --

24 (Witness reviews document.)

25 BY MR. REISS:

1 Q Have you ever seen Exhibit N before?

2 A I don't believe so.

3 Q This is kind of peculiar, because this is  
4 N, but N sub F, if you would turn to that.

5 A Exhibit F within N.

6 Q Yes, sir.

7 A Okay.

8 Q This looks like a screen shot of the City  
9 of Miami Beach records showing Tremont Towing at  
10 1916 Bay Road. Do you know what -- in 1988 what  
11 zoning district that would have been located in?

12 A I don't know offhand what that district --  
13 where that would be located.

14 Q Do you know -- where the Sunset Harbour  
15 shops are now, do you know what zoning district that  
16 would have been in prior to 1989?

17 A That's CD-2 now. Probably CD-5 --  
18 probably C-5. But without actually seeing a map  
19 from then, I couldn't confirm.

20 MR. ANDRADE: There's a map in the back.  
21 I'm pretty sure.

22 MR. REISS: Well, I have the -- I only  
23 have one copy, though.

24 MR. ANDRADE: Didn't we print out -- yeah,  
25 that's the one. That has the map. The map's

1 not there. It's in here.

2 THE WITNESS: Okay.

3 BY MR. REISS:

4 Q I'll have to pass it around. I won't mark  
5 it as an exhibit. But if you want a take a minute,  
6 you can look at it. See if you can --

7 A Okay.

8 Q -- figure out where that address -- zoning  
9 district is. And we'll pass it around if they want  
10 to look at it.

11 MR. ANDRADE: The map's like towards the  
12 back.

13 BY MR. REISS:

14 Q There's a tab. Well, that was where --

15 A Yes. It's actually C-6.

16 Q Okay.

17 A Yeah, that whole area was C-6.

18 Q Okay. So, in any event, looking at --

19 A Can I pass it around?

20 Q Yes, you can pass it around if they want  
21 to look at it. I'm not hiding anything.

22 MR. REISS: But I'd ask you to agree that  
23 if I marked it, it's not a waiver of my work  
24 product.

25 MR. BUCKNER: You're not waiving your work

1 product.

2 MR. REISS: I think I put a tab on the  
3 one --

4 BY MR. REISS:

5 Q Is that the one you looked at, P-5?

6 A Yes.

7 MR. BUCKNER: I've got it. Go ahead.

8 BY MR. REISS:

9 Q So looking at the exhibit that's N sub F,  
10 and I think we established that towing is not listed  
11 specifically anywhere in the code that existed at  
12 this time, yet it looks like there are licenses  
13 issued to towing companies in the C-5 district --  
14 I'm sorry, in the C-6 district under the code.

15 A That's correct.

16 Q And so, therefore, that would support your  
17 conclusion that simply because the word "towing"  
18 isn't mentioned does not imply that it's a  
19 non-permitted use under the code prior to 1989,  
20 correct?

21 A That's correct.

22 Q And then turning to -- on Exhibit N, the  
23 document sub-marked N-G as in good, there's another  
24 1989 screen shot of a tow company for -- at 1333  
25 Dade Boulevard. Do you know what zoning district

1 that was?

2 A Would also have been the C-6.

3 Q So again another towing permit issued even  
4 though the code in C-6 does not mention the word  
5 "towing"?

6 A Now, this one says South Beach Brothers  
7 Auto Service.

8 Q But at the bottom of that it says  
9 "wrecker/towing service." You see that, "\$165,  
10 Occupational Fees Calculations"?

11 A Oh, okay. I'm sorry. Yeah. Under the  
12 "Description." Okay. Yes. It says "wrecker/towing  
13 service" and "tow truck."

14 Q And then turning to N sub H, N-H, it's --  
15 that's again -- that's Alton Towing, Inc. at 1333  
16 Dade Boulevard, and it's wrecker/towing service.  
17 Again, that would be C-6?

18 A That address is --

19 Q C-5? I'm sorry. This is --

20 A Alton Towing at 1333 Dade Boulevard would  
21 be C-6.

22 Q Actually, this was issued in 1996, right,  
23 this Alton Towing, Inc., original issue date?

24 A Yes.

25 Q And so at that time it would be CD-2?



1           A     That's correct.

2           Q     Would the Planning Department have  
3 reviewed this Business Tax Receipt before issuing  
4 the license? This is an original.

5                     MR. BUCKNER: Objection. Speculation.

6           A     They should have. Whether they did, I  
7 don't know without looking at the notes.

8           Q     Okay. And then looking at Exhibit N as in  
9 Nancy, I as in ice, it's a BTR, Business Tax  
10 Receipt. It looks like Occupational License issued  
11 1984. Do you know where 800 First Street was at  
12 that time?

13          A     No. I would need to review the zoning  
14 map.

15                     MR. REISS: Guys, pass that back.

16                     MR. ANDRADE: Incidentally, that's  
17 Russel's home now.

18                     MR. REISS: You're not allowed to do that.

19          A     It's 801 -- oh, 800 First Street. Okay.  
20 It is C-6.

21          Q     Okay. So again, even though towing is not  
22 listed, apparently the city is issuing licenses for  
23 towing in C-6 consistent with the interpretation of  
24 Mr. Kurlancheek that towing was permitted in C-6 at  
25 that time, correct?

1           A     Correct.

2           Q     And the absence of the word "towing" in  
3     C-5 or C-6 in your review of the city code in effect  
4     and through 1989 does not negate the legality of  
5     towing in those districts, correct?

6           A     Correct.

7           Q     Will it be important to your analysis that  
8     the city code requires cars being towed for police  
9     or parking department to be stored on the city --  
10    within the city despite the fact that in the  
11    pre-1989 code towing was not specifically listed  
12    expressly as a permitted use in C-5 or C-6, or  
13    anywhere in the code?

14          A     Can you repeat?

15               MR. BUCKNER:   Form.

16   BY MR. REISS:

17          Q     Yes.  We know that the city code requires  
18    cars being stored for police or parking -- for the  
19    police or parking department to be stored in the  
20    City of Miami Beach, correct?

21          A     Correct.

22          Q     And we know that prior to 1989 there were  
23    tow companies located in the City of Miami Beach?

24          A     Correct.

25          Q     And we also know that the word "tow

1 company" is not listed in the pre-1989 code at all,  
2 correct?

3 A Correct.

4 Q So as part of your analysis, will you  
5 consider the fact that even though towing is not  
6 specifically listed, the code elsewhere actually  
7 required the towed cars to be stored within the  
8 city? Will that come into play as part of your  
9 analysis?

10 A That's something that I can look at.

11 Q Have you considered that before today?

12 A No.

13 Q If the code required, as it did, cars  
14 being towed for the police or parking department to  
15 be stored within the city, wouldn't you be required  
16 as part of your interpretation to apply that towing  
17 must be permitted somewhere within the city?

18 A The interpretation that I'm doing is  
19 specific to one property. And so I can certainly  
20 take into consideration the fact that under another  
21 section of the code cars towed in Miami Beach by  
22 police and fire were required to be located within  
23 Miami Beach.

24 Q And particularly with respect to any  
25 interpretation or argument that simply because

1 towing is not specifically listed it's therefore  
2 negated, correct?

3 A Correct.

4 Q They can't both be true at the same time.  
5 The code can't require the cars to be towed and  
6 parked in the city and at the same time preclude all  
7 towing, right? Those are impossibilities?

8 A That would be a correct statement.

9 MR. REISS: I need to take a two-minute  
10 break. Sorry.

11 (There was a recess taken from 1:18 p.m.  
12 To 1:22 p.m.)

13 BY MR. REISS:

14 Q Mr. Mooney, what definition of legal  
15 nonconforming use are you using in your analysis?

16 A The definition from Chapter 118 under  
17 Nonconformances.

18 Q Do you know generally what that provision  
19 provides for?

20 A No. I would need to -- I would need to  
21 access the code.

22 Q Do you know what section it is?

23 A It's Chapter 118. I don't know the exact  
24 section.

25 Q Generally what's a legal nonconforming

1 use?

2 A Generally a legal nonconforming use is a  
3 use that was lawfully established prior to a change  
4 in the code that subsequently prohibited the use.

5 Q Do you have knowledge of any facts to  
6 indicate that Beach Towing's use of 1349 Dade  
7 Boulevard today for towing is not a legal  
8 nonconforming use?

9 A No.

10 Q Prior to 1989, was towing at 1349 Dade  
11 Boulevard a permitted use?

12 MR. BUCKNER: Object to form.

13 A My reading in research of the code  
14 indicates that it appears to have been permitted in  
15 the C-5 district under the towing -- under the  
16 vehicle storage, 612, B-20.

17 Q Okay. And therefore in C-6 at 1349, since  
18 it was permitted in C-5, and C-6 adopts C-5, it was  
19 permitted in C-6 as well?

20 A That's correct.

21 Q So if I'm clear then, it's your  
22 interpretation of the City of Miami Beach Zoning  
23 Code that prior to 1989 towing was a permitted use  
24 at 1349 Dade Boulevard?

25 A Yes.

1           Q     And I think you said earlier that based on  
2     your letter to Mr. Penn that you believe that towing  
3     is not a main permitted use in the post-1989 zoning  
4     code in CD-2, correct?

5           A     That's correct.

6           Q     So since it was, based on your testimony  
7     today towing was a permitted use prior to 1989 at  
8     1349 Dade Boulevard, when it became not a main  
9     permitted use in CD-2 post 1989, it became a legal  
10    nonconforming use because it was uninterruptedly  
11    used for that purpose, correct?

12          A     I have not reached that formal conclusion  
13    as of yet.

14          Q     But you have no knowledge of any facts to  
15    indicate that the answer to my question is not, in  
16    fact, correct, it became a legal nonconforming use?

17          A     I don't have anything -- I haven't seen  
18    anything that would contradict that.

19                MR. REISS:  It's your turn, Mr. Buckner.  
20                Do you want to switch sides to make it easier  
21                for the court reporter?

22                MR. BUCKNER:  If you don't mind, can we  
23                take a break and do that?  Because I think it's  
24                going to be too hard for me to talk over these  
25                guys.

1 MR. REISS: And then we're going to switch  
2 back on redirect?

3 MR. BUCKNER: Yes.

4 (There was a recess taken from 1:26 p.m.  
5 to 1:30 p.m.)

6 MR. BUCKNER: Okay. I'm going to  
7 continue. I apologize to you all in advance.  
8 I forgot to make enough extra copies. So I've  
9 got one for the witness and one for them or  
10 you.

11 MR. BOKSNER: That's fine.

12 MR. BUCKNER: We'll figure it out. A lot  
13 of it's stuff we've already used.

14 CROSS-EXAMINATION

15 BY MR. BUCKNER:

16 Q All right. Mr. Mooney, I'm going to try  
17 not to cover all the ground Mr. Reiss covered. I  
18 just want to -- I want to talk to you about some of  
19 this stuff.

20 Okay. What's an accessory use?

21 A A use that is subordinate to the main  
22 permitted use.

23 Q Okay. And am I correct that an accessory  
24 use cannot continue unless the main permitted use is  
25 continuing?

1           A     That's correct.

2           Q     So if, for example, you had a gas station  
3     with an accessory towing use, when the gas station  
4     ceased to function, the towing use would have to end  
5     as well, correct?

6                     MR. REISS: Object to the form.

7           A     If the towing function was accessory to  
8     the gas station, yes.

9           Q     And there's been a lot of different words  
10    used today. I want to make sure I'm using the right  
11    ones the way you use them in your professional work.  
12    Do you refer to it as a main permitted use?

13          A     Yes.

14          Q     And I know we've gone through this, but  
15    what is a main permitted use?

16          A     A main permitted use is the use -- the  
17    main use on the property. And it would not be  
18    considered an accessory use.

19          Q     And main permitted uses are set out in the  
20    code we've been talking about, correct?

21          A     That's correct.

22          Q     Both the post-1989 code and the pre-1989  
23    code?

24          A     That's correct.

25          Q     And those main permitted uses are the uses



1 that are allowed in each zoning district as set  
2 forth in the code, correct?

3 A That's correct.

4 Q And so one way the citizens of the City of  
5 Miami Beach can tell what kind of uses they're  
6 permitted to put their property to is by going to  
7 the zoning code and looking to see what the main  
8 permitted uses are, correct?

9 A That's correct.

10 Q And in addition to main permitted uses,  
11 there's also, we've talked about accessory uses,  
12 correct?

13 A That's correct.

14 Q And there are also things known as  
15 conditional use, right?

16 A That's correct.

17 Q What's a conditional use?

18 A A conditional use is a use that requires  
19 the review and approval of the Planning Board before  
20 it can become an operational use.

21 Q And so a conditional use is something that  
22 could potentially be allowed, but only with certain  
23 approvals, in this case, as you described, from the  
24 Planning Board, correct?

25 A That's correct.

1           Q     And were there conditional uses in --  
2     strike that.

3                     Are there conditional uses under the  
4     current code?

5           A     Yes.

6           Q     And were there conditional uses under the  
7     pre-1989 code?

8           A     Yes.

9           Q     And just so we're clear, because I don't  
10    want the record to be in any way ambiguous later,  
11    when I say "the code," we're talking about the Land  
12    Development Regulations of the city code?

13          A     That's correct.

14          Q     Okay. So if I refer to that as "the  
15    code," you know what that is?

16          A     Okay. Yes.

17          Q     All right. And I'm going to try and be  
18    careful, because I know we're dealing with pre and  
19    post 1989, so I'll try and put a date on it. But if  
20    for some reason I'm not clear to you - you seem very  
21    adept at asking for a restatement - you will, I'm  
22    sure, ask me to restate?

23          A     Yes.

24          Q     Okay. So the fact that something's a main  
25    permitted use in a particular district, that means

1 that someone who owns property that's zoned in that  
2 district can put their property to that use without  
3 any further approval, correct?

4 A They would need building permit approval  
5 potentially if they're doing physical improvements  
6 on the site and the use would also require a  
7 Business Tax Receipt.

8 Q Okay. But they wouldn't need a  
9 conditional use approval, would they?

10 A No. Not if it's listed as a main  
11 permitted use.

12 Q Right. And so if it's not listed as a  
13 main permitted use in a particular district and  
14 someone wants to put their property to that use,  
15 they need to get a conditional use approval,  
16 correct?

17 MR. REISS: Form.

18 A If it is listed as a conditional use  
19 within that zoning district, they would need to get  
20 conditional use approval.

21 Q Well, let me ask you this. In going  
22 through the code, is every single possible use to  
23 which a particular parcel of land could put actually  
24 listed somewhere in the code?

25 A No.

1           Q     In fact, isn't it the case that both in  
2     the pre-1989 code and the current code there are  
3     certain uses that are set forth in there, correct?

4           A     Correct.

5           Q     And there are some set forth as primary --  
6     I'm sorry, as main permitted uses, correct?

7           A     That's correct.

8           Q     And there are some set forth as  
9     conditional uses, correct?

10          A     That's correct.

11          Q     And there are other uses that are not  
12     listed anywhere?

13          A     That's correct.

14          Q     But those uses do exist within the City of  
15     Miami Beach today, do they not?

16          A     Yes, they do.

17          Q     And prior to 1989, such uses existed  
18     within the City of Miami Beach, did they not?

19          A     Yes.

20          Q     So the mere fact that -- well, strike  
21     that.

22                     And the reason for that is because the  
23     Zoning Code cannot possibly anticipate every single  
24     potential use to which property can be put, correct?

25          A     Yes.

1           Q     And so the main permitted uses tell you  
2     what you can do without further approval from the  
3     zoning -- from the Planning Board, correct?

4           MR. REISS:   Form.

5           A     That's correct.

6           Q     And the conditional uses are uses you can  
7     put property to if you get Planning Board approval,  
8     correct?

9           A     That's correct.

10          Q     And back before 1989 -- well, strike that.  
11                 Today when -- is the City of Miami Beach  
12     still -- strike that.

13                 Today does the City of Miami Beach still  
14     approve on occasion conditional uses of property?

15          A     Yes.

16          Q     And do those conditional uses require  
17     approval from the Planning Board?

18          A     Yes.

19          Q     Do they require commission approval?

20          A     No.   Not under today's code.

21          Q     Did they used to require commission  
22     approval?

23          A     Under the previous code, City Commission  
24     approval was required.

25          Q     And when you say "the previous code,"

1     you're talking pre-1989?

2             A     Yes.

3             Q     And were they also recorded in the records  
4     of the Circuit Court in and for Miami-Dade County,  
5     Florida?

6             A     I don't know.

7             Q     Do you know if today conditional use  
8     approvals are recorded in the Circuit Court records?

9             A     Yes, they are.

10            Q     So as of the current time period when the  
11     city Planning Board grants conditional use approval  
12     to a particular use, that is recorded in the Circuit  
13     Court's records?

14            A     Yes.

15            Q     And what you don't know as you sit here is  
16     whether pre-1989 they were also recording those  
17     conditional uses in the Circuit Court records?

18            A     That I don't know.

19            Q     Do you know where pre-1989 they were  
20     recording those conditional use approvals?

21            A     Since they were reviewed by the City  
22     Commission, I would imagine that the city clerk kept  
23     a record of that at the time.

24            Q     Do you know for a fact that the city clerk  
25     kept a record?

1           A     That I don't know.

2           Q     Do you know if those records still exist  
3 today?

4           A     That I don't know.

5           Q     Do you know if those records still exist  
6 today if they're complete?

7           A     That I don't know.

8           Q     And the reason that those conditional use  
9 approvals are required to be recorded is so that if  
10 some years down the road someone wants to find out  
11 if there was a conditional use, they would have a  
12 place to go to check?

13                   MR. REISS: Form. Predicate.  
14 Speculation.

15           A     Right now conditional use approvals are  
16 recorded so that there is a formal record and so  
17 that future property owners will be aware of any  
18 conditions that are part of that conditional use  
19 approval.

20           Q     But as you sit here today, you don't know  
21 how complete the older records from prior to your  
22 tenure are, do you?

23           A     No, I don't.

24           Q     And you don't know how complete the  
25 records are from prior to 1989, do you?

1           A     No.

2           Q     But one of your predecessors who worked as  
3     planning director in the city back then might know,  
4     correct?

5                     MR. REISS:   Form.   Speculation as to the  
6     mind of another.   Predicate.

7           A     I couldn't speak to my predecessor's  
8     knowledge.

9           Q     Well, let me ask you this.   In terms of  
10    how -- in terms of how conditional use approvals  
11    were recorded and maintained prior to 1989, would  
12    you defer to your predecessors as planning director  
13    who were there at the time in terms of their  
14    knowledge on that issue?

15                    MR. REISS:   Form.   Predicate.  
16     Speculation.

17          A     In terms of how commission actions were  
18    recorded, I would defer to the city clerk at the  
19    time.

20          Q     Okay.   And with regard to how the -- how  
21    the Planning Department handled conditional use  
22    approvals prior to 1989, would you defer to your  
23    predecessors who were working as planning directors  
24    prior to 1989 on that procedure?

25                    MR. REISS:   Form.   Predicate.



1           Speculation.

2           A     For the Planning Department and Planning  
3     Board recommendations, I would defer to my  
4     predecessors.

5           Q     Now, you've said several times today that  
6     towing is not permitted within the CD-2 district,  
7     correct?

8           A     That's correct.

9           Q     And so the only way today that Beach  
10    Towing could be lawfully towing at 1349 Dade  
11    Boulevard is if it was a legal nonconforming use,  
12    correct?

13          A     They -- Beach Towing has an active BTR.  
14    That's how they're able to continue their towing  
15    operation.

16          Q     Okay. But in terms of the determination  
17    that Mr. Reiss was asking you about that you're  
18    going to be completing by the end of the month,  
19    which is, as I understand it, whether Beach Towing  
20    is operating lawfully where it is, that's what the  
21    determination will be, right?

22                   MR. REISS: Form.

23          A     Yes. That's correct.

24          Q     Okay. And so as part of that  
25    determination -- well, strike that.

1           Because Beach Towing is not lawfully able  
2   to tow at 1349 Dade Boulevard under the current  
3   code, correct?

4           MR. REISS: Form. Predicate.

5           A     Towing would not be a permitted use under  
6   the current code.

7           Q     So the only way you can make a  
8   determination that they are towing lawfully there  
9   today, and your determination at the end of the  
10   month, is if you find they're a legal nonconforming  
11   use, correct?

12          MR. REISS: Form. Legal conclusion.

13          A     Again, the -- the determination as to  
14   their legal nonconforming status is a question of  
15   fact that I will be putting together and finalizing  
16   by the end of next week.

17          Q     Right. And I understand that. What I'm  
18   trying to get at is something different. I'm trying  
19   to make sure there's nothing I'm missing here. For  
20   you to find that Beach Towing is operating legally  
21   at 1349 Dade Boulevard, you would have to find that  
22   they're a legal nonconforming use, because there's  
23   no other legal basis for them to be operating there  
24   today; is that not right?

25          MR. REISS: Form. Predicate. Legal

1 conclusion.

2 A That's a very broad question that I  
3 couldn't answer at least until I make the  
4 determination regarding legal nonconforming use.

5 Q Okay. Is the towing operation at 1349  
6 Dade Boulevard, to your knowledge, an accessory use  
7 to any other use?

8 A The current operation, no.

9 Q And you've said it's not a main permitted  
10 use under the current code, correct?

11 A That's correct.

12 Q And does Beach Towing have a conditional  
13 use permit to tow at 1349 Dade Boulevard?

14 A No.

15 Q Other than being a legal nonconforming  
16 use, is there any other status under the code that  
17 would allow them to tow there today?

18 MR. REISS: Form. Predicate. Legal  
19 conclusion.

20 A That's something that I also couldn't  
21 answer, again until I make the determination as to  
22 the legal nonconformance.

23 Q Okay. Well, am I missing -- is there a  
24 status other than main permitted use, conditional  
25 use or accessory use that I've missed?

1           MR. REISS: Form, predicate, legal  
2           conclusion.

3           A     Those are the three main types of uses  
4           that a property would consist of.

5           Q     Okay. Are there any others that I've not  
6           named?

7           A     Not that I'm aware of.

8           MR. REISS: Form. Legal conclusion.

9           (Discussion off the record)

10          BY MR. BUCKNER:

11          Q     Let me -- I want to ask you about  
12          something else. Mr. Reiss asked you some  
13          questions -- and I apologize; I may jump around a  
14          little because I'm sort of tracking what he did. So  
15          it's not meant to confuse you. It really is --

16          A     Okay.

17          Q     -- because I'm schizophrenic.

18          MR. REISS: Is that on the record?

19          MR. BUCKNER: Yes, it is. Use it to your  
20          heart's content.

21          One second. I want to find something that  
22          seems to have wandered off. There it is.

23          Okay.

24          (Plaintiff's Exhibit No. 1 was marked for  
25          Identification.)

1           MR. BUCKNER: Marked as Exhibit 1. Again,  
2           I'm going to apologize to everybody. This is  
3           Section 118-390 of the code. I'm sorry. I  
4           don't have copies. I totally forgot. You all  
5           from the city, I owe you great penance. I  
6           supplicate myself.

7           MR. BOKSNER: I'll make sure I'll try to  
8           collect on that.

9           MR. BUCKNER: You should. You should.  
10          It's worth at least a few rounds.

11       BY MR. BUCKNER:

12          Q       So I've put in front of you Exhibit 1,  
13       sir. Do you recognize that?

14          A       Yes.

15          Q       What is it?

16          A       This is Article 10 of the city code under  
17       Chapter 118 regarding nonconformances.

18          Q       And --

19          A       I'm sorry. Article 9.

20          Q       That's fine. And Article 9,  
21       Nonconformances, is this the part of the city code  
22       that gives you the rules with regard to how the city  
23       deals with nonconforming uses?

24          A       Yes.

25          Q       And this is part of the current code,

1 correct?

2 A That's correct.

3 Q And so this is one of the things you have  
4 to consider in the analysis you're going to complete  
5 by the end of the month?

6 A Yes.

7 Q I want to ask you a few things about this.  
8 So first of all, if you look here, in Section A, in  
9 the middle of it, it says, "The intent of this  
10 section is to encourage nonconformities to  
11 ultimately be brought into compliance with current  
12 regulations." What does that mean?

13 A Pretty much what it says, to encourage  
14 nonconformities to be brought into compliance with  
15 the current regulations.

16 Q So if you have a nonconforming use, it's  
17 the city's policy to try and bring it into  
18 conformity with the current regulations, correct?

19 A That's correct.

20 Q It's not to leave the nonconforming use in  
21 place for an indefinite period of time, right?

22 A It's to encourage bringing a nonconforming  
23 use into compliance.

24 Q Okay. Is part of your job as planning  
25 director to bring nonconforming uses into

1 compliance?

2 A I wouldn't characterize that as part of my  
3 job, because that's not something that I can  
4 ultimately control in terms of the use of the  
5 property.

6 Q Well, when you say you can't control as to  
7 the use of the property, your department has a hand  
8 in issuing BTRs, correct?

9 A Correct.

10 Q If you decided, for example, to stop  
11 issuing BTRs to a particular property owner for a  
12 particular use, they would have to cease that use,  
13 right?

14 A The Finance Department is the entity that  
15 issues BTRs. We review BTRs, new BTRs for  
16 consistency with the current code.

17 Q If you told the Finance Department --  
18 well, strike that.

19 So whose job is it, if it's not yours, to  
20 effectuate the intent of this section to encourage  
21 nonconformities to be brought into compliance with  
22 current regulations?

23 MR. REISS: Predicate. Form.

24 A It would be the responsibility of the  
25 planning director.

1 Q So that is one of your responsibilities?

2 A Yes.

3 Q And we talked about nonconformity before.

4 Looking at part B --

5 A Okay.

6 Q -- "The term 'nonconformity' shall refer  
7 to a use, building or lot that does not comply with  
8 the regulations of this article. Only legally  
9 established nonconformities shall have rights under  
10 this section." I read that right?

11 A Yes.

12 Q And what does that mean?

13 A That means that a use or a building would  
14 have to be legally established in order to continue  
15 with any nonconforming attributes.

16 Q And by "legally established" that means it  
17 had to have been a legal use prior to it becoming an  
18 illegal use?

19 A A nonconforming use, that's correct.

20 Q So, for example, if there was a change in  
21 the code that rendered a particular use  
22 nonconforming, the only way it could be legally  
23 nonconforming if it was a legally conforming use  
24 under the old code, right?

25 A It would have to have been legally



1 established under the previous code.

2 Q And when you say "legally established,"  
3 does that mean if the use that has to have started  
4 while the old code was in effect?

5 A Yes.

6 Q Forgive me. I'm going to be looking at  
7 stuff --

8 A That's okay.

9 Q -- because I have people just throwing  
10 stuff at me and whatever. It's hard to follow all  
11 these people throwing things at me.

12 And you understand under Section 114.4 of  
13 the code -- I'm sorry, 114.7 of the code  
14 enforcement, you have the authority to refuse to  
15 approve of a BTR if a nonconforming use is  
16 nonconforming --

17 MR. REISS: Form. Predicate.

18 BY MR. BUCKNER:

19 Q -- remains nonconforming, correct?

20 MR. REISS: Form. Predicate.

21 A That's correct.

22 Q And so in terms of bringing nonconforming  
23 uses into conformity, which is the intent of the  
24 code, you have both the authority and the ability to  
25 do that, right?

1                   MR. REISS: Form. Predicate. Legal  
2                   conclusion.

3           A       I have the authority to enforce the code.  
4   And that would include all of the standards set  
5   forth under the nonconformances.

6           Q       And if you go further down under D-3, we  
7   just discussed this, an existing use, it's defining  
8   "legally established." And it says, among the  
9   things that makes something legally established is,  
10   "An existing use which conformed to the code at the  
11   time it was established," correct?

12          A       That's correct.

13          Q       That means that for a current use to be  
14   legally nonconforming, it had to have conformed to  
15   the code at the time the use was established,  
16   correct?

17          A       That's correct.

18          Q       Now, am I right that there are -- and I  
19   don't know this. So if I'm wrong, you tell me. You  
20   won't hurt my feelings. There are three kinds of  
21   nonconformity, a nonconforming use of a building, a  
22   nonconforming use of a land, and nonconforming use  
23   general?

24          A       There's --

25                   MR. REISS: Form.

1           A       -- a nonconforming building, nonconforming  
2    use of a building, and nonconforming use of land.

3           Q       Okay. And nonconforming -- you would  
4    agree with me that at 1349 Dade Boulevard, Beach  
5    Towing is using its land to tow and store cars,  
6    correct?

7                   MR. REISS: Form.

8           A       From what I have seen, they're using both  
9    the land and the building.

10          Q       Okay. So there's a non -- there could  
11   theoretically be a nonconforming use of the building  
12   and a nonconforming use of the land, correct?

13          A       That's correct.

14          Q       And with regard to the nonconforming use  
15   of the land, Section 118-391 governs that; is that  
16   right?

17          A       That's correct.

18          Q       And it says, "In any district where vacant  
19   land is being used as a nonconforming use, and such  
20   use is the main use and not accessory to the main  
21   use conducted in a building, such use shall be  
22   discontinued not later than two years from the  
23   effective date of these land development  
24   regulations." Did I read that right?

25          A       Yes.

1           Q     And does that require that nonconforming  
2     uses of land be terminated within two years of the  
3     enactment of this code section?

4           A     Vacant land.

5           Q     Okay. And what's the difference between  
6     Beach Towing's land and vacant land?

7           A     They have a building on it. I believe  
8     multiple buildings. And the land is not vacant.  
9     It's being used.

10          Q     Okay. So even though they're using the  
11     land for towing, and the -- you know that not all  
12     the -- strike that.

13                 You know that not all the cars that Beach  
14     Towing tows are contained within that building,  
15     correct?

16                 MR. REISS: Form. Predicate.  
17                 Speculation.

18          A     That I don't know. I don't know their  
19     operation.

20          Q     As part of this opinion you're going to  
21     render at the end of the month, are you going to go  
22     out to Beach Towing and investigate how they're  
23     using the land?

24                 MR. REISS: Form.

25          A     I will certainly -- I have taken a look at

1 the property. And I will certainly take another  
2 look at the property.

3 Q Okay. And having taken a look at the  
4 property, you know that the building they have on  
5 the property cannot store more than a few cars at  
6 most, right?

7 MR. REISS: Form. Predicate.

8 A That's correct.

9 Q And under the towing permit, they're  
10 required to have space to store up to a hundred  
11 cars, right?

12 A That I don't know, because I'm not  
13 familiar enough with the permit.

14 Q Okay. Do you know how many cars they're  
15 required to be able to store at any one time?

16 A No.

17 Q But you would agree with me since you  
18 visited the property that Beach Towing has cars  
19 stored all over the property, not just inside the  
20 building.

21 MR. REISS: Form.

22 BY MR. BUCKNER:

23 Q Correct?

24 A I have seen cars stored both outside and  
25 inside the building.

1           Q     It says here further down in 118-391, "Any  
2     building incident and subordinate to such use of  
3     land shall be removed at the end of the two-year  
4     period or, if such building is so constructed as to  
5     permit the issuance of a permit for a use not  
6     excluded from the district, such building may remain  
7     as a conforming use; thereafter, both land and  
8     building shall be used only as conforming uses."  
9     Doesn't that contradict your statement that vacant  
10    land doesn't have a building on it if they're  
11    contemplating nonconforming use of land can have a  
12    building on it as an incident and subordinate use?

13               MR. REISS: Form. Predicate.

14           A     Sorry. Can you repeat?

15           Q     Sure. That part that I just read to  
16    you --

17           A     Yes.

18           Q     -- it's under the section "Nonconforming  
19    use of land," right?

20           A     Uh-huh.

21           Q     And you distinguished this section from  
22    the way Beach Towing is operated by saying Beach  
23    Towing isn't vacant land because it has a building  
24    on it, right?

25           A     Well, no, not just because it has a

1 building on it, but because it's not vacant land.  
2 They've got a use on the land. Vacant land is  
3 vacant land. There's nothing on it.

4 Q No use at all.

5 A No use at all.

6 Q Okay. If there's no use at all, if that's  
7 what's required something to be vacant land, then  
8 why does 118-391 talk about use of the vacant land?  
9 If it's being used -- it couldn't be in  
10 nonconformance if it's vacant land with nothing  
11 happening on it, right?

12 A That's correct.

13 Q So this section here talks about vacant  
14 land both with uses on it and buildings on it. Is  
15 it possible that your interpretation of the term  
16 "vacant land" here is too narrow?

17 A No. I don't believe so because it says  
18 very specifically in the first sentence, "In any  
19 district where vacant land is being used as a  
20 nonconforming use."

21 Q Okay. And I'm not trying to argue with  
22 you. I'm just trying to figure out what makes  
23 something vacant land. You had said it doesn't have  
24 a building on it, but then it talks about buildings  
25 on vacant land. Then you said if it has a use on

1 it, it's not vacant land, but it talks about uses in  
2 here. So if those two things don't make something  
3 vacant land, what makes something vacant land?

4 A Vacant land could be land that is adjacent  
5 to a use that's being used for storage of materials  
6 or being used in some other capacity that's  
7 nonconforming. But in order for it to meet that  
8 two-year period for elimination, a determination  
9 would have to be made that it is, in fact, vacant  
10 land.

11 This was a section of code that was  
12 written before I even started with the city. And so  
13 it may have been intended for certain types of uses  
14 because of that two-year sunset provision.

15 Q Okay. But it is still part of the city  
16 code --

17 A Yes.

18 Q -- correct?

19 A Uh-huh. Yes.

20 Q And it's part of the city code that the  
21 city is required to comply with, correct?

22 A That's correct.

23 Q As it's part of the city code that you're  
24 required to enforce, correct?

25 A That's correct.



1           Q     Let's switch to the next page, if we  
2     could, Section 118-394. So you see here under  
3     118-394-A, it says, "A nonconforming use may not be  
4     enlarged, extended, intensified, or changed, except  
5     for a change to a use permitted in the district in  
6     which the property is located." I read that right?

7           A     Yes.

8           Q     And does that express, again as we  
9     discussed at the outset of this section, the intent  
10    of this section to encourage nonconformities to  
11    ultimately be brought into compliance?

12          A     Yes.

13          Q     Now, "enlarged," what does that mean?

14                 MR. REISS: Form.

15          A     It could mean --

16                 MR. REISS: Hypothetical.

17          A     It could mean a number of things. An  
18    enlargement of a building, of a nonconforming  
19    building. An enlargement of a particular use.

20          Q     So if there was a nonconforming use, for  
21    example, on part of a property, enlargement would be  
22    the spreading of that use onto more of the property.

23                 MR. REISS: Form. Hypothetical.

24    BY MR. BUCKNER:

25          Q     Correct?

1 MR. REISS: Predicate.

2 A Potentially.

3 Q And by the way, it's your job as city  
4 planning director to interpret these code sections  
5 every day, isn't it?

6 A Yes.

7 Q You familiarize yourself with them, right?

8 A Yes.

9 Q And over the years you've worked with the  
10 city, you've made it a matter of, I assume, your  
11 professional practice to be conversant in the code?

12 A Yes.

13 Q When it says "extended," that means a use  
14 should not be extended in time, correct?

15 A I would not agree with that.

16 Q Okay. What do you think "extended" means?

17 A "Extended" means -- it could mean a number  
18 of things. And these are things that are looked at  
19 on an individual case-by-case basis. But "extended"  
20 in my mind would mean extending the use to other  
21 areas of the property, extending the building.

22 Q Okay. Let me ask you this. Is it the  
23 city's policy to allow legal nonconforming uses to  
24 be allowed to continue indefinitely?

25 A If there's a legally established use that

1 becomes legal nonconforming, there's nothing in this  
2 section of the code that would sunset that use.

3 Q Okay. And there's nothing that would  
4 sunset it, you mean there's no hard deadline,  
5 correct?

6 A There's no hard deadline.

7 Q But there is the intent of the section to  
8 encourage them to come into compliance with the  
9 current regulation, correct?

10 A That's correct.

11 Q What efforts has the City of Miami Beach  
12 made to try and bring Beach Towing into  
13 compliance -- strike that.

14 What efforts has the City of Miami Beach  
15 made to try and bring Beach Towing's use of 1349  
16 Dade Boulevard as a towing use into compliance with  
17 the current regulations?

18 MR. REISS: Form. Predicate.

19 A I'm not aware of any efforts.

20 Q Do you know how many other legal  
21 nonconforming uses there are in the city today?

22 A No.

23 Q Are you making any effort to bring other  
24 legal nonconforming uses into compliance with the  
25 current code?

1           A     We look at legal nonconforming uses on a  
2     case-by-case basis.

3           Q     Okay. So as you sit here today, can you  
4     think of any legal nonconforming uses that you are,  
5     as planning director, attempting to bring into  
6     compliance with the current code?

7                     MR. REISS: Form. Predicate.  
8     Hypothetical.

9           A     I can't think of any offhand.

10          Q     Do you know, as you sit here, what the  
11     longest lasting -- strike that.

12                    Do you know, as you sit here, what the  
13     oldest legal nonconforming use in the City of Miami  
14     Beach is today?

15          A     No.

16          Q     Does your department track legal  
17     nonconforming uses somewhere?

18          A     No, we don't.

19          Q     What, if anything, does your department do  
20     to comply with the intent of Section 118 and Article  
21     9 to bring nonconformities into compliance with the  
22     current code?

23                    MR. REISS: Form.

24          A     When we are presented with a legal  
25     nonconforming use, we will address each of those

1 uses on a case-by-case basis.

2 Q Okay. As you sit here today, can you  
3 think of the last time, other than this case, that  
4 you've addressed the question of a legal  
5 nonconforming use on land in the City of Miami  
6 Beach?

7 A Certain retail uses in an RO district. RO  
8 is residential office. And there's a lot of legal  
9 nonconforming retail and nonresidential office uses.  
10 And my staff has worked with tenants and with  
11 landlords when they come in with new tenants about  
12 perhaps doing use that would be consistent with that  
13 district purpose and allowed under the district.

14 Q So your staff works with these landlords  
15 when they come in with new tenants to try and bring  
16 their use of their land into compliance with the  
17 current code?

18 A That's correct.

19 Q Anything else you can think of that you've  
20 done that in?

21 A Not offhand, no.

22 Q When was the last time that circumstance  
23 you just described occurred?

24 A Probably within the last two months.

25 Q Has the -- and we'll talk more about this,

1 I think, as we go along today. Talked a little  
2 about BTRs, Business Tax Receipts, right? Correct?

3 A Yes. Correct.

4 Q I'm sorry. In your experience, has the  
5 City of Miami Beach ever issued a Business Tax  
6 Receipt in error?

7 MR. REISS: Form. Hypothetical.

8 A I cannot think of one offhand, but that's  
9 not to say that it hasn't happened. I can't say  
10 that it has not happened, but I can't think of one  
11 offhand where it has happened.

12 Q And you would agree with me that even  
13 within your line of work as the city planning  
14 director, sometimes mistakes are made, right?

15 A That's correct.

16 Q And one of the reasons you have the power  
17 and authority you do is to go back and correct those  
18 mistakes, correct?

19 A That's correct.

20 Q And if someone was issued a BTR and you  
21 subsequently learned that they were not operating  
22 consistent with their zoning on their property, you  
23 could revoke that BTR, right?

24 A I could not revoke it as the planning  
25 director. Only the city manager could revoke a

1 BTR.

2 Q Okay. So the city manager could revoke a  
3 BTR if it was determined that the property owner was  
4 using a land inconsistent with the zoning  
5 regulations?

6 A If they were using the land in a manner  
7 inconsistent with the zoning regulations and not  
8 previously approved.

9 Q And the question -- the reason I ask is a  
10 BTR isn't a -- strike that.

11 The property owner doesn't own the BTR.  
12 It's at the discretion of the city to issue a BTR,  
13 right?

14 A It's at the discretion of the city to  
15 issue the initial BTR.

16 Q And if it's subsequently found that the  
17 property owner is not in compliance with the zoning  
18 code and therein which their land is located, that's  
19 one basis for the city manager to revoke a BTR,  
20 correct?

21 A That's correct.

22 Q And you could make that recommendation to  
23 the city manager to revoke a BTR?

24 A That's correct.

25 Q So the mere fact that an owner of land has

1 a particular BTR doesn't necessarily mean that that  
2 owner of land is using the land consistently with  
3 the zoning regulations, does it?

4 A No.

5 Q No, it does not?

6 A No, it does not.

7 Q One of the things that the Article 9  
8 Nonconformances requires is that you, as the  
9 planning director, conduct a factual investigation  
10 to determine all aspects of the nonconformity,  
11 correct?

12 A That's correct.

13 Q And you're required to conduct that  
14 investigation before you determine that a particular  
15 use is legally nonconforming?

16 A That's correct.

17 Q Tell me what investigation you conducted  
18 to date with regard to Beach Towing's use of 1349  
19 Dade Boulevard for towing use.

20 MR. REISS: Form. Predicate.

21 A To date, I've reviewed the Article 9 of  
22 Chapter 118. I've reviewed the BTR history for the  
23 property. I've reviewed the Zoning Code that was in  
24 place prior to October of 1989. I've reviewed data  
25 and exhibits that Mr. Andrade has sent to me.



1 Q Anything else?

2 A Not that I can think of offhand.

3 Q By the way, the exhibits that Mr. Andrade  
4 has given to you, I don't know that I've seen those.  
5 What are those?

6 A Some of them were presented today. They  
7 consist of the BTR, copies of the BTRs from the  
8 1980s from some of the towing uses; the transcript  
9 of the appeal; the Planning Board or the Planning  
10 Department staff report to the Board of Adjustment  
11 on the 1987 appeal.

12 Q Okay. Was there anything else that  
13 Mr. Andrade has given you that has not been made a  
14 an exhibit today?

15 A I'd have to look and compare what he sent  
16 me to --

17 Q If there is any such thing, would you mind  
18 giving it to your attorney so I can get a copy?

19 A No, not at all.

20 Q Thanks. Have you had any discussions with  
21 Mr. Andrade prior to today about this case?

22 A No.

23 Q Have you had any discussion with anybody  
24 on behalf of Beach Towing prior to today with regard  
25 to this case?

1 A No.

2 Q In your discussions with the  
3 commissioners, has any of them emphasized to you  
4 that they want you to come out with a particular  
5 determination with regard to Beach Towing's legal  
6 nonconforming use?

7 A No.

8 Q Have any of them emphasized to you the  
9 importance of Beach Towing to them?

10 A Not in meetings that I've had with them.

11 Q In any way?

12 A At the commission meeting some of the  
13 members of the commission expressed the importance  
14 of Beach Towing.

15 Q Now, you've said before, we all agreed  
16 Beach Towing is the CD-2 district?

17 A Currently it's in the CD-2 district.

18 Q And I should be more precise. 1349 Dade  
19 Boulevard is zoned CD-2?

20 A Correct.

21 Q Has Beach Towing or anyone on their behalf  
22 ever come to the city to try and have that property  
23 rezoned I-1?

24 A Not that I'm aware of.

25 Q And you would agree with me that towing is

1 permitted -- is a main permitted use in I-1,  
2 correct, under the current code?

3 A Under the current code, towing is a  
4 conditional use in the I-1.

5 Just so you know, there's a scrivener's  
6 error in Municode. We fixed it.

7 Q Okay. Because I was like am I losing my  
8 mind? I know I read this.

9 A I know. We fixed it.

10 Q So --

11 A It's a conditional use. I apologize.

12 Q No, no. It's okay. So let me explore  
13 this, because I --

14 A It was previously a permitted use.

15 Q Okay.

16 A And then it became a conditional use.

17 Q All right.

18 A That happened about 2008.

19 Q Okay.

20 A And then in 2012 or 2014, with another  
21 code change, that somehow got deleted during the  
22 Municode translation. And we noticed it. And I  
23 worked with the city attorney. We fixed it. We  
24 sent the corrected version to Municode.

25 Q Okay. So --

1           A     And I can get you both sides if you need  
2     it, all the relevant adopted ordinances that back  
3     that up.

4           Q     No, that's fine. They're obviously not  
5     zoned I-1. So I'm just a little surprised. But  
6     okay.

7                     So currently towing is only allowed in the  
8     City of Miami Beach, a towing use, on property in an  
9     I-1 district with a conditional use permit?

10          A     That's correct.

11          Q     Is Tremont Towing on an I-1 -- is their  
12     building on an I-1 lot?

13          A     I believe so, yes.

14          Q     Do they have a conditional use permit?

15          A     I believe so, yes.

16          Q     And, in fact, the current code in I-1,  
17     when you say it's in the conditional uses, it  
18     specifically says "towing services;" it uses those  
19     words, correct?

20          A     That's correct.

21          Q     So it's a specific delineated use?

22          A     That's correct.

23          Q     But as Mr. Reiss asked you several times,  
24     in the pre-1989 code you cannot find the words  
25     "towing" or "towing use" or "towing services"

1 anywhere in there?

2 A That's correct.

3 Q You also, by the way, in the pre-1989  
4 code, if I'm not mistaken, cannot find the term  
5 "nuclear power plant;" is that correct?

6 A That's correct.

7 Q And you also can't find --

8 MR. BUCKNER: Guys. You can whisper.

9 BY MR. BUCKNER:

10 Q And like I was asking you before, there  
11 are a number of other uses that don't appear in the  
12 code. That's correct?

13 A That's correct.

14 Q In the pre-1989 code?

15 A That's correct.

16 Q If I owned land in the City of Miami Beach  
17 pre-1989, and I had a use to which I wanted to put  
18 it that was not listed, what would I be required to  
19 do?

20 MR. REISS: Form. Predicate. Improper  
21 hypothetical.

22 A Depending upon the use and depending upon  
23 the property that you wanted to put the use, we  
24 would have to evaluate whether or not that use would  
25 be consistent with the listed permitted uses.

1           Q     Right. But if you determined -- if the  
2     city determined that the use was consistent with the  
3     listed permitted uses, I would still need a  
4     conditional use permit because it's not listed,  
5     right?

6                     MR. REISS: Form. Lack of predicate.

7           A     No. You're only required to get  
8     conditional use approval for uses specifically  
9     called out as conditional uses.

10          Q     Let's look at that. I've got -- here's an  
11     even older code that was produced in discovery. I  
12     believe this is the 1979 code.

13                     (Plaintiff's Exhibit No. 2 was marked for  
14     Identification.)

15     BY MR. BUCKNER:

16          Q     Exhibit 2. And we're going to come back  
17     to this. I'm going to ask a few questions and we're  
18     going to come back to this.

19                     If you go to page 6.18, which is the C-6  
20     Intensive Commercial District.

21          A     6.18?

22          Q     6.18, yes, sir.

23          A     Okay.

24          Q     Okay. First of all what it says, "Uses  
25     Permitted." It says, "No land, water or structure

1     may be used, or whole or in part, except for one or  
2     more of the following uses," correct?

3           A     Okay.

4           Q     Did I read that right?

5           A     Yes.

6           Q     And that means that in the C-6 district  
7     you can't use land, water or a structure unless it's  
8     one of the following uses delineated therein, 1  
9     through 19, correct?

10          A     That's correct.

11          Q     And then 20 says, "The following uses may  
12     be permitted as a conditional use: A, Uses not  
13     listed above, which are similar in character to one  
14     or more permitted uses, and which would not be  
15     inappropriate in the district." Did I read that  
16     right?

17          A     Yes.

18          Q     And what that means is, if it's not one of  
19     the listed uses, you can use it in that district,  
20     you can use the land for that, as long as it is not  
21     inappropriate and consistent with the character of  
22     the listed permitted uses, right?

23          A     That's correct.

24          Q     And then it would be a conditional use?

25          A     That's correct.

1           Q     And then you would need a conditional use  
2     permit?

3           A     That's correct.

4           Q     One of those, by the way, another thing  
5     that you would need a conditional use permit for is  
6     a filling station, right?

7           A     That's correct.

8           Q     We'll come back to this. Hang on to that.  
9     Because I want to ask the other stuff first.

10          A     Okay.

11          Q     So let me go to where I was before.

12                     (Plaintiff's Exhibit Nos. 3 and 4 were  
13     marked for Identification.)

14     BY MR. BUCKNER:

15          Q     I'll give you these both at the same time.

16          A     This is three and four, right?

17          Q     Three and four.

18          A     Okay.

19                     MR. BUCKNER: Al, I actually have another  
20     one. Just one.

21                     MR. BOKSNER: Just one.

22                     MR. BUCKNER: Just one. I'm going to keep  
23     apologizing.

24                     MR. BOKSNER: That's all right.

25                     MR. BUCKNER: I'm going to keep



1           apologizing, Al.

2                   (Witness reviews document.)

3   BY MR. BUCKNER:

4           Q     Do you recognize three and four as screen  
5   printouts from the City of Miami Beach website with  
6   regard to Business Tax Receipt categories?

7           A     Yes.

8           Q     Okay. And obviously these are not every  
9   BTR category, right?

10          A     That's correct.

11          Q     These are BTR categories, at least some of  
12   them, in the transportation and warehousing  
13   category, correct?

14          A     That's correct.

15          Q     And these are different uses to which real  
16   property in the City of Miami Beach can be put?

17          A     That's correct.

18          Q     And on here, for example, one of the uses  
19   is storage yard on Exhibit 3. You see that?

20          A     Yes.

21          Q     And a storage yard is -- what's your  
22   understanding of what a storage yard is?

23          A     A place where things are stored.

24          Q     Is it specifically a place where  
25   automobiles are stored?

1           A     It could be automobiles.

2           Q     Okay. In addition, one of the other uses  
3 is tow truck/wrecker, correct?

4           A     That's correct.

5           Q     And on Exhibit 4, the last is  
6 wrecker/towing service; that's another use, correct?

7           A     That's correct.

8           Q     And these are all separate and independent  
9 uses to which real property can be put, correct?

10          A     That's correct.

11          Q     And obviously, if you have a BTR -- strike  
12 that.

13                 You can have a BTR -- a particular  
14 property owner can have -- let me not step all over  
15 myself. Strike that.

16                 A particular property owner can have a BTR  
17 for his or her property that has more than one use  
18 listed on it, correct?

19          A     That's correct.

20          Q     In fact, it's probably not an unusual  
21 occurrence that property owners have multiple uses  
22 listed on their BTRs?

23          A     That's correct.

24          Q     But each use is separate and independent,  
25 correct?

1           A     That I couldn't answer, because the  
2     issuance of the BTR -- a BTR is separate. So if  
3     somebody gets multiple BTRs on a property, those are  
4     all separate.

5           Q     Okay. I guess my question -- I'm sorry I  
6     confused you. These uses are each different uses?

7           A     On the Exhibit 3 and 4.

8           Q     Yes.

9           A     Yes.

10          Q     And, in fact, your Planning Department has  
11     in the past, in the recent past when Mr. Lorber --  
12     who is Richard Lorber?

13          A     He was the previous planning director  
14     before me.

15          Q     Okay. Was he acting or was he actually  
16     ever full-time?

17          A     He was the acting director.

18          Q     He had your job?

19          A     Yes.

20          Q     And during the time Mr. Lorber was  
21     planning director, with regard to these particular  
22     defendants, Beach Towing, the Planning Department  
23     made a distinction between a towing use and a  
24     vehicle storage use, correct?

25                   MR. REISS: Form. Predicate.

1           A     That I don't know.

2           Q     Okay.

3                     (Plaintiff's Exhibit No. 5 was marked for  
4   Identification.)

5   BY MR. BUCKNER:

6           Q     Exhibit 5.

7                     (Witness reviews document.)

8           A     Okay.

9           Q     All right. So, and you can take a minute  
10   to read it if you need to. But this is a request by  
11   Beach Towing to store vehicles on the old Giant  
12   Motors property located at 1743 Purdy, correct?

13                    MR. REISS: Form. Best evidence rule.  
14   Predicate.

15           A     Yes.

16           Q     And the determination, and you can read  
17   through it, but there's -- this is -- this is --  
18   well, strike that.

19                    This is an analysis done by the staff of  
20   the Planning Department, right?

21                    MR. REISS: Form. Predicate.

22           A     Yes.

23           Q     And when you were a planning staffer, this  
24   is the kind of analysis you would have written,  
25   right?

1           A     Yes, but I did not write this analysis.

2           Q     No, I know you didn't write this one.

3           A     But yes.

4           Q     Okay. And now that you're planning  
5 director, this is the kind of analysis that your  
6 staff creates for you, correct?

7           A     That's correct.

8           Q     And you use these analyses to make your  
9 determination with regard to zoning issues, right?

10          A     That's correct.

11          Q     And so let's go piece by piece through  
12 this. In the first paragraph under "Background" it  
13 says that the Giant Motors property has been used  
14 "for auto painting and motor vehicle storage yard  
15 since 1990," and it says it's got a Business Tax  
16 Receipt number, right?

17          A     Yes.

18          Q     And "those uses have since become  
19 nonconforming," right?

20          A     Yes.

21          Q     That's because in that area that's now --  
22 I believe that's also now zoned CD-2, right?

23          A     That's correct.

24          Q     And so vehicle storage would no longer be  
25 permitted there?

1 A That's correct.

2 Q Nor would auto painting, right?

3 A That's correct.

4 Q Because in the change in zoning for the  
5 area, CD-2 is a much less intensive zoning category?

6 A That's correct.

7 Q And the analysis goes on to say, "Although  
8 those uses have since become nonconforming, they may  
9 continue to exist at this location as legal  
10 nonconforming uses as per the Nonconforming Uses  
11 section of the Land Development Regulations,  
12 specifically Section 118-393," correct?

13 A Correct.

14 Q And that's what we were just talking  
15 about, Section 118?

16 A Yes.

17 Q And then it goes to say as long as that  
18 use is continuous and is not abandoned, which is --

19 A That's correct.

20 Q -- part of nonconforming use?

21 A Correct.

22 Q That is, when I say it's part of  
23 nonconforming use, to have a legal nonconforming use  
24 you can't have abandonment, right?

25 A That's correct.

1           Q     Now, this property was licensed by Giant  
2     Motors for auto painting and a motor vehicle storage  
3     yard, correct?

4           A     That's what it says here.

5           Q     Not towing?

6           A     I don't believe so.

7           Q     And if you go to the next page it says, in  
8     the second paragraph under "Argument 1." And  
9     "Argument 1" is, "This use" -- apparently someone  
10    objected and said, "This use is not permitted in the  
11    subject CD-2 zoning District," which of course it  
12    was not, right?

13          A     That's correct.

14          Q     And the issue here is whether Beach Towing  
15    can store cars on the Giant Motors site?

16          A     Yes.

17          Q     "Care was taken to specify that approval  
18    under the legal nonconforming regulations of the  
19    City Code could extend solely to the storage of  
20    vehicles, and would not permit the relocation of  
21    other components of towing service operations to  
22    this site, such as offices, cashiers, or other  
23    customer service functions, nor would it permit the  
24    installation of mechanical parking systems, which  
25    would constitute an expansion of the legal

1 nonconforming use." Did I read that right?

2 A Yes.

3 Q And that's because the relocation of those  
4 towing services and functions to that site would be  
5 an expansion of the vehicle storage use that was the  
6 legal nonconforming use?

7 A That is what Mr. Lorber concluded.

8 Q Okay. And then again it says further  
9 down, "Note again, as indicated above in Argument 1,  
10 that this approval would only apply to the storage  
11 of vehicles, and would not permit towing service  
12 operations," correct?

13 A Correct.

14 Q And that's because the towing service  
15 operations is a different use than the storage of  
16 vehicles, right?

17 A That appears to be what Mr. Lorber  
18 concluded in this.

19 Q Do you have any reason to think that  
20 towing service operations is the same use as the  
21 storage of vehicles?

22 MR. REISS: Form. Predicate.

23 Hypothetical.

24 A I haven't looked at that that closely. So  
25 I couldn't tell you here and now whether or not that



1 would be the case.

2 Q Well, but you would agree with me that at  
3 least as of August 5th, 2011, with regard to  
4 defendant Beach Towing the city took the position  
5 that towing was a different and distinct use from  
6 vehicle storage, correct?

7 MR. REISS: Form. Predicate.

8 A Well, I would say that as it pertains to  
9 this particular property, that's the position taken  
10 at this particular property. Because the appeal was  
11 specific to this address. And so as it applies to  
12 this property, that's the position that was taken.

13 Q Okay. But you would agree with me that if  
14 towing services operations were the same as vehicle  
15 storage operations, then the outcome of this would  
16 have been different, right?

17 MR. REISS: Form. Improper hypothetical.  
18 Predicate.

19 A That I honestly couldn't answer.

20 Q Well, if towing service operations were  
21 the same as vehicle storage operations, then it  
22 would not -- towing services operations would not  
23 represent an expansion of the legal nonconforming  
24 use, would it?

25 MR. REISS: Improper hypothetical. Form.

1           A     That's what Mr. Lorber concluded in this  
2     appeal.

3           Q     At least at some point in the recent past,  
4     your department has made a distinction between  
5     vehicle storage and towing, correct?

6                     MR. REISS:   Form.   Predicate.

7           A     There was a distinction made in this  
8     particular appeal, yes.

9           Q     Okay.   And you would agree with me,  
10    though, that there are functions with regard to a  
11    towing operation that are different from the mere  
12    storage of vehicles, right?

13          A     When you say mere towing operation, what  
14    do you mean?

15          Q     Well, I mean, you're the planning  
16    director.   One of the things you have to do is  
17    familiarize yourself with uses of land, right?

18          A     Correct.

19          Q     And because you're being asked to make  
20    determinations about whether some use or other is  
21    compliant with the code or not, right?

22          A     Correct.

23          Q     And part of your job is to read the plain  
24    language of the code, right?

25          A     Correct.

1 Q And obviously if -- strike that.

2 And part of your job is to apply common  
3 sense to the code, right?

4 A Correct.

5 Q And part of your job is to analyze the  
6 facts of any particular situation, right?

7 A Correct.

8 Q And you and I discussed before when we  
9 were talking about the 1979 code, that in the C-6  
10 district, as in every other district, "no land,  
11 water or structure may be used or whole or in part,  
12 except for one or more of the following uses," and  
13 then it lists them, right?

14 A Correct.

15 Q And if you don't see your use on that  
16 list, you fall into the conditional use catchall  
17 perhaps, correct?

18 MR. REISS: Form. Asked and answered.

19 Mischaracterizes the witness' testimony.

20 A As it pertains to the C-6, per No. 1, you  
21 could revert to uses permitted in the C-5 district.

22 Q Okay. Well, and in the C-5 district, by  
23 the way, the only use that you've identified today  
24 that could apply to Beach Towing prior to 1989 is  
25 No. 20, right?

1 A Correct.

2 Q And that says, "Storage garages, truck  
3 storage within an area enclosed by a masonry wall."

4 A Correct.

5 Q It does not say towing, does it?

6 A No.

7 Q And Mr. Lorber made a distinction between  
8 storage and towing, correct?

9 MR. REISS: Asked and answered.

10 Argumentative.

11 A Yes. Pursuant to this appeal.

12 Q And so you would agree with me if Beach  
13 Towing's towing operation doesn't fall completely  
14 within "Storage garage, truck storage, No. 20," it's  
15 not a main permitted use in C-6, correct?

16 MR. REISS: Form. Mischaracterizes the  
17 witness' testimony.

18 A I'm sorry. Can you repeat?

19 Q If Beach Towing's towing operation, prior  
20 to 1989 when it was initiated, did not fall entirely  
21 within No. 20 in C-5, "Storage garages, truck  
22 storage," then the only way it could have been  
23 permitted would have been in the conditional use  
24 section in C-6, correct?

25 MR. REISS: Form.

1           A     If it was concluded that towing did not  
2     fall within No. 20, then yes, the only other option  
3     would be under C-6 under conditional uses.

4           Q     Okay. And today towing is specifically  
5     delineated in I-1, correct?

6           A     Correct.

7           Q     But there are other parts of the code that  
8     have storage as a listed use, vehicle storage,  
9     correct?

10          A     I believe so, yes.

11          Q     And yet they're separately listed,  
12     correct?

13          A     I believe so, yes.

14          Q     And that's because they're different  
15     things, right?

16                     MR. REISS: Form. Predicate.

17          A     Correct.

18          Q     I want to -- there's -- I'm sorry.

19                     (Discussion off the record)

20     BY MR. BUCKNER:

21          Q     Now, Mr. Reiss asked you about  
22     Mr. Larkin's letter. You recall that?

23          A     Yes.

24          Q     Do I need to pull his letter back out?  
25     I'm not going to go through it. You know which

1 letter I'm talking about?

2 A Yes.

3 Q Okay. And you said you hadn't reviewed it  
4 in a while?

5 A That's correct.

6 Q And I recommend it to you. But be that as  
7 it may. You know that one of the things Mr. Larkin  
8 alleged was that Beach Towing could only have been  
9 using 1349 Dade Boulevard for towing as an accessory  
10 to the gas station use that they sought approval of,  
11 correct?

12 A I believe that's what he alleged in the  
13 letter, yes.

14 Q Okay. And are you aware that Mr. Andrade,  
15 testifying as corporate representative of Beach  
16 Towing, has said that Beach Towing is not in  
17 compliance with any of the conditions for the  
18 conditional use gas station permit they received in  
19 1980?

20 A No.

21 Q You've seen that conditional use permit  
22 attached to Mr. Larkin's letter, though, correct?

23 A I believe so.

24 Q Okay. I think it actually was the -- I  
25 think it's recorded on the building card.

1                   (Plaintiff's Exhibit No. 6 was marked for  
2 Identification.)

3 BY MR. BUCKNER:

4           Q       Exhibit 6. Turn to the second page. Let  
5 me ask you this. Do you recognize what Exhibit 6  
6 is?

7           A       Exhibit 6 is a building card for 1349 Dade  
8 Boulevard.

9           Q       Okay. And on the second page does it  
10 reflect a Planning Board public hearing conditional  
11 use approval of a reinstallation of gasoline pumps?

12          A       Yes, it does.

13          Q       And does it set forth conditions there?

14          A       Yes, it does.

15          Q       Okay. And to be in compliance with that  
16 conditional use, the property owner would have to be  
17 in compliance with all of those individual  
18 conditions, correct?

19          A       Yes.

20          Q       And if they weren't in compliance with all  
21 of those conditions, they're not in compliance with  
22 their conditional use permit, right?

23          A       That's correct.

24          Q       Would it be of interest to you to see  
25 Mr. Andrade's testimony where he says that they were

1 not in compliance -- strike that.

2 Would it be of interest to you to see  
3 Mr. Andrade's testimony that Beach Towing is in  
4 compliance with none of those conditions?

5 MR. REISS: Form.

6 A I certainly don't have a problem perusing  
7 that, if it's sent to me.

8 Q And you would also agree with me -- we  
9 were talking about business tax receipts earlier.  
10 All business tax receipts state that, "A Business  
11 Tax Receipt issued under this article does not waive  
12 or supersede other city laws, does not constitute  
13 city approval of a particular business activity, and  
14 does not excuse the licensee from all other laws  
15 applicable to the licensee's business," correct?

16 A That's correct.

17 Q Mr. Andrade -- I'm going to go back to  
18 some of -- I'm sorry. Mr. Reiss, I'm going to go  
19 back to something of his documents from before. One  
20 of them is -- can you go -- oh, God, I don't know  
21 where it is. Can you find his Exhibit A?

22 A It should be right at the bottom.

23 Q All right. There you go. Perfect. Thank  
24 you. Do you recall that document?

25 A Yes.



1           Q     Okay. And you recall Mr. Reiss asked you  
2     some questions about when Beach Towing started  
3     towing at 1349 Dade Boulevard?

4           A     Yes.

5           Q     Now, do you have any personal knowledge,  
6     as you sit here today, when Beach Towing started  
7     towing at 1349 Dade Boulevard?

8           A     No.

9           Q     Did you know, for example, that Vincent  
10    Festa, the original owner of Beach Towing, had  
11    several locations to which he towed on Miami Beach?

12          A     No.

13          Q     Did you know that he lost the right to tow  
14    at some of those locations at some period of time?

15          A     No.

16          Q     And by the way, Mr. Festa's testified in  
17    this case. Did you know he testified that when he  
18    sought the conditional use permit for the gas  
19    station, he never intended to pump gasoline and  
20    never pumped a gallon of gasoline?

21          A     I did not know that.

22          Q     Okay. And looking here at Exhibit A,  
23    remember Mr. Reiss showed you this, dated July 18,  
24    1979 there on the middle card, right?

25          A     Yes.

1           Q     And he showed you this to try and  
2     establish that Beach Towing was towing to 1349 Dade  
3     Boulevard as of that date, right?

4           A     I believe so.

5           Q     But that's not actually what it says, is  
6     it? If you read it, the second part says,  
7     "determine appropriate action city may take to  
8     require them to maintain their 1349 Dade Boulevard  
9     property clear of disabled vehicles." Doesn't that  
10    mean they were allowed to tow vehicles to that  
11    property as of that time?

12          A     I don't know. I could not answer that.

13          Q     Okay. This document does not establish  
14    that Beach Towing was lawfully towing at 1349 Dade  
15    Boulevard as of 1979, does it?

16               MR. REISS: Form. Argumentative. Legal  
17    conclusion.

18          A     I couldn't reach that conclusion.

19          Q     So you would not be able to conclude that  
20    Beach Towing was towing as of that date from this  
21    document, would you?

22          A     No.

23          Q     And so when Mr. -- the import of  
24    Mr. Larkin's letter in part was that Beach Towing  
25    was towing as an accessory use to a gas station use

1 at 1349 Dade Boulevard as of 1980, correct?

2 MR. REISS: Form.

3 A I would have to review Mr. Larkin's letter  
4 to determine that.

5 Q Okay. If they were towing as an accessory  
6 to the gas station use, that gas station use was  
7 under the old code, as we've seen, only allowed with  
8 a conditional use permit, right?

9 MR. REISS: Form. Predicate. Improper  
10 hypothetical.

11 A Under the C-6, it listed filling stations  
12 as a conditional use.

13 Q Right. So they would have needed a  
14 conditional use permit, right?

15 A For a filling station.

16 Q Right. And, in fact, the building card  
17 shows they sought and received a conditional permit  
18 for a filling station, correct?

19 A Correct.

20 Q And towing could be an accessory use to a  
21 filling station, right?

22 MR. REISS: Form. Improper hypothetical.  
23 Predicate.

24 A Towing generally could be an accessory use  
25 to a filling station.

1           Q     Right. Because if you're -- if you have a  
2     repair operation, for example, you might need to tow  
3     cars that aren't running, right?

4           A     Correct.

5           Q     But if that filling station use ceases to  
6     exist at some point in time, so must the accessory  
7     towing use, correct?

8                     MR. REISS: Form. Predicate.

9           A     It would depend upon how the towing use  
10    was licensed and permitted.

11          Q     Okay. But even if it had -- even if the  
12    towing use had a BTR and everything else -- let me  
13    ask you this. Are you familiar with the situation  
14    where an accessory use grows to overtake the main  
15    permitted use?

16                    MR. REISS: Form. Improper hypothetical.  
17                    Predicate.

18          A     I'm familiar with how that could  
19    potentially happen.

20          Q     Right. And if an accessory use expands  
21    and overtakes the permitted use, that doesn't make  
22    the accessory use permitted, does it?

23                    MR. REISS: Form. Predicate.

24          A     It doesn't remove its status as an  
25    accessory use if the code still listed it as an

1     accessory use.

2           Q     And so if the main permitted use goes  
3     away, then the accessory use is not allowed to stand  
4     on its own; it too has to end?

5           MR. REISS:   Improper hypothetical.   Form.

6           A     If the accessory use is not a main  
7     permitted use in the zoned district.

8           Q     Mr. Reiss -- if you go to D and E for me.  
9     I'll try and move through these expeditiously.

10          MR. REISS:   The Resolutions.

11          MR. BUCKNER:   Yes, the two.

12          MR. BOKSNER:   He's got it, D and E.

13   BY MR. BUCKNER:

14          Q     Okay.   Perfect.   Let's start with -- let's  
15     start with D.

16          A     Okay.

17          Q     Mr. Reiss asked you, in the third to last  
18     "Whereas" clause, "Whereas, the permittees are the  
19     only two service providers which satisfy all the  
20     requirements in the Miami Beach City Code and  
21     Administrative Rules and Regulations for police and  
22     parking towing permits, including the requirement to  
23     provide vehicle storage facilities within the city  
24     limits."   Do you recall him asking you about that?

25          A     Yes.

1 Q Did you or the -- strike that.

2 Did the Planning Department at the City of  
3 Miami Beach make that determination?

4 A Not that I'm aware of.

5 Q Okay. Do you know who made that  
6 determination in that "Whereas" clause?

7 A No.

8 Q Did you?

9 A I did not.

10 Q How about in E, the last "Whereas" clause,  
11 which says essentially the same thing?

12 A I'm not aware --

13 MR. REISS: Form.

14 A -- of the Planning Department putting  
15 together that "Whereas" clause and I didn't put it  
16 together.

17 Q Okay. So the Planning Department has made  
18 no such finding as set forth in those paragraphs  
19 that we just read?

20 A As it pertains to these two Resolutions,  
21 no.

22 (Plaintiff's Exhibit No. 7 was marked for  
23 Identification.)

24 BY MR. BUCKNER:

25 Q Exhibit 7.

1 A Okay.

2 Q There's a previous exhibit sticker because  
3 we used it at another deposition, but yours has the  
4 right exhibit sticker on it, Mr. Mooney.

5 A Okay.

6 Q It's a series of --

7 MR. REISS: I'm sorry. Which exhibit on  
8 this depo is it?

9 MR. BUCKNER: Seven, also. I did it to  
10 line it up because I knew how important that  
11 would be.

12 MR. REISS: Good job.

13 MR. BUCKNER: I have some marginal level  
14 of competence.

15 And Allan's going to say humor doesn't  
16 translate well to a transcript, but I disagree.

17 BY MR. BUCKNER:

18 Q Do you recognize these as Beach Towing's  
19 BTRs?

20 A Yes, I do.

21 Q Okay. And these are BTRs that would have  
22 been issued by the City of Miami Beach for Beach  
23 Towing Services, Inc., Beach Towing Services of  
24 Miami, Inc., and Alton Gulf Service, Inc.?

25 A That's correct.

1           Q     And the last, Alton Gulf Service, Inc., is  
2     in care of Vincent Festa, right?

3           A     That's correct.

4           Q     Are you familiar with Alton Gulf Service,  
5     Inc.?

6           A     No.

7           Q     Are you familiar with Beach Towing  
8     Services of Miami, Inc.?

9           A     No.

10          Q     You're only familiar with Beach Towing  
11     Services, Inc.?

12          A     Yes. Well, I'm familiar with Beach  
13     Towing. I'm not familiar with any of the three  
14     corporate entities.

15          Q     Okay. I'll represent to you that Beach  
16     Towing Services, Inc. is the operating entity. I  
17     think Mr. Reiss may have said it at the outset, but  
18     it's the operating entity.

19          A     Okay.

20          Q     Who enters the data that's on these BTRs?

21          A     The clerk in the Finance Department.

22          Q     Okay. And so if they say, "Tow trucks  
23     linked to service station: Number of trucks, 7,"  
24     that's something that they would have gotten -- on  
25     the first page, in the box underneath the "Business



1     Type" uses, that's something they would have gotten  
2     somewhere from within the city's records, correct?

3             MR. REISS: Form. Predicate. Calls for  
4     speculation.

5             A     I would need to defer to the Finance  
6     Department on that.

7             Q     Okay. But this, too -- these BTRs, you  
8     said one of the things you're going to do is review  
9     Beach Towing's old BTRs, right?

10            A     That's correct.

11            Q     Is there a service station at 1349 Dade  
12     Boulevard today?

13            A     Not that I'm aware of.

14            Q     But there was a conditional use approval  
15     for one in 1980, wasn't there?

16            A     According to the records there were, yes.

17            Q     Okay. So, "Tow trucks linked to service  
18     station: Number of trucks, 7," can you think of any  
19     other service station to which that would pertain  
20     other than the one for which Beach Towing received  
21     approval in 1980?

22            MR. REISS: Form. Predicate.  
23     Speculation.

24            A     I don't know.

25

1           Q     Would that figure into your analysis of  
2     the zoning question that's before you to be decided  
3     by the end of August?

4           A     It's something that I would take a look  
5     at.

6           Q     One of the things you talked about at the  
7     beginning of your testimony was your role as issuing  
8     formal determinations regarding to zoning issues in  
9     the City of Miami Beach, right?

10          A     Correct.

11          Q     And I don't -- I'm trying -- if I use the  
12     wrong words, you tell me, because I don't know how  
13     you refer to stuff.

14          A     Okay.

15          Q     So what is -- well, strike that.

16                     My understanding is you create an actual  
17     document when you make a formal building and zoning  
18     interpretation, right?

19          A     That's correct.

20          Q     So as head of the Planning Department  
21     when -- under the appropriate circumstances you're  
22     asked to render an interpretation of the code, you  
23     create a document?

24          A     That's correct.

25          Q     You don't give verbal opinions as to what

1 the code means, correct?

2 A That's correct.

3 Q And the reason for that is you want to  
4 make sure that you state with absolute precision all  
5 the details necessary to understand the opinion  
6 you're rendering, correct?

7 A That's part of the reason, yes.

8 Q And what other parts of the reason are  
9 there?

10 A So that there's formality to the decision.

11 Q Okay. And so these documents that you  
12 issue, what do you call them?

13 A Letters of determination or letters of  
14 interpretation.

15 Q And is that title actually at the top, one  
16 of those two?

17 A It's typically done in letter format to  
18 the entity making the request. And depending upon  
19 whether it's an interpretation of the regulations or  
20 a determination, then we'll usually put that. It  
21 will be either be Zoning Interpretation or Zoning  
22 Determination and then the subject, the property or  
23 the subject matter.

24 Q And what's the difference between an  
25 interpretation and a determination?

1           A     Determination usually applies to  
2     specifically to what may or may not be permitted at  
3     a property, or if say something is not listed, what  
4     that -- what the determination might be.

5           An interpretation would be where one party  
6     reads the code one way and our -- my staff doesn't  
7     agree with it, they'll ask the planning and zoning  
8     director for a formal interpretation. And usually  
9     when those are made, they'll know beforehand what  
10    the issues are. And so they'll know whether or not  
11    they're going to want to appeal them.

12          Q     And what kind of a letter are you going to  
13    be issuing with regard to this matter?

14          A     That's something that I'm still  
15    discussing.

16          Q     Okay. But one of those two. Or could it  
17    be something else?

18          A     It could be something else.

19          Q     Okay. Do those other things have a name?

20          A     Zoning letter, Zoning Interpretation or  
21    Zoning Determination letters.

22          Q     But one of the reasons you put it in  
23    writing is so that there's precision, so that  
24    everybody knows all the factors that went into your  
25    determination, correct?

1 MR. REISS: Asked and answered.

2 A That's correct.

3 Q And so one of the problems with relying on  
4 transcripts of hearings that occurred involving  
5 people you don't know at some time in the past is  
6 that you don't necessarily know all the details that  
7 went into the particular determination that they're  
8 talking about, correct?

9 A That's correct.

10 Q So, for example, Mr. Reiss in Exhibit K  
11 put in front of you a transcript involving one of  
12 your predecessors, Jud Kurlancheek, right?

13 A That's correct.

14 Q He made certain statements about C-5 and  
15 C-6 zoning, correct?

16 A That's correct.

17 Q But you don't know all the detail -- well,  
18 strike that.

19 Have you gone back and looked at all the  
20 documents and all the determinations that  
21 Mr. Kurlancheek made prior to making those  
22 statements?

23 A No.

24 Q Do you know whether, for example,  
25 Mr. Kurlancheek believed that a conditional use

1 permit was required for towing in C-5 and C-6?

2 A I don't know what Mr. Kurlancheek's  
3 opinion was or what he thought.

4 Q Okay. And with regard to these -- this  
5 particular property in question here, this  
6 discussion involving Magnum Towing, do you know if  
7 Magnum Towing had a conditional use permit to tow in  
8 C-5?

9 A That I don't know, either.

10 Q And you started work for the City of Miami  
11 Beach after the current code came into force, right?

12 A That's correct.

13 Q Mr. Kurlancheek, however, worked for the  
14 city back when the pre-1989 code was in force,  
15 correct?

16 A That's correct.

17 Q It would have been his job to interpret  
18 that code day-to-day, right?

19 A I believe so, yes.

20 Q And would you defer to his interpretation  
21 of the old, pre-1989 code with regard to these  
22 issues?

23 MR. REISS: Form. Predicate.

24 A If he had a formal interpretation, a  
25 formal written interpretation, I would certainly

1 take it into consideration.

2 Q Okay. But these statements in this  
3 transcript, Exhibit K, that Mr. Reiss showed you,  
4 these are not a formal interpretation of anything,  
5 are they?

6 A They're not a formal zoning  
7 interpretation, no.

8 Q They're just statements on a record that  
9 may or may not be complete, right?

10 MR. REISS: Form. Predicate.

11 A They're statements on a record. I don't  
12 know whether they're complete or not.

13 Q You don't know what details aren't  
14 recorded in this transcript, right?

15 A Correct.

16 Q You don't know what documents they were  
17 looking at when they were discussing this, do you?

18 A Correct.

19 Q And so that's why you don't take  
20 statements for record. You taken written zoning  
21 interpretations as persuasive in your line of work,  
22 correct?

23 A The zoning interpretations are what we  
24 use. The formal letter interpretations are what is  
25 considered the interpretation.

1           Q     Not some spoken words on a transcript,  
2     right?

3           A     No.

4           Q     Am I right?

5           A     You're correct.

6                     MR. BUCKNER:  Why don't we take a break.

7                     (There was a recess taken from 2:52 p.m.  
8     to 3:10 p.m.)

9     BY MR. BUCKNER:

10          Q     I'm going to bounce around a little again.  
11     I'm just going to clean up a few things.  I'm going  
12     to let Mr. Reiss ask you questions.

13          A     Okay.

14          Q     You remember Mr. Reiss showed you plans  
15     for, Exhibit G, Sunset Park?  You remember that?

16          A     Yes.

17          Q     And he was asking you questions about  
18     vehicular circulation particularly in Sunset  
19     Harbour?

20          A     Yes.

21          Q     You would agree with me that all uses that  
22     generate visits have some traffic or vehicular  
23     circulation impact, correct?

24          A     That's correct.

25          Q     And so he gave you a number of uses.  But,



1 for example, a vehicle repair garage would generate  
2 vehicular circulation issues, right?

3 A Yes.

4 Q And like I said any -- well, strike that.

5 And I think you testified, but if I'm  
6 wrong, you correct me, that you had not seen Exhibit  
7 G before?

8 A I had not seen Exhibit G, no.

9 Q So you've had no role with regard to  
10 approving or analyzing this plan?

11 A I saw very early versions of that, but my  
12 staff has been point on that. And I have not  
13 reviewed what has been submitted to date.

14 Q Another thing Mr. Reiss asked you was he  
15 asked you if you were aware of any violations at  
16 1349 Dade Boulevard. And I was confused -- well,  
17 strike that.

18 Mr. Reiss asked you if you were aware of  
19 any violations at 1349 Dade Boulevard. Did you  
20 understand that to mean active violation  
21 investigations or inquiries by the city?

22 A I understood that to be either code  
23 violations or zoning violations.

24 Q Okay. And when he asked you if there were  
25 code or zoning violations, have you actually

1 investigated whether there were code or zoning  
2 violations at 1349 Dade Boulevard?

3 A No, I have not.

4 Q So you're just not aware of any, but you  
5 haven't checked to see if there are any?

6 A That's correct.

7 Q Can you pull Exhibit N for me? We could  
8 have done this before. Sorry. Can I help you?

9 MR. BOKSNER: I think it's in this stack.

10 MR. BUCKNER: It's about this thick.

11 MR. BOKSNER: I think it's this one right  
12 here.

13 MR. BUCKNER: Yes. The last one, of  
14 course.

15 BY MR. BUCKNER:

16 Q First of all, Exhibit N, do you know where  
17 this comes from?

18 A No.

19 Q This isn't a document from the city, is  
20 it, the front document at least?

21 A I didn't produce this.

22 Q You don't know who did?

23 A No.

24 Q So one of the things -- Mr. Reiss pointed  
25 out some exhibits in here. For example, he showed

1     you Exhibit F, I think, Tremont Towing, Inc.

2             A     Okay.

3             Q     And you were talking about, I think,  
4     Tremont Towing, if my recollection serves, at the  
5     time they're talking about here, in the pre-1989  
6     code was in the C-6 district?

7             A     That's correct.

8             Q     Do you know whether Tremont Towing had a  
9     conditional use permit prior to 1989 for a towing  
10    operation at its location?

11            A     I do not know.

12            Q     Exhibit G, on that same one. It's South  
13    Beach Brothers Auto Service, Inc, with an original  
14    issue date beginning of 1989. You see that?

15            A     Yes.

16            Q     And it has a number of -- these are all --  
17    when it says "Occupational Fees Calculations" at the  
18    bottom, these are all BTR categories, right?

19            A     Let's see. At the time it may have been  
20    an occupational license code. But, yeah, BTR or  
21    occupational code.

22            Q     Okay.

23            A     Use code.

24            Q     And from just looking at these codes,  
25    first of all, do you know whether South Beach

1 Brothers Auto Service had a conditional use permit  
2 for towing?

3 A I don't know.

4 Q Do you know if South Beach Brothers Auto  
5 Service, Inc. had tow truck and record towing  
6 services and accessory use to their garage and  
7 automobile painting?

8 A That I do not know, either.

9 Q And you can't tell that from this  
10 document?

11 A No.

12 Q So it's possible that the wrecker/towing  
13 service and the tow truck could have been an  
14 accessory to the garage and automobile painting?

15 MR. REISS: Improper hypothetical. Form.  
16 Predicate.

17 A Potentially.

18 Q And then the next one was Alton Towing.

19 A That's H?

20 Q That was, yes, H. And if I'm not  
21 mistaken -- give me a second to check my notes. I  
22 don't want to be wrong. Alton Towing was the one  
23 that you all determined was in the CD-2 district,  
24 correct?

25 A Yes. Currently in the CD-2 district.

1           Q     Right. And the original issue date of  
2     this --

3           A     It says March 14, 1996.

4           Q     So that would be under the current code?

5           A     That's correct.

6           Q     And it says they were tow truck/wrecker  
7     and wrecker/towing service were the two uses for  
8     which they had occupational fees calculated,  
9     correct?

10          A     That's correct.

11          Q     And you said this was in CD-2, right?

12          A     Yes.

13          Q     Seems like somebody made a mistake, right?

14          A     They may have made a mistake. Without  
15     doing further research, I couldn't make that  
16     conclusion one way or the other.

17          Q     But you do know that mistakes happen,  
18     right?

19          A     Yes.

20          Q     Even within the City of Miami Beach?

21          A     Yes.

22          Q     That was for Al.

23                     MR. BOKSNER: Tom never makes mistakes.

24                     THE WITNESS: No, never.

25     BY MR. BUCKNER:

1           Q     One of the things we talked about a little  
2     earlier in your testimony was the current I-1 zoning  
3     district.

4           A     Yes.

5           Q     And you said towing had gone from being a  
6     main permitted use in I-1 to a conditional use.

7           A     That's correct.

8           Q     Why was that change made?

9           A     That I don't know. I was not a staff  
10    person to the Planning Board at that time. And so I  
11    don't know the reason why it was changed.

12          Q     Just for my edification, if I wanted to  
13    see if I could figure that out, where would I go,  
14    document-wise I assume?

15          A     There's a Municode. They have a history  
16    of the legislation. And you could pull that  
17    legislation. I think there's a way you can pull it  
18    from the website. And each ordinance, approved  
19    ordinance will have a corresponding attached  
20    commission memo that will have a legislative  
21    history.

22          Q     Perfect. Okay. I'll do that.

23                   MR. BUCKNER: I have no further questions.

24                   Thank you, Mr. Mooney, for your time.

25                   THE WITNESS: You're welcome.

1 (Discussion off the record)

2 REDIRECT EXAMINATION

3 BY MR. REISS:

4 Q All right. Mr. Mooney, you've just been  
5 subject to cross-examination by Mr. Buckner. And  
6 after that cross-examination, looking at the  
7 documents that he's shown you, are you aware of any  
8 facts that indicate, as we sit here today, factually  
9 that Beach Towing is in violation of the City of  
10 Miami Beach Zoning Code by operating a towing  
11 service at 1349 Dade Boulevard?

12 A No.

13 Q I think you said -- I think this was your  
14 testimony, so I'll just ask. And I don't mean to be  
15 redundant, but I want to make sure it's clear. If a  
16 use is permitted, then it's not an accessory use; is  
17 that correct?

18 A If a use -- a use has to be permitted even  
19 if it's an accessory use.

20 Q But it would be a permitted accessory use?

21 A That's correct.

22 Q So when we were talking about -- some of  
23 my questions were in the pre-1980 code, I believe --  
24 I'm sorry. Strike that.

25 In the pre-1989 City of Miami Beach Code,

1 it's my understanding from your testimony that  
2 towing was a main permitted use in the C-5 zoning  
3 district, correct?

4 A Correct.

5 Q And since C-6 permitted as a main  
6 permitted use all uses permitted in C-5 that were  
7 not residential, it was therefore also a main  
8 permitted use in C-6?

9 A That's correct.

10 Q So then since towing was a permitted use,  
11 a main permitted use in the pre -- strike that.

12 Since towing was a main permitted use in  
13 the pre-1989 code in the C-6 district, a conditional  
14 use permit was not required, correct?

15 A That's correct.

16 Q And since towing in the pre-1989 code was  
17 a main permitted use in C-6, it was not an accessory  
18 use?

19 A Accessory uses are typically under a  
20 different section of the code. I haven't reviewed  
21 the accessory use section of the pre-1989 code. So  
22 I couldn't confirm whether or not that would be  
23 listed an accessory use or not.

24 Q Okay. But since towing was a main  
25 permitted use in the pre-1989 code, whether or



1 not -- well, we know that towing wasn't listed as an  
2 accessory use in the pre-1989 code because towing  
3 wasn't listed anywhere, right?

4 A Correct.

5 Q So, therefore, towing was not an accessory  
6 use in the pre-1989 code?

7 MR. BUCKNER: Object to form.

8 A Correct.

9 MR. REISS: What's the matter with the  
10 form?

11 MR. BUCKNER: I think it was leading.

12 BY MR. REISS:

13 Q Was towing an accessory use in the  
14 pre-1989 code?

15 A Not that I'm aware of.

16 Q Mr. Buckner asked you some questions in  
17 terms of the word "status." I just want to make  
18 sure I understand your testimony. Is a legal  
19 nonconforming use under the current code a status  
20 allowing operation of that legal nonconforming use,  
21 although not permitted as a main permitted use?

22 A If something is established as a legal  
23 nonconforming use, it could be a main permitted use;  
24 it could be an accessory use.

25 Q But if it's a legal nonconforming use,

1 it's a legal status --

2 A Yes.

3 Q -- in terms of the zoning code?

4 A Yes.

5 Q Mr. Buckner showed you -- if you could  
6 look at Plaintiff's Exhibit 2. I'm not sure exactly  
7 what it is. It looks like a portion of some code.

8 A Okay.

9 (Discussion off the record)

10 BY MR. REISS:

11 Q Did you get Plaintiff's Exhibit 2?

12 A Yes.

13 Q Now, Mr. Buckner pointed out to you that  
14 in this document, whatever it is -- do you know what  
15 this document is?

16 A This appears to be a listing of the zoning  
17 districts under the pre-1989 code.

18 Q Well, it's different than Exhibit --

19 A I believe he said this was the 1980 code.

20 MR. BUCKNER: '79 code.

21 THE WITNESS: 1979 code. Okay.

22 BY MR. REISS:

23 Q So looking at Plaintiff's Exhibit 2, under  
24 C-6, Mr. Buckner pointed out to you that paragraph  
25 20 says, "The following uses" -- in paragraph 20,

1 "The following uses may be permitted as a  
2 conditional use. Uses not listed above." Okay.

3 A Okay.

4 Q So do you read this to mean, except listed  
5 above in B-1 is, "Any nonresidential use permitted  
6 in C-5." Right? And then if you look back at C-5,  
7 Subsection 20 includes, "Storage garages, truck  
8 storage within an area enclosed by a masonry wall."  
9 Which I believe you said previously was -- although  
10 towing wasn't anywhere specifically located in the  
11 code, it was analogous to towing because it includes  
12 storage and an office space, et cetera, correct?

13 MR. BUCKNER: Object to form.

14 A That's correct.

15 (Mr. Brodsky leaves the deposition room.)

16 BY MR. REISS:

17 Q So is it your testimony that looking at  
18 this Exhibit 2, Plaintiff's Exhibit 2, that towing  
19 would have been permitted under C-5 as a main  
20 permitted use and not a conditional use under C-6?

21 A Yes.

22 (Discussion off the record)

23 BY MR. REISS:

24 Q Looking at Exhibit M --

25 A Your Exhibit M, right?

1           Q     Yes, sir. Exhibit M was a copy of the  
2     code. It says, "Effective date October 1, 1971,"  
3     correct?

4           A     Yes.

5           Q     And if you look at -- and then, "As  
6     Amended through January 18, 1985," correct?

7           A     Correct.

8           Q     All right. And so the language  
9     Mr. Buckner pointed out to you in section -- for  
10    section -- for C-6, that had been changed, right?  
11    That conditional use had been removed, page 6.27.

12               MR. BUCKNER: Object to the form. It's  
13    right there.

14          A     All right. So on page 6.27, your question  
15    was again?

16          Q     Under the code that -- as it was amended  
17    through January 18, 1985, it specifically listed  
18    conditional uses, correct?

19          A     Let's see. On page 6.27, under No. 20,  
20    "The following uses may be permitted as a  
21    conditional use." And it lists all the conditional  
22    uses.

23          Q     Right. It doesn't contain that language  
24    about "uses not listed above"?

25               MR. BUCKNER: Objection.

1           A     It does.

2           Q     Where is that?

3           A     H. I'm sorry. I.

4           Q     Does that mean uses listed above in  
5 Section 20 or in the rest of 1 through 19 to you?

6           A     Twenty.

7           Q     Okay. So it would be A through H?

8           A     Yes.

9           Q     And the result is the same because you  
10 feel even under the previous version of what's  
11 alleged in the code that Mr. Buckner showed you,  
12 C-5, towing would still be allowed as a main  
13 permitted use and adopted through and in C-6 through  
14 C-6 B-1 as a nonresidential use permitted in C-5?

15          A     Yes.

16          Q     So either way it's the same result?

17          A     Yes.

18          Q     Are you aware of any facts that indicate  
19 that Beach Towing Services did not legally establish  
20 its towing services under City of Miami Beach Zoning  
21 Code prior to the 1989 amendment to the Zoning Code?

22          A     No.

23          Q     Okay. Looking at Plaintiff's Exhibit 1,  
24 subsection -- Mr. Buckner spent a lot of time with  
25 you talking about "to encourage nonconformities to

1 ultimately be brought into compliance." You see  
2 that?

3 A Yes.

4 Q What's the word "encourage" mean to you as  
5 the planning director?

6 A To encourage.

7 Q Cajole? Ask?

8 A Encourage is very broad.

9 Q Does it -- to you does it mean --

10 MR. BUCKNER: Objection. He's answering  
11 the question. You're cutting him off.

12 BY MR. REISS:

13 Q I apologize. I didn't mean to --

14 A Encourage is very broad.

15 Q Does it mean to you put somebody out of  
16 business?

17 A No.

18 Q Does it mean pull somebody's Business Tax  
19 Receipt?

20 A No.

21 Q Does it mean pull somebody's towing permit  
22 that was issued after a vote by the entire city  
23 commission?

24 A No.

25 Q In fact, the sentence before that says,

1 "Nothing contained in this article shall be deemed  
2 or construed to prohibit the continuation of a  
3 legally established nonconforming use," et cetera,  
4 right?

5 A Correct.

6 Q And Mr. Buckner went back over the  
7 Resolutions D and E that we talked about during  
8 direct. And these are, in fact, Resolutions of the  
9 City of Miami Beach, the entire commission, correct?

10 A They were for the entire commission, yes.  
11 They were a Resolution of the commission, yes.

12 Q So these are the -- as you understand as  
13 the planning director, these are the official  
14 pronouncements on the issues raised in these  
15 documents, Exhibits D and E, of the City of Miami  
16 Beach, correct?

17 A Correct.

18 Q And with all due respect, you work for the  
19 City of Miami Beach.

20 A Yes.

21 Q The Planning Department falls under the  
22 City of Miami Beach umbrella?

23 A Correct.

24 Q The Planning Department doesn't speak for  
25 the City of Miami Beach in this instance, correct?

1 A Correct.

2 Q The City of Miami Beach speaks for the  
3 City of Miami Beach through its Resolutions,  
4 Exhibits D and E, correct?

5 A Correct.

6 Q Including the Planning Department,  
7 correct?

8 A Correct.

9 Q Now, Beach Towing Services, Mr. Buckner  
10 asked you about, you've been out there. To your  
11 knowledge, the office and the storage space, it's  
12 all in a single folio, correct?

13 A Correct.

14 Q 1349 Dade Boulevard?

15 A Correct.

16 Q It's one business?

17 A Correct.

18 Q It's not segregated?

19 A Correct.

20 Q It's not separate?

21 A Correct.

22 Q And there's a building where people come  
23 and they pay money, they wait inside, they pay  
24 money, they get their keys, they go out there, get  
25 their car that's stored on the land where the



1 building is, correct?

2 MR. BUCKNER: Objection. Outside the  
3 witness' competence.

4 A That's my understanding.

5 Q And there is also an enclosed area --  
6 strike that.

7 There's part of the building that's also  
8 used, is it, to your knowledge, for storage of towed  
9 vehicles?

10 MR. BUCKNER: Object to form. Outside  
11 competence.

12 A I've been into the Beach towing yard  
13 before and I have seen cars in there.

14 Q Inside?

15 A Yes.

16 Q And there's also an office back there?

17 MR. BUCKNER: Object to form.

18 A I'm only familiar with the office in the  
19 front of the property.

20 Q Looking at Plaintiff's Exhibit 6.

21 A The building card.

22 Q Mr. Buckner asked you about the  
23 conditional use permit. First of all, since -- as  
24 you previously testified, towing in the pre-1989  
25 code was a main permitted use; therefore, could the

1 issuance of a COP for a gas station lead to the  
2 conclusion that the towing was an accessory use?

3 MR. BUCKNER: Objection. It seeks  
4 speculation.

5 BY MR. REISS:

6 Q Withdraw the question.

7 Is there anything in Exhibit 6 that  
8 indicates to you that towing was an accessory use,  
9 not a main permitted use?

10 MR. BUCKNER: Object to the form.

11 MR. REISS: What's the matter with the  
12 form?

13 MR. BUCKNER: It's leading.

14 BY MR. REISS:

15 Q You can answer.

16 A You're talking about the Planning Board,  
17 the conditional use.

18 Q Yes, sir.

19 A This appears to apply solely to the  
20 filling station.

21 Q Okay. So nothing in here indicates to you  
22 that towing was an accessory use?

23 A No.

24 Q And do you know who this -- who Vincent  
25 J. Festa was making this application on behalf of,

1 what entity?

2 A No.

3 Q Do you know if it was Beach Towing  
4 Services, Inc.?

5 A No.

6 Q To the City of Miami Beach, does it matter  
7 that none of these conditions were ever complied  
8 with, with respect to your analysis as to  
9 whether Beach Towing -- whether -- strike that.

10 Does it matter to the City of Miami Beach  
11 in its analysis as to whether towing is a legal  
12 nonconforming use that none of these conditions with  
13 respect to Exhibit 6, the conditional use permit,  
14 were complied with?

15 A I don't believe that that's going to be  
16 germane to our analysis.

17 Q Going to Exhibit 5. Do you remember  
18 Mr. Buckner asking you about Exhibit 5?

19 A Yes.

20 Q This has to do with a property that's  
21 different than 1349 Dade Boulevard, correct?

22 A That's correct.

23 Q And the question as to whether a legal  
24 nonconforming use has been expanded on the property  
25 at which the legal nonconforming use was originally

1 established is different than whether it can be  
2 extended to a second property, correct?

3 A That's correct.

4 Q And this document, Exhibit 5, had to do  
5 with a second property?

6 A It had to do with 1747 Bay Road.

7 Q Okay. And so the analysis is not  
8 analogous to the analysis the city is currently  
9 going through as to whether towing at 1349 Dade  
10 Boulevard is a legal nonconforming use?

11 MR. BUCKNER: Object to form.

12 A That's correct.

13 MR. REISS: What's the matter with the  
14 form?

15 MR. BUCKNER: You're leading. You're on  
16 redirect. It's your witness.

17 MR. REISS: I got it the first time, but  
18 thanks. I appreciate the coaching.

19 BY MR. REISS:

20 Q How is the analysis in Exhibit 5,  
21 Plaintiff's Exhibit 5, having to do with two  
22 properties analogous to the analysis the city is  
23 currently going through as to whether Beach Towing's  
24 use of 1349 Dade Boulevard is a legal nonconforming  
25 use?

1           A     I don't think it is analogous.

2           Q     Looking at Exhibit K.

3           A     Okay.

4           Q     And you can take a minute to look through  
5     it. But did you see anything in any of these  
6     documents that indicate that Magnum's use of the  
7     property in C-5 for towing was a conditional use and  
8     not a main permitted use?

9           A     I didn't see anything in going through  
10    these documents that would indicate that it was a  
11    conditional use.

12          Q     I believe that -- and I'm not going to --  
13    I wasn't physically at the commission meeting on  
14    July 25th, but I believe - and again, I'm not going  
15    to ask for privileged communications - but I believe  
16    that your determination that you're working on and  
17    we talked about earlier in the day is going to be  
18    reduced to the amicus brief by August 30th. Is that  
19    your understanding?

20          A     Yes.

21          Q     You're not issuing any of the letters that  
22    Mr. Buckner was asking you about, correct?

23          A     We have not determined the manner in which  
24    it will be issued.

25          Q     Okay. Well, in this case the owner of the

1 property, Vincent Festa, he's not asked for one of  
2 those written determinations, correct?

3 A That's correct.

4 Q And my understanding of the code is you  
5 only issue those letters that Mr. Buckner was  
6 talking about at the written request of the owner,  
7 correct?

8 A Our current policy is that we only issue  
9 those formal determinations when the property owner  
10 has requested it.

11 Q And that's not happened in this case?

12 A That has not happened in this case.

13 Q Do you know if there's a present intention  
14 to do something other than the amicus that was the  
15 subject of the vote on July 25?

16 A As part of the direction to put together  
17 the amicus, the commission directed me to prepare an  
18 interpretation as part of the amicus. And so it  
19 will be part of the amicus.

20 Q It will be incorporated into the amicus,  
21 correct?

22 A I can't speak to --

23 MR. BOKSNER: Objection. Calls for  
24 attorney/client communication. Don't answer.

25 BY MR. REISS:

1           Q     In any event, to the extent that your  
2     interpretation is issued, it would not be pursuant  
3     to the code section related to a request by the  
4     owner for such an interpretation, correct?

5           A     The owner would not be making a request  
6     for the determination.

7           Q     Okay. So that code section wouldn't apply  
8     to your interpretation?

9           A     Which code section is that?

10          Q     The code section that talks about when the  
11     owner requests a written interpretation then the  
12     planning director will give you one.

13          A     There's no specific code section on that.

14          Q     Office space is allowed within the CD-2  
15     district, right?

16          A     Yes.

17          Q     So if hypothetically -- well, strike that.

18                 If Beach Towing wanted to open an office  
19     for the purpose of conducting its business, but not  
20     have storage in CD-2, that would be permitted in the  
21     CD-2 district?

22          A     Office uses are permitted in the CD-2  
23     district.

24          Q     Have you had a chance to review Beach  
25     Towing's current Business Tax Receipt?

1           A     I think I've seen it. If it's not in one  
2 of these exhibits, I don't recall offhand whether  
3 I've seen the current one.

4           Q     Are you aware that that language  
5 concerning linked to a service station has been  
6 removed by the city from that BTR?

7           A     No.

8           Q     Are you aware as to whether that language  
9 was included as a mistake in the earlier versions?

10           MR. BUCKNER: Object to form.

11           A     That I don't know.

12           Q     You don't know how it got there?

13           A     No.

14           MR. REISS: I'm almost done. I've just  
15 got to go through my notes. Five minutes.

16           Okay?

17           THE WITNESS: Okay.

18           (There was a recess taken from 3:50 p.m.  
19 to 3:59 p.m.)

20           BY MR. REISS:

21           Q     There were some questions about Commission  
22 Memorandum 8205. I marked it as Exhibit L. And  
23 part of this document, which hasn't been made a part  
24 of the record, was also part of a letter that Sunset  
25 Land sent to you on April 15, 2016. So I don't have



1 a lot of extra copies with me, but this was served  
2 by Sunset. If you look at the letter dated -- the  
3 May 7, 1990 letter.

4 A So that's this? Is that L?

5 MR. BUCKNER: What are we talking about?

6 MR. BOKSNER: You're talking about L?

7 MR. ANDRADE: It looks like L.

8 BY MR. REISS:

9 Q Yes, L. The part of the letter that, B-1,  
10 that Sunset Land sent you. The actual request, if  
11 you take a look at that, it says, "The applicant,  
12 Vincent Festa, owner of Beach Garage," right?

13 A Okay.

14 Q So the application was not on behalf of  
15 the Beach Towing?

16 MR. BUCKNER: Object to form. Outside the  
17 witness' knowledge.

18 BY MR. REISS:

19 Q Do you have any knowledge that this  
20 document is not a correct recitation of who the  
21 applicant was on 8205?

22 A No.

23 Q A couple final questions. Does a legal  
24 nonconforming use run with the land?

25 A There's nothing in the code that puts a

1 cap on it. So the term "run with the land" usually  
2 applies to things like covenants or variances that  
3 are granted by a board. So I've never used that  
4 term with a legal nonconforming use.

5 Q But does the use itself, if there's a  
6 determination made that there's a legal  
7 nonconforming use, it relates to the use of the  
8 land, not the owner of the property, correct?

9 A That's correct.

10 Q So if the owner sold the property and then  
11 the next day somebody bought it and continued the  
12 same legal nonconforming use, that would be okay?

13 A Yes.

14 Q So if I understand your testimony, if you  
15 make the final determination that towing is a legal  
16 nonconforming use at 1349 Dade Boulevard, if Beach  
17 Towing the day after that determination closed and a  
18 new tow company opened, that would be okay?

19 A If that determination was made, yes.

20 MR. REISS: That's all I've got.

21 Gentlemen?

22 MR. BUCKNER: No. I'm allowed to go home.

23 MR. REISS: Read or waive?

24 MR. BOKSNER: He's going to read.

25 MR. REISS: Thank you, sir.

1           THE WITNESS: All right. Allan, nice to  
2           meet you.

3           MR. REISS: Nice to meet you.

4           THE REPORTER: Do you need this  
5           transcribed?

6           MR. REISS: Yes, please.

7           THE REPORTER: Regular delivery?

8           MR. REISS: Regular.

9           THE REPORTER: Mr. Buckner, do you need a  
10          copy?

11          MR. BUCKNER: I'll take a copy, just  
12          e-tran.

13                 (Thereupon, the deposition concluded at  
14    4:03 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

I, the undersigned authority, certify that  
THOMAS R. MOONEY personally appeared before me and  
was duly sworn.

WITNESS my hand and official seal this 4th  
day of September, 2018.

---

LILLIAN GADOMSKI  
Notary Public - State of Florida  
My Commission No. FF186967  
Expires: January 4, 2019

## 1 CERTIFICATE

2

3 STATE OF FLORIDA )

4 ) SS:

5 COUNTY OF MIAMI-DADE)

6

7 I, LILLIAN GADOMSKI, Professional Court  
8 Reporter and Notary Public, certify that I was  
9 authorized to and did stenographically report the  
10 deposition of THOMAS R. MOONEY; that a review of the  
11 transcript was requested; and that the transcript is  
12 a true and complete record of my stenographic notes.

13 I further certify that I am not a  
14 relative, employee, attorney, or counsel of any of  
15 the parties, nor am I a relative or employee of any  
16 of the parties' attorney or counsel connected with  
17 the action, nor am I financially interested in the  
18 action.

19 Dated this 4th day of September, 2018.

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LILLIAN GADOMSKI

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THOMAS R. MOONEY

Sworn to and subscribed before me  
this        day of                      2018.

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Notary Public - State of  
My Commission Expires:

## ERRATA SHEET

IN RE: SUNSET LAND ASSOCIATES, LLC vs. MARK FESTA,  
et al.

CASE NO.: 2016-004547 CA 01

DEPOSITION OF: THOMAS R. MOONEY

DATE TAKEN: AUGUST 24, 2018

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE.

PAGE NO.	LINE NO.	CORRECTION OR CHANGES
_____	_____	_____
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_____	_____	_____
_____	_____	_____

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true and correct subject to any changes in form or substance entered here.

DATE: \_\_\_\_\_

SIGNATURE OF DEPONENT: \_\_\_\_\_

TAYLOR, JONOVIC, WHITE, GENDRON & KIRCHER-ECHARTE  
FLORIDA REALTIME REPORTING  
2455 EAST SUNRISE BOULEVARD  
SUITE 1200  
FORT LAUDERDALE, FLORIDA 33304  
(954) 759-4560

September 4, 2018

City of Miami Beach  
Attn: Thomas R. Mooney  
c/o Aleksandr Boksner, Esquire  
1700 Convention Center Drive  
4th Floor  
Miami Beach, Florida 33133

Dear Mr. Mooney:

With reference to the deposition taken on August 24, 2018, please be advised that the transcript of the deposition has been completed and is awaiting signature.

Please arrange to stop by our office for the purpose of reading and signing the deposition. Our office hours are 9:00 a.m. to 5:00 p.m., Monday through Friday. You may, however, read a copy of the transcript provided by any of the attorneys connected with the case, denoting any corrections by page and line number on a separate sheet of paper. This correction page must be signed by you and returned to us for filing with the original.

If this has not been taken care of, however, within the next 30 days, or by the time of trial, whichever comes first, I shall then conclude that the reading, subscribing and notice of filing have been waived. The original of this deposition has been forwarded to the ordering party, and your errata sheet, once received, will be forwarded to all counsel of record.

Sincerely,

Lillian Gadomski

CC: Allan S. Reiss, Esq.  
David M. Buckner, Esq.



# **EXHIBIT “D”**

**ZONING ORDINANCE**

**1891**

**CITY OF MIAMI BEACH**

**EFFECTIVE DATE**

**OCTOBER 1, 1971**

**(As Amended through January 18, 1985)**

**MAYOR**

**Malcolm H. Fromberg**

**COMMISSIONERS**

**Stanley H. Arkin**

**Alex Daoud**

**Ben Z. Grenald**

**William E. Shockett**

**Bruce Singer**

**Sidney Weisburd**

**CITY MANAGER**

**Rob W. Parkins**

**CITY ATTORNEY**

**Arnold M. Weiner**

ZONING ORDINANCE  
MIAMI BEACH, FLORIDA

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## ZONING ORDINANCE AMENDMENT

### MAILING LIST

The Development Services Department maintains a mailing list of persons interested in receiving notification of amendments to the Zoning Ordinance. If you would like your name placed on the mailing list, please fill out the portion of the sheet with your name and address and mail your request to:

Development Services Department  
1700 Convention Center Drive  
Miami Beach, Florida 33139

-----  
Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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The Planning Board from time to time considers amendments and revisions of the Zoning Ordinance. If you have any suggestions on how this Ordinance may be improved, please send them to:

Miami Beach Planning Board  
c/o Director of Planning  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Name \_\_\_\_\_

Address \_\_\_\_\_

Suggestion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Thank You!!



ZONING ORDINANCE

MIAMI BEACH, FLORIDA

ORDINANCE NO. 1891

SECTION 1

TITLE

AN ORDINANCE TO REGULATE AND RESTRICT THE ERECTION, RECONSTRUCTION, ALTERATION, LOCATION AND USE OF BUILDINGS, STRUCTURES, LAND AND WATER, FOR TRADE, INDUSTRY, RESIDENCE, OR OTHER PURPOSES; TO REGULATE AND RESTRICT THE SIZE OF BUILDINGS AND OTHER STRUCTURES HEREAFTER ERECTED OR ALTERED, THE SIZE AND DIMENSIONS OF YARDS, COURTS AND OTHER OPEN SPACES SURROUNDING BUILDINGS; TO REGULATE AND RESTRICT BUILDING LINES AND THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED, AND THE DENSITY OF POPULATION, AND FOR SAID PURPOSES TO DIVIDE THE CITY OF MIAMI BEACH INTO DISTRICTS OF SUCH NUMBER, SHAPE AND AREA AS MAY BE DEEMED BEST SUITED TO CARRY OUT THESE REGULATIONS, AND FOR EACH SUCH DISTRICT TO IMPOSE REGULATIONS AND RESTRICTIONS DESIGNATING THE KINDS OR CLASSES OF TRADES, INDUSTRIES, RESIDENCES OR OTHER PURPOSES FOR WHICH BUILDINGS OR OTHER STRUCTURES OR PREMISES MAY BE PERMITTED TO BE ERECTED, ALTERED OR USED; TO PROVIDE A METHOD FOR AMENDMENT, SUPPLEMENT, CHANGE, MODIFICATION AND REPEAL OF REGULATIONS, RESTRICTIONS AND BOUNDARIES; TO PROVIDE A PLANNING BOARD AND PRESCRIBE ITS POWERS AND DUTIES, MEETINGS AND PROCEDURES; TO PROVIDE A METHOD OF ADMINISTRATION; TO PROVIDE A BOARD OF ADJUSTMENT AND PRESCRIBE ITS POWERS AND DUTIES, TO PROVIDE SITE PLAN REVIEW REGULATIONS, APPLICABILITY AND EXEMPTIONS, AND APPEAL; AND TO PRESCRIBE PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE AND ALSO PROVIDE FOR ITS ENFORCEMENT AND REPEALING ALL ORDINANCES IN CONFLICT.

This Ordinance shall be known and cited as the "Zoning Ordinance of Miami Beach, Florida."

## **SECTION 2**

### **DECLARATION OF PURPOSE**

WHEREAS, by the provisions of Chapter 9837, No. 719 Special Laws of Florida, 1923, authority is conferred upon the City of Miami Beach to establish districts or zones within its corporate limits for the purpose of regulating the use of land and buildings, the height of buildings, the size of open spaces surrounding buildings and density of population, and

WHEREAS, the City Commission of the City of Miami Beach deems it necessary in order to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements, to make and promulgate such regulations with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said City in accordance with a comprehensive plan:

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Miami Beach, Florida:

**SECTION 3**  
**DEFINITIONS**

**3-1 General Rules of Construction.**

- A. The following general rules of construction shall apply to the regulations of this Ordinance:
1. The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
  2. Words used in the present tense include the past and future tenses, and the future the present.
  3. The word "shall" is mandatory, the word "may" is permissive.
  4. The word "building" or "structure" includes any part thereof, and the word "building" includes the word "structure".
  5. The word "lot" includes the word "plot" or "parcel" or "tract" or "site".
  6. The words "used" or "occupied" include the words "intended", "designed" or "arranged" to be used or occupied.
  7. The words "required yards" or "minimum required yards" and "minimum yards" includes the word "setback".
  8. Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.

**3-2 Terms Defined.**

- A. For the purpose of this Ordinance, certain terms and words are hereby defined.
1. **ACCESSORY BUILDING:** A detached subordinate building or portion thereof, the use of which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use. Where there is no main building on the lot, an accessory building shall be considered as a main building for the purpose of the height, area, and bulk regulations.
  2. **ACCESSORY USE:** A subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.
  3. **ADULT CONGREGATE LIVING FACILITY:** Any State licensed institution, building or buildings, residence, private home, boarding home, home for the aged, or other place whether operated for profit or not, which undertakes

through its ownership or management to provide for a period exceeding 24 hours, one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal service for fewer than four adults shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services. Personal services means services in addition to housing and food service, which include but are not limited to: personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, and assistance with securing health care from appropriate sources. Personal service does not include medical services. The language above shall not preclude an applicant from seeking conditional use approval contingent upon obtaining a valid State license.

4. AGGREGATE AREA OR WIDTH: The sum of two or more designated areas or widths to be measured, limited, or determined under these regulations.
5. ALCOHOLIC BEVERAGE: As defined by section 561.07 (7) Florida Statutes.
6. ALLEY: A public or private thoroughfare which affords only a secondary means of access to abutting property and which is not otherwise designated as a street.
7. APARTMENT: (See DWELLING UNIT.)
8. APARTMENT BUILDING: A building with or without resident supervision occupied or intended to be occupied by more than two families living separately and with separate cooking facilities in each unit.
9. APARTMENT HOTEL: A building containing both dwelling units and sleeping units, under resident supervision which maintains an inner-lobby through which all tenants must pass to gain access to the apartments or units.
10. AWNING: A detachable, rooflike cover, supported from the walls of a building for protection from sun or weather.
11. BALCONY; OPEN UNENCLOSED: A platform that projects from the wall of a building and is enclosed by a parapet or railing, the long side of which shall be open above the guard rail or parapet, and which serves only one unit.
12. BAR: Any place devoted to selling or dispensing and drinking alcoholic beverages, or any place where a sign is displayed indicating that alcoholic beverages are obtainable for consumption on the premises.
13. BASEMENT: (See SUBTERRANEAN)

14. BEACHFRONT PARK AND PROMENADE: A revegetation program including beach recreation structures which are primarily constructed of wood and located on the dune. It is designed to permit the passage of pedestrians over and across the dune in such a manner as to protect and stabilize the dune, vegetation, and natural beach.
15. BEER: An alcoholic fermented beverage made from malt and hops.
16. BLOCK: That portion of a street between two intersecting streets.
17. BOARDING HOUSE: Same as ROOMING HOUSE.
18. BUILDING WIDTH: The width of the lot left to be built upon after the required side yards are provided.
19. BUILDING: Any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.
20. BUILDING OFFICIAL: CODE ENFORCEMENT DIRECTOR.
21. BULKHEAD LINE: An official line therefore established by the City of Miami Beach and appropriately recorded - - includes HARBOR LINE.
22. CABANA: A structure used as a bathhouse or a shelter directly associated with a swimming pool or deck.
23. CABARET: A bar which provides entertainment and which may or may not serve meals and which is accessory to a hotel, motel, motor lodge or other building as provided in these regulations.
24. CAFE, OUTDOOR: A use associated with a restaurant that provides exterior table service which shall be adjacent and attached to the main structure.
25. CLINIC: An establishment where patients are not lodged overnight, but are admitted for examination and treated by a group of physicians or dentists practicing medicine together. The term does not include a place for the treatment of animals.
26. CANOPY: A detachable, rooflike cover, supported from the ground, or deck, or floor of a building, and from the walls of a building, for protection from sun or weather.
27. CARPORT: A canopy, rooflike structure, or shed, open on three sides and attached to the main building for the purpose of providing shelter for one or more motor vehicles.
28. CLUB, PRIVATE: Building and facilities or premises used or operated by an organization or association for some common purpose, such as, but not limited to, a fraternal, social, educational or recreational purpose, but not

including clubs organized primarily for profit or to render a service which is customarily carried on as a business. Such organizations and associations shall be incorporated under the Laws of Florida as a non-profit corporation and such corporation's major purpose shall not be for the purpose of serving alcoholic beverages to its members or others.

29. COMMERCIAL VESSEL: Every vessel which is used or operated for commercial purposes on the navigable waters of the city; that is either carrying passengers, carrying freight, towing, or for any other use.
30. COMPREHENSIVE PLAN: The document adopted by the City Commission pursuant to the Local Government Comprehensive Planning Act of 1975 (Chapter 163, Florida Statutes), presenting the principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the City.
31. CONDITIONAL USE: A use that would not be appropriate generally or without restriction throughout a particular Zoning District, but would, if controlled as to number, area, location, or relation to the neighborhood, be appropriate.
32. COURT: An open space which may or may not have direct street access and around which is arranged a single building or a group of related buildings,
33. DENSITY: For the purpose of this Ordinance density refers to the total number of dwelling units and/or sleeping units per gross acre of land excluding platted streets and rights-of-way and submerged land seaward from the established bulkhead line or where the bulkhead line is not established then seaward of the mean high water line. The number of permitted units per gross acre of land shall be rounded to the closest whole number computed in the density calculation. For example:
- $7.0 - 7.4 = 7$  permitted units  
 $7.5 - 7.9 = 8$  permitted units
34. DORMITORY: A residence or building providing sleeping accommodations for students enrolled in a religious, educational, or business program who occupy rooms on a contractual basis generally corresponding to the length of the curriculum.
35. DRIVE-IN: A term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space.
36. DWELLING: A building or portion thereof, designed or used exclusively for residential occupancy, but not including trailers, mobile homes, hotels, motels, motor lodges, boarding and lodging houses, tourist courts, or tourist homes.

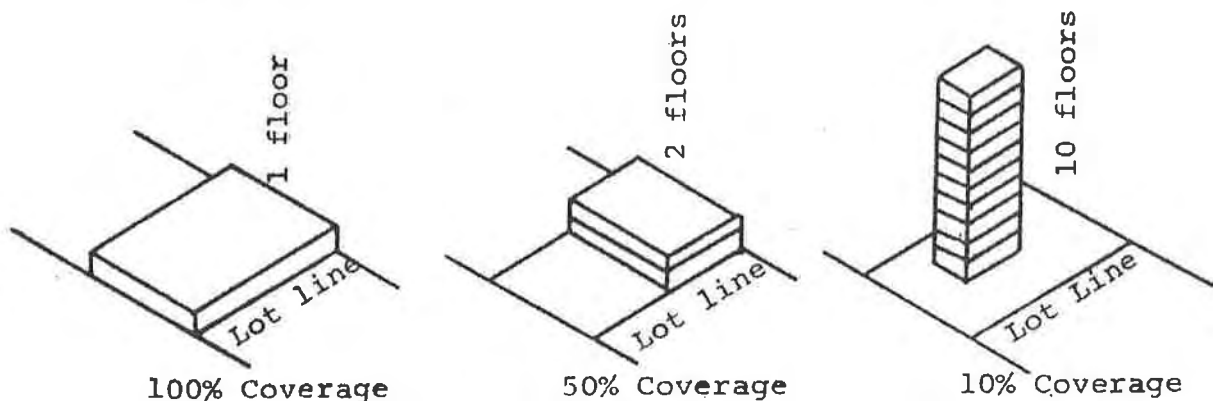
37. DWELLING, SINGLE-FAMILY: A building designed for or occupied exclusively by one family.
38. DWELLING, MULTIPLE-FAMILY: A building designed for or occupied by three or more families.
39. DWELLING, TWO-FAMILY (DUPLEX): A building designed for or occupied exclusively by two families.
40. DWELLING, SINGLE-FAMILY DETACHED: A single-family dwelling surrounded by yards or other open spaces on the same lot.
41. DWELLING UNIT: A room, or group of rooms, occupied or intended to be occupied as separate living quarters by one family and containing independent cooking and sleeping facilities.
42. DWELLING UNIT, PORTABLE: Any vehicle designed so as to permit its being used, as a conveyance, upon the public streets and highways, containing a plumbing system suitable for connection to an external sewerage system and constructed in such a manner so as to permit occupancy thereof for dwelling or sleeping purposes.
43. EROSION CONTROL LINE (ECL): It is the line determined in accordance with the provisions of Florida Statutes 161.041 - 161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, Bays, Lagoons, and other tidal reaches thereof on the date of the recording of the survey as authorized in Statute 161.181.
44. FALLOUT SHELTER: A structure or portion of a structure intended to provide protection to human life during periods of danger from nuclear fallout, air raids, storms or other emergencies.
45. FAMILY: An individual or two or more persons related by blood or marriage, or a group of not more than three persons (excluding servants) who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.
46. FILLING STATION: Any building, structure, or land used for the retail sale of motor vehicle fuels, oils, and accessories, and the servicing or repairing of minor parts and accessories, but not including major repair work, such as motor replacement, body and fender repair, or spray painting and excluding public garages.
47. FLOOR AREA: The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of a projection, the area of which is included in the floor area calculation or from the centerline of walls separating two attached buildings. Floor area includes space used for:

- a. Elevator shafts or stairwells at each floor.
- b. Mechanical equipment.
- c. Penthouses.
- d. Attic floor space, whether or not a floor has been laid, providing structural headroom of seven feet, six inches or more.
- e. Exterior corridors from which access is gained to dwelling and/or sleeping units.
- f. Interior halls, enclosed balconies or interior mezzanines.
- g. Enclosed porches.
- h. Accessory buildings.
- i. Measured floor area less 180 square feet for a one-car capacity or 360 square feet for a two-car capacity private garage, attached or detached, accessory to a single-family or two-family dwelling.
- j. Any floor space used for residential use, no matter where located within the building.

However, the floor area of a building shall not include:

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory off-street parking spaces.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.

48. **FLOOR AREA RATIO:** The floor area of the building or buildings on any lot divided by the area of the lot.



#### FLOOR AREA RATIO

Each example illustrated above  
has a floor area ratio of 1.0



49. GARAGE, COMMUNITY: A building or a portion thereof, used for indoor parking of private passenger vehicles by residents in the vicinity of said building.
50. GARAGE, MECHANICAL: Any premise where vehicles are mechanically repaired, rebuilt or constructed for commercial purpose.
51. GARAGE, PRIVATE: An accessory building designed or used for the parking of private passenger vehicles by the occupants of the building to which it is accessory.
52. GRADE: Grade shall be defined as the City sidewalk elevation at the center line of the property. If there is no sidewalk, the Public Works Department shall establish the City sidewalk elevations. The owner will submit a current survey and other required documents to the Public Works Department to aid in establishing sidewalk grade. The Public Works Department will be required to give final approval of grade.
53. GROUP HOUSE: (TOWN HOUSE) A group or row of more than two attached single-family dwellings, designed and built as a single structure, facing upon a street or place.
54. GROUND - That portion of a building or structure which is equal to or less than 20 feet in height above sidewalk elevation and is utilized solely and exclusively for the purpose of parking, equipment, public spaces, access ways, swimming pools, cabanas, lobbies, shops and offices, but under no circumstances used for apartment units and/or sleeping units. Where a subterranean level area, as described herein is utilized, the ground level area shall be that portion of a building or structure above the subterranean level area and equal to or less than 20 feet in height above the sidewalk elevation.
55. GUEST HOUSE: Living quarters within a detached or semi-detached accessory building located on the same lot with the main building for use by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utility meters and not rented or otherwise used as a separate dwelling.
56. HEIGHT OF BUILDING: The vertical distance from the grade to a roof. The highest point of the roof shall be determined by the following: (a) the highest point of a flat roof; (b) the deck line of a mansard roof; (c) the average height between eaves and ridge for gable, hip, and gambrel roofs; or (d) the average height between high and low points for a shed roof.
57. HELIPORT: An area excluding docks, used or to be used for landing or take-off of helicopters or other steep-gradient aircraft capable of hovering, and may include any or all of the area or buildings which are appropriate to accomplish these functions, including refueling and meets with FAA approval.

58. HELISTOP, PRIVATE: An area, excluding docks, used or to be used for landing or take-off of helicopters or other aircraft capable of hovering, which are owned or controlled by the owner or occupant of the premises or by guests or patrons of such owner or occupant; such private helistop does not afford refueling, maintenance, or repair facilities and all tie-down or hangar facilities are for the accommodation of a single aircraft.
59. HELISTOP, PUBLIC: An area excluding docks, used or to be used for landing or take-off of helicopters or other aircraft capable of hovering, which does not afford refueling, maintenance, or repair facilities, in which tie-down facilities alone are available and for the accommodation of a single aircraft, regardless of ownership or control, and which area is open to use of any helicopter or other aircraft capable of hovering.
60. HOSPITAL: A building or group of buildings having room facilities for overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities, central service facilities, and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operations. Hospital-related facilities include Nursing Homes and Convalescent Homes or Extended Care Facilities.
61. HOTEL: A building occupied or intended to be occupied generally by transient residents with all residents occupying sleeping units and with ingress and egress to and from all rooms made through an inside lobby and/or office supervised by a person in charge at all times.
62. HOUSEBOAT: A watercraft designed for dwelling purposes which is propelled by sail, motor or both.
63. HOUSEBARGE: A vessel or watercraft capable of being utilized as a residence floating on water, usually permanently moored, which does not have a system of propulsion.
64. INDIVIDUAL: Any person, corporation, firm, partnership, limited partnership, association, joint stock association or business entity.
65. LIQUOR: All distilled or rectified spirits, brandy, whiskey, rum, gin, cordials or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.
66. LIVE ABOARD: Any person who utilizes a vessel as a temporary or permanent place of abode or habitation. A person using a vessel during parts of a day for recreation or entertainment, but not sleeping shall not be deemed a live aboard.
67. LOADING SPACE: Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are

filled. Required off-street loading spaces are not to be included as off-street parking spaces in the computation of required off-street parking spaces.

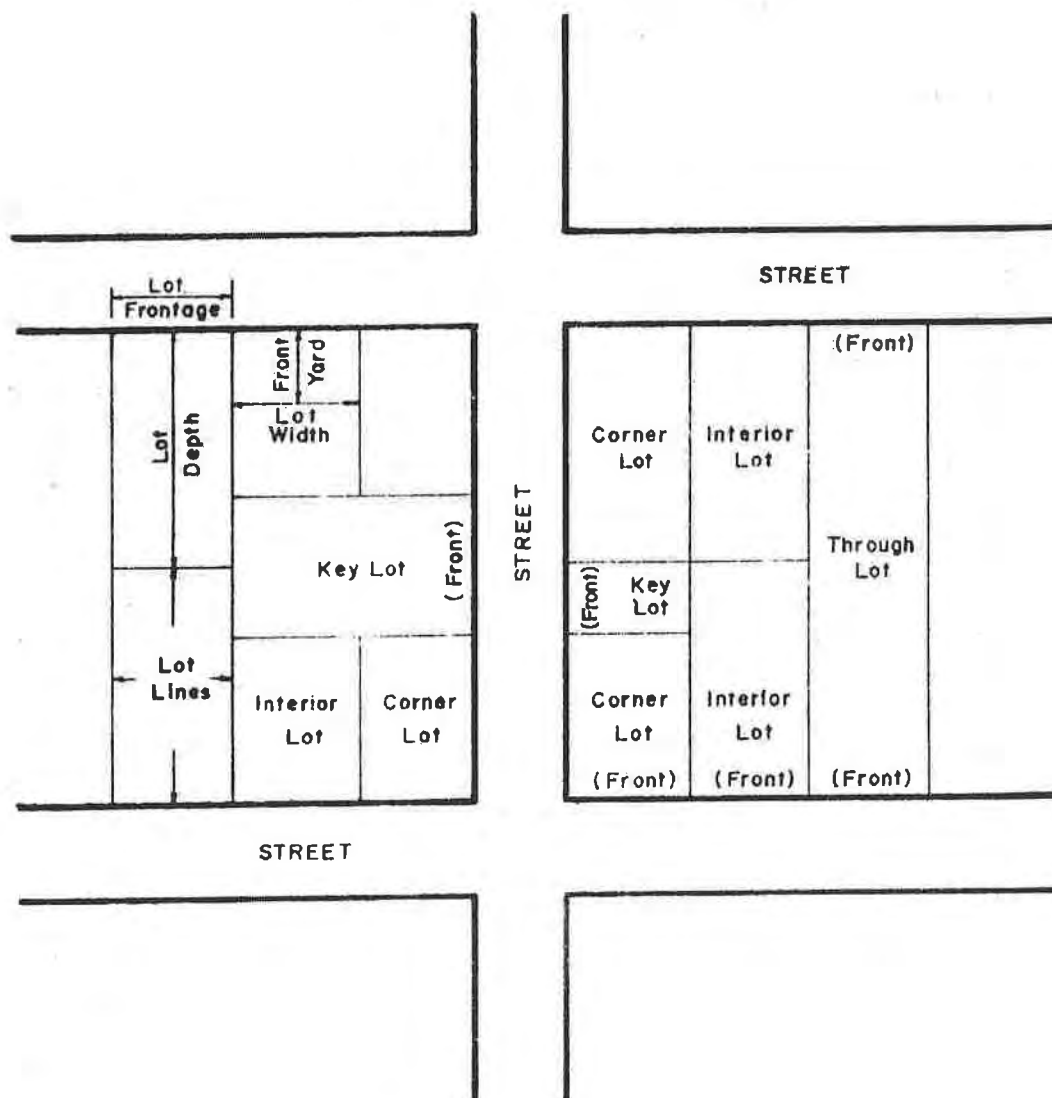
68. LOT: A parcel of land of at least sufficient size to meet minimum zoning requirements for use, minimum width, and area, and to provide such yards and other open spaces as are required in the Zoning Ordinance. Such lot shall have frontage on a public street, and may consist of:
- a. A single lot of record;
  - b. A portion of a lot of record;
  - c. A combination of complete lots of record, and portions of lots of record; or of portions of lots of record;
  - d. A parcel of land described by metes and bounds.

Provided that, in case of division or combination of property, no residual lot or parcel shall be created that does not meet the aforementioned requirements of the Zoning Ordinance.

Lot of record shall mean a lot which is part of a subdivision, the map of which has been recorded in the Office of the Circuit Court Clerk, or a lot described by metes and bounds, the description of which has been recorded in the Office of the Circuit Court Clerk. (See SITE)

69. LOT AREA: The total horizontal area within the lot lines of the lot.
70. LOT, CORNER: A lot abutting upon two or more streets at their intersection.
71. LOT COVERAGE: The percentage of the total area of a lot that, when viewed directly from above, would be covered by all principal and accessory buildings and structures, or portions thereof; provided, however, that exterior unenclosed private balconies, awnings and porte-cocheres shall not be included in determining the building area.
72. LOT DEPTH: The mean horizontal distance between the front and rear lot lines.
73. LOT FRONT: The front of a lot shall be construed to be the portion nearest the street. For corner lots, the lot front shall be the narrowest portion abutting the street unless determined otherwise by the Code Enforcement Director.
74. LOT FRONTAGE: The distance for which the front lot line and the street line are coincident.
75. LOT, INTERIOR: A lot, other than a corner lot.

76. **LOT, THROUGH (DOUBLE FRONTAGE):** Any lot having frontages on two parallel or approximately parallel streets.
77. **LOT, KEY:** An interior lot having its side lot lines coincident on one or both sides with the rear lot lines of adjacent lots.
78. **LOT LINE:** The boundary line of a lot. On waterfront lots the established bulkhead line or, where the bulkhead line has not been established, the mean high water shall be construed to be a lot line.
79. **LOT WIDTH:** The horizontal distance between the side lot lines measured at the required front yard line and parallel to the front street line.



ILLUSTRATIONS OF LOT DEFINITIONS

80. MARINA: A place for docking pleasure boats or commercial boats and providing services to the occupants thereof, including minor servicing and minor repair to boats, sale of fuel and supplies, and provision of lodging, food, beverages, commercial offices, and entertainment as accessory uses. A yacht club shall be considered as a marina, but a hotel, motel, or similar use, where docking of boats and provision of services thereto, is incidental to other activities shall not be considered a marina, nor shall boat docks accessory to a multiple dwelling where no boat-related services are rendered.
81. MARINE DOCKAGE: Accessory use only - A place for docking of pleasure boats.
82. MEZZANINE: An intermediate floor in any story or room with floor area not exceeding one-third the total floor area in that room or story in which the mezzanine occurs and with clear height above or below the mezzanine floor construction not less than seven feet.
83. MOBILE HOME: (See PORTABLE DWELLING UNIT)
84. MOTEL, MOTOR COURT, TOURIST COURT, OR MOTOR LODGE: A building occupied or intended to be occupied by transient residents traveling by automobile, with all residents occupying sleeping units and ingress or egress may or may not be through a common lobby or office that is supervised by a person in charge at all times.
85. NIGHT CLUB: A business operated to supply music or entertainment or both and which provides beverages and meals prepared on the premises, seating for not less than 40 persons at tables, a dance floor at least 300 square feet in area, and a total floor area of at least 2,200 square feet.
86. NONCONFORMING BUILDING OR STRUCTURE: A building or structure or portion thereof existing at the effective date of this Ordinance, or any amendment thereto, which was designed, erected or structurally altered in such a manner that characteristics of the building or structure, other than use regulations, do not meet the provisions of this Ordinance.
87. NONCONFORMING USE: The lawful use of land or a building or a portion thereof, which use does not conform with the use regulations of the district in which it is located.
88. NURSERY, DAY: Any establishment providing care of children not members of the resident family during the day, but not overnight, including nurseries for children of working mothers, kindergartens, and nursery schools for children under the minimum age for admission to public schools, or for after-school care of school children and other establishments of a similar nature.
89. NURSING HOME: A State Licensed facility providing long-term care of the chronically ill, the physically disabled, and the aged who are unable to move about without the aid of another person or device.

90. OPEN SPACE: That part of a lot, including courts and yards which:
- a. is open and unobstructed from its lowest level upward, and
  - b. is accessible to all residents on the lot without restrictions except as may be required for safety, and
  - c. is not occupied by off-street parking, streets, drives, or other surfaces for vehicles, except as may be required to provide one parking space per dwelling unit on the lot. Open space shall, in general, be available for entry and use by the occupants of the building or buildings on the premises, but may include space located and treated to enhance the amenity of the development by providing landscaping, screening for the benefit of the occupants or neighboring areas, or a general appearance of openness. Open space may include water surfaces that comprise not more than 10 percent of total open space.
91. OVERLAY DISTRICT: Constitutes a set of regulations which are superimposed upon and supplement, but not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.
92. OVERLAY ZONE: The designation of a site within an Overlay District.
93. PARKING LOT, AUTOMOBILE: Open, or Enclosed, Non-Commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
94. PARKING LOT, COMMERCIAL: Any lot upon which space for the parking of vehicles is provided for or offered to the general public for compensation.
95. PARKING LOT, STORAGE: A landscaped at grade all weather surface or gravel area, not in a street or alley, with a minimum area of 7,500 square feet and a maximum area not to exceed 45,000 square feet that is completely screened from public view through the placing of landscaped materials and a solid wood fence or decorative masonry wall at grade level; and, partially screened, from public view from adjoining properties at elevations above grade, through the use of landscaped materials. Screening and landscaping of the street, alley, interior, and rear perimeters shall be pursuant to Section 9-5, I-1 of this Ordinance. There shall be a minimum five foot landscaped area between the fence or decorative masonry wall and the street or alley. Such landscaped areas shall include an underground irrigation system with sprinkler heads located at 10 foot centers or hose bibs at 50' intervals. The interior of the lot shall include at least one tree on each and every individual 1000 square foot area or portion thereof. A 4 x 4 unpaved ground area shall surround the tree at the base of the trunk and shall contain pervious ground material. A concrete curb shall surround each 4 x 4 space. The use of such areas shall be exclusively reserved for the temporary storage of new passenger vehicles provided no vehicle shall

exceed 2½ tons in gross weight. Signs shall only be permitted in commercial districts and in accordance with Section 11. Hours of operation shall be 7:30 a.m. to 6:00 p.m.

96. PARKING SPACE, OFF-STREET: An all-weather surfaced area not in a street or alley and having an area as required by Section 9-5 of this Ordinance exclusive of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather surfaced driveway which affords ingress and egress for an automobile without requiring another automobile to be moved.
97. PEDESTAL: That portion of a building or structure which is equal to or less than 50 feet in height above sidewalk elevation. Where a ground level and/or subterranean level area, as described herein, is utilized, the pedestal level area shall be that portion of a building or structure above the ground level area or subterranean level if no ground level is utilized, and equal to or less than 50 feet in height above the sidewalk elevation. No pedestal portion of a building shall contain more than five (5) floors, except in those cases where the maximum clear height between finished floor and finished ceiling for all floor levels except garage levels is 8'0", provided the minimum height from finished floor to finished ceiling for garage levels is 7'6".
98. PLANNING DIRECTOR: The Director of the Planning Department of the City of Miami Beach, Florida.
99. PLANNING BOARD: The Planning Commission of the City of Miami Beach, Florida.
100. PLEASURE CRAFT OR PLEASURE BOAT: A vessel not within the classification of a commercial vessel, housebarge, or houseboat and which is designed primarily for the purpose of movement over a body of navigable water and which is equipped with a means of propulsion, in operating condition, which is appropriate to the size and type of vessel.
101. PREMISES: A lot, together with all buildings and structures thereon.
102. PROMENADE LINKAGE: A structure constructed of wood which functions as a stairway or ramp connecting the upland property to the Beachfront Park and Promenade. Said structure shall conform to the design specifications for the Beachfront Park and Promenade and shall be located at points previously established by the Planning Department. All such structures shall conform to the requirements of the Department of Natural Resources, Division of Beaches.
103. RESIDENTIAL DISTRICT: Districts RS-1 through RM-125.
104. RESTAURANT: An establishment where refreshments or meals may be purchased by the public and where the primary business is the serving of food to be consumed on or off the premises.

105. ROOMING HOUSE: A building other than an apartment, apartment hotel, hotel, motel, or motor lodge where, for compensation and by pre-arrangement for definite periods, lodging, meals, or lodging and meals are provided for three or more persons but not exceeding 20 persons.
106. SAFETY BARRIERS: Safety barriers shall take the form of a screened-in patio, a wooden or wire fence, a stone or concrete block wall or other materials, so as to enable the owner to blend the same with the style or architecture planned or in existence on the property.

The minimum height of the safety barrier shall be not less than four feet and shall be erected either around the swimming pool or around the premises or a portion thereof thereby enclosing the area entirely, thus prohibiting unrestrained admittance to the enclosed area.

Where a wooden type fence is to be provided, the boards, pickets, louvers, or other such members shall be spaced, constructed and erected so as to make the fence nonclimable and impenetrable.

The walls, whether of the stone or block type, shall be so erected to make them nonclimable.

Where a wire fence is to be used, it shall be the two inch chain like or diamond weave nonclimable type, or of an approved equal, with a top rail and shall be of heavy galvanized material.

Gates, where provided, shall be of the spring lock type so that they shall automatically be in a closed and fastened position at all times. They shall also be equipped with a gate lock and shall be locked when the swimming pool is not in use.

107. SELF-SERVICE LAUNDRY: A business establishment equipped with customer operated automatic washing machines having a capacity per unit not exceeding twenty-five (25) pounds of dry clothing.
108. SERVANTS' QUARTERS: Living quarters within a portion of a main building or in an accessory building located on the same lot with the main building, used for servants employed on the premises, such quarters having no kitchen facilities or separate utility meters, and not rented or otherwise used as a separate dwelling unit.
109. SERVICE STATION: (See FILLING STATION)
110. SIDEWALK CAFE: A use associated with a restaurant that has exterior table service which is not attached or adjacent to the main structure and where prepared food and/or beverages is delivered to and/or placed on warming and/or cooling facilities for consumption on the premises. It is characterized by shade structures limited to covered porches, canvas, umbrellas, wood trellises, wood gazebos, or chickees which are predominantly open on all sides and in which tables and chairs are either wholly or partially placed under.



111. SIGN: An identification, description, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure, or land and which directs attention to a place, activity, product, person, institution, or business.
112. SIGN AREA: That area within a line including the outer extremities of all letters, figures, characters, and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon, or a building or part thereof, shall not be included in the sign area. Only one side of a double-faced sign shall be included in a computation of sign area. The area of a cylindrical sign shall be computed by multiplying one-half of the circumference by the height of the sign.
113. SIGN, AWNING: Any sign painted, stamped, perforated or stitched on an awning, canopy, roller curtain or umbrella.
114. SIGN, DETACHED: A sign not attached to or painted on a building but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall not a part of the building, shall be considered a detached sign.
115. SIGN, DOUBLE-FACED: A sign with two parallel, or nearly parallel, faces, back to back and located not more than 24 inches from each other.
116. SIGN, ESTABLISHMENT-IDENTIFICATION: A sign which pertains only to the use of a premises and which, depending upon the zoning district in which it is located, contains any or all of the following information:
- a. The name of the owner, occupant, and/or management of the use.
  - b. The address of the use.
  - c. The kind of business and/or the brand name of the principal commodity sold on the premises.
  - d. Other information relative to a service or activity involved in the conduct of the business, but not including the names of subsidiary products except where specifically permitted by the provisions of this Ordinance.
117. SIGN, FLASHING: An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any revolving illuminated sign shall be considered a flashing sign.
118. SIGN, FLAT: Any sign attached to, and erected parallel to, the face of, or erected or painted on the outside wall of a building and supported throughout its length by such wall or building and not extending more than 12 inches from the building wall.

119. SIGN, GENERAL ADVERTISING: Any sign which is not an accessory sign or which is not specifically limited to a special purpose by these regulations.
120. SIGN, ILLUMINATED: Any sign designed to give forth artificial light or designed to reflect light from one or more sources of artificial light erected for the purpose of providing light for the sign.
121. SIGN, MARQUEE: Any sign attached to or hung from a marquee. For the purpose of this Ordinance, a marquee shall be as defined in the Code of the City of Miami Beach.
122. SIGN, PROJECTING: A sign which is attached to and projects more than 12 inches from the face of a wall of a building. The term projecting sign includes a marquee sign. A projecting sign which extends more than 36 inches above a roof line or parapet wall shall be designated as a roof sign.
123. SIGN, ROOF: A sign which is fastened to and supported by or on the roof of a building or which extends over the roof of a building or a projecting sign which extends more than 36 inches over or above the roof line or parapet wall of a building.
124. SITE: A parcel of land considered as a unit or capable of being occupied by a use permitted in this Ordinance. A site which is used to calculate setbacks, density, or floor area for a given use occupying such site, cannot be subdivided and sold or leased or otherwise utilized except as permitted by the Zoning Ordinance. A site must also possess a continuous or unbroken boundary that is, a site cannot be divided by a public street, right-of-way, private street, or waterway.
125. SITE PLAN: A drawing illustrating a proposed development and prepared in accordance with the specifications of Section 7.
126. SLEEPING UNIT: A room, or group of rooms, with one access to the corridor, intended for rental to transients on a day-to-day, week-to-week, or month-to-month basis, not intended for use or used as a permanent dwelling and without cooking facilities.
127. STORY: That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the surface of the floor next above it; or, if there be no floor next above it, then the space between such floor and the ceiling next above it.
128. STREET: A public thoroughfare which affords the principal means of access to abutting property.
129. STREET LINE: The right-of-way line of a street.
130. STRUCTURAL ALTERATION: Any change, except for repair or replacement, in the supporting members of a building or structure, such as bearing walls, columns, floor or roof joists, beams or girders.

131. STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground. Among other things, structures include buildings, walls, fences, signs and screen enclosures.
132. SUBTERRANEAN: That portion of a building or structure which is equal to or less than 7 feet in height above sidewalk elevation and is utilized solely and exclusively for the purpose of parking and equipment. Where a subterranean area abuts a side lot line, open and unencumbered access shall be provided from the front yard area to the roof or deck of such area by means of a ramp or stairs.
133. SWIMMING POOL: COMMERCIAL: A commercial pool is any conventional pool, spa type pool, wading pool, or special purpose pool, as per State of Florida, Department of Health and Rehabilitation Standards, serving any type of structure or group of structures of four (4) or more dwelling units.
134. TOURIST RESIDENCE: A dwelling containing one dwelling unit for use of the manager and a number of sleeping units or suites of rooms, where lodging is provided with or without meals.
135. TOWER: That portion of a building or structure greater than 50 feet in height.
136. TOWNHOME RESIDENTIAL DEVELOPMENT: A grouping of single family attached or detached units on one building site. Each townhome unit shall have separate ingress and egress and independent electrical and water utilities.
137. TRAILER: Any portable structure or vehicle designed so as to be used as a conveyance upon the public streets and highways, containing a self-contained plumbing system which is not connected to an external sewerage system and constructed in such a manner so as to permit the occupancy thereof for dwelling or sleeping purposes.
138. USE: Any purpose for which buildings or other structures or land may be arranged, designed, intended, maintained, or occupied; or any occupation, business, activity, or operation carried on or intended to be carried on in a building or other structure or on land.
139. VARIANCE: A variance is a relaxation of certain regulations contained in this Ordinance where such variance shall not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance may be authorized only for height, area, size of structure, size of yards and open spaces, and off-street parking and loading requirements. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district. (Refer to Section 13)

140. VENDOR: An individual who has received a City of Miami Beach occupational license to sell, offering for space or keeping for sale with the intention of selling a product.
141. WINE: The product of the normal alcoholic fermentation of the juice of fresh, sound, ripe fruit, with the usual cellar treatment and necessary additions to correct defects due to climatic saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-four (24) per cent by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which same was predominantly produced or as artificial or imitation wine.
142. WATERWAY: Any body of water, including any creek, canal, river, lake, bay, or ocean, or any other body of water, natural or artificial except a swimming pool or ornamental pool located on a single lot.
143. YARD: An open area, other than a court, on the same lot with a building unoccupied and unobstructed from the ground upward, except as otherwise provided in these regulations.
144. YARD, FRONT: A yard across the full width of the lot extending from the front line of the building to the front street line of the lot.
145. YARD, REAR: A yard extending the full width of the lot between the main building and the rear lot line.
146. YARD, REQUIRED: The minimum distance allowed between a lot line and a building or structure excluding allowable encroachments.
147. YARD, SIDE: A yard between the building and the adjacent side of the lot, and extending from the front yard to the rear yard thereof.

**SECTION 4**  
**ZONING DISTRICTS**

**4-1 Districts Established.**

- A. To achieve the purposes of this Ordinance and of Part I, Division II, Article VI, Related Laws, The Code of the City of Miami Beach, Florida, and regulate the use of land, water and buildings, height and bulk of buildings and other structures, and population density and open space, the City is hereby divided into the following districts:

<u>SYMBOL</u>	<u>DISTRICT</u>
RS-1	Single-Family Residential
RS-2	Single-Family Residential
RS-3	Single-Family Residential
RS-4	Single-Family Residential
RM-14	Multiple-Family Low Density
RM-24	Multiple-Family Medium Low Density
RM-60	Multiple-Family Medium Density
RM-100	Multiple-Family Medium High Intensity
RM-125	Multiple-Family High Density
C-1	Neighborhood Business
C-2	General Office
C-3	Central Business
C-4	Business
C-5	General Business
C-6	Intensive Commercial
RH	Hospital District
MR	Marine Recreational
MU	Municipal Use
PUD	Planned Unit Development
HM	Hotel-Motel District
CCC	Convention Center District
MD-1	Marine District
MD-II	Marine District
NH	Nursing Home
R-PS1	Residential Medium-Low Density
R-PS2	Residential Medium-Low Density
R-PS3	Residential Medium-High Density
R-PS4	Residential High Density
C-PS1	Commercial Limited Mixed Use
C-PS2	Commercial General Mixed Use
C-PS3	Commercial Intensive Mixed Use

**4-2 District Map.**

- A. The locations of these Districts are shown on a map designated as the City of Miami Beach Zoning District Map, dated and signed by the Mayor and City Clerk

of the City of Miami Beach, upon adoption. This Zoning District Map, together with all notations, dimensions, references and symbols shown thereon, pertaining to such districts, is hereby adopted by reference and declared to be as much a part of this Ordinance as if fully described herein. Such map shall be available for public inspection in the office of the Code Enforcement Director and any later alterations to this map, adopted by amendment as provided in this Ordinance, shall be similarly dated, filed, and made available for public reference.

#### 4-3 Interpretation of District Boundaries.

- A. A district name or symbol shown on the district maps indicates that the regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole area in the municipality bounded by the district boundary lines within which such name or symbol is shown or indicated, except as otherwise provided by this section.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this Ordinance, the following rules apply:

1. In cases where a boundary line is given a position within a street or alley, easement, canal, navigable or non-navigable stream, it will be deemed to be in the center of the right-of-way of the street, alley, easement, canal, or stream, and if the actual location of such street, alley, easement, canal, or stream varies slightly from the location as shown on the district map, then the actual location controls.
2. The boundary line adjacent to Biscayne Bay is the established bulkhead line.
3. The boundary line adjacent to the Atlantic Ocean is the Erosion Control Line as determined in accordance with Florida Statutes. Except as provided in Section 30, the area of land between the established Bulkhead Line and the Erosion Control Line shall not be used in any computation for purposes of determining compliance with the Miami Beach Zoning Ordinance. Therefore, the established bulkhead line shall be the official line of demarkation for computing standards for uses and structures located west of the said line. Structures located east of the established bulkhead line and extending to the Erosion Control Line shall be considered similar to an accessory use to the upland property and allowed only pursuant to the provisions of Section 30 Dune Overlay Regulations.
4. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries will be construed to be the lot lines, and where bounded approximately by lot lines, the lot lines will be construed to be the boundary of such districts unless the boundaries are otherwise indicated on the map or by ordinance.

5. If a parcel of property is crossed by a zoning district boundary and thus lies in two zoning districts, the district boundary shall be treated as if it were a lot line separating the two separately zoned parcels.
6. The east boundary line of the Dune Overlay Zone shall be the Erosion Control Line as established by the appropriate regulatory agencies and the west boundary line shall be the established Bulkhead Line. The north and south boundary line shall be the City limits.

## SECTION 5

### GENERAL PROVISIONS

#### 5-1 Compliance with Regulations Required.

Except as hereinafter provided:

- A. No land or water area may be used except for a purpose permitted in the district in which it is located.
- B. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or part thereof, be used except for a use permitted in the district in which the building is located.
- C. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered to exceed the height limit herein established for the district in which the building is located.
- D. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the area regulations of the district in which the building is located.
- E. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, except in conformity with the off-street parking and loading regulations of the district in which the building is located.
- F. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the floor area ratio, or open space ratio regulations of the district in which it is located.
- G. No building shall be erected or moved except in conformity with the established flood criteria applicable to the site on which the building is to be located.
- H. No building permit shall be issued for any lot or site that does not meet the requirements of the definition of lot as stated in this Ordinance.

#### 5-2 Encroachment; Reduction of Lot Area.

- A. The minimum yards, parking space, open spaces, including lot area per family required by these regulations for each and every building existing at the time of the passage of these regulations or for any building hereafter erected, shall not be encroached upon or considered as required yard or open space for any other building, except as hereinafter provided, nor shall any lot area be reduced below the requirements of these regulations.

#### 5-3 Accessory Buildings, Prior Construction of.

- A. No accessory building shall be constructed upon a lot until the construction of the main use building has been actually completed or construction of main and



accessory buildings is concurrent. No accessory building shall be used unless the main use building on the lot is also being used.

5-4 Building Under Construction.

- A. Any building or structure for which a lawful building permit has been issued, and the construction of which has been started prior to the Effective Date of this Ordinance, may be completed and used in accordance with the plans and specifications upon which said building permit was granted, provided such construction is completed within one (1) year after the Effective Date of this Ordinance.

5-5 Outstanding Permits.

- A. Where, at the Effective Date of this Ordinance, there are outstanding valid building permits, authorizing the construction of buildings, structures, additions or alterations, the use of construction of which do not conform to the requirements of this Ordinance, such permits shall be void unless actual construction work, excluding grading or excavating, is substantially underway on that date.
- B. Where, at the Effective Date of this Ordinance, there are outstanding valid permits, authorizing the use of land or buildings without construction work, and where such use is not permissible under the terms of this Ordinance, such permit shall be void unless the use is actually in operation on that date.

5-6 Tractor-trailer, Trailer, Portable Dwelling Units.

- A. No tractor-trailer, truck, semi-trailer, trailer or portable dwelling units shall be permitted on any parcel of land except for purposes of loading and unloading, except where provided elsewhere in this Ordinance.

5-7 Store Enclosures.

- A. In all use districts designated in this Ordinance, the sale, or exposure for sale or rent, of any personal property, including merchandise, groceries, perishable foods, such as vegetables and fruits, is prohibited, unless such sale, or exposure for sale, is made from permanent, substantial, and permanently structurally enclosed buildings or structures; provided, however, that nothing herein contained shall be deemed applicable to gasoline stations, automobile service stations or repair shops, revocable permits or beach concessions operated or granted by the City, or newspaper stands, wherever such uses are otherwise permissible."

5-8 Division of Lot; Lot-Split.

- A. No lot, plot or parcel of land, whether improved or unimproved, designated by number, letter or other description in a plat of a subdivision, shall be further divided or split, for the purpose, whether immediate or future, or transfer of ownership or development, without prior review and approval by the Director of the Code Enforcement Department.

5-9 Relationship to the Comprehensive Plan.

- A. All regulations contained herein and the maps attached thereto shall be amended, supplemented or changed only in compliance with Chapter 163 of the Florida Statutes as pertains to comprehensive planning activities.

## SECTION 6

### SCHEDULE OF DISTRICT REGULATIONS

#### 6-1 RS-1, RS-2, RS-3, and RS-4 Single Family Residential Districts.

- A. DISTRICT PURPOSE. These Districts are designed to foster and protect Miami Beach's single-family residential neighborhoods. The four Districts vary only in minimum lot area and lot width requirements.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
1. Single-family detached dwelling.
  2. The following uses may be permitted as a conditional uses:
    - a. Recreational facilities such as playground, playfield, park, beach or golf course.
    - b. Municipal buildings and uses.
    - c. Temporary use for a period not to exceed 15 days.
  3. Accessory uses for above uses.
- C. MINIMUM LOT AREA.
1. RS-1 30,000 square feet.
  2. RS-2 18,000 square feet.
  3. RS-3 10,000 square feet.
  4. RS-4 6,000 square feet.
- D. MINIMUM LOT WIDTH.
1. RS-1 100 feet.
  2. RS-2 75 feet.
  3. RS-3 60 feet.
  4. RS-4 50 feet.
- E. MINIMUM YARDS.
1. Front: 20 feet.
  2. Side: The sum of the side yard width shall be at least 25% of the lot width but no side yard adjacent to a street shall be less than 15 ft. and no interior side yard shall be less than 7.5 ft. except that where an existing building has at least a minimum 5 ft. interior side yard setback be allowed to follow the existing building line for said building. The maintenance of the minimum required 5 ft. side yard setback shall apply to the linear extension of a single story building or the construction of a second floor addition to existing single family buildings.
  3. Rear: 15% of the lot depth, but not less than 20 feet.

F. MAXIMUM BUILDING HEIGHT: 30 feet.

G. MINIMUM FLOOR AREA: 1,800 square feet.

6-2 RM-14 Multiple-Family Low Density District.

A. DISTRICT PURPOSE: This is a low density, low rise, single and multiple family, permanent residence District.

B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:

1. Apartment building.
2. Group houses.
3. One- or two-family dwelling.
4. Townhome Residential Development pursuant to Section 26: Townhome Residential Development Regulations.
5. The following uses may be permitted as a conditional use:
  - a. Church, synagogue and temple.
  - b. Municipal buildings and uses.
  - c. Public and governmental buildings and uses.
  - d. Public utilities or public service uses, structures and appurtenances thereto.
  - e. Publicly owned and operated recreational facility, playground, playfield, park and beach.
  - f. School, elementary or high, having a curriculum substantially equivalent to public schools or comparable grades and having approval of the State Department of Education.
  - g. Temporary use for a period not to exceed 15 days.
6. Accessory uses for above uses.

C. MINIMUM LOT AREA. 6,000 square feet.

D. MINIMUM LOT WIDTH. 50 feet.

E. MINIMUM YARDS. As provided in Section 8.

F. MAXIMUM DENSITY. 14 units per acre.

G. MAXIMUM BUILDING HEIGHT. 30 feet.

H. MINIMUM FLOOR AREA.

1. Single-family detached dwelling: 1,800 square feet.
2. Two-family dwelling and group house: 900 square feet per dwelling unit.
3. Apartment building: 750 square feet per dwelling.

6-3 RM-24 Multiple Family Medium Low Density District.

A. DISTRICT PURPOSE: This is a medium density low-rise, single and multi-family residential district primarily designed to encourage and enhance family residence. The district is intended to produce an environment of desirable character and result in a superior quality of housing, open space and parking areas,

B. USES PERMITTED: No land, water or structure may be used, in whole or in part, except for one or more of the following uses:

1. Apartment building.
2. Group houses.
3. One or two-family dwellings.
4. Townhome Residential Development pursuant to Section 26: Townhome Residential Development Regulations.
5. The following uses may be permitted as a conditional use:
  - a. Automobile parking lot, open, non-commercial.
  - b. Marine dockage.
  - c. Public and governmental buildings and uses.
  - d. Publicly owned and operated recreation facility, playground, playfield and park.
  - e. Public utilities or public service uses, structures and appurtenances.
  - f. Temporary use for a period not to exceed 15 days.
6. Accessory uses for the above uses.

C. MINIMUM LOT AREA: 6,000 square feet.

- D. MINIMUM LOT WIDTH: 60 feet.
- E. MINIMUM YARDS: As provided in Section: 8.
- F. MAXIMUM BUILDING HEIGHT: 30 feet.
- G. MINIMUM FLOOR AREA:
  - 1. Single family detached dwelling: 1,800 square feet.
  - 2. Two family dwelling and group house: 900 square feet per dwelling unit.
  - 3. Apartment building: 750 square feet per dwelling.
- H. MAXIMUM DENSITY: 24 units per acre.

6-4 PUD Planned Unit Development Residential District.

- A. DISTRICT PURPOSE. PUD District is intended for a transitional area where there is a need for allowing flexibility as to the arrangement of buildings and a need to regulate access and circulation in order to preserve the character and natural habitat of an existing neighborhood. Large sites best lend themselves to this type of development and incentives have been provided to encourage assembly of properties. The proposed development must be designed to produce an environment of desirable character and in harmony with the particular area. The provisions herein are intended to result in a superior quality of housing and open space relationships, high standards for recreational areas, parking areas and service areas. The objectives can only be defined in general terms and their realization can be obtained only by review and approval of the development plans for each development in the PUD Residential District.
- B. USES PERMITTED.
  - 1. Single family detached dwelling.
  - 2. The following uses are subject to site plan approval:
    - a. Adult Congregate Living Facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Apartment building.
    - c. Automobile parking lot, open, or enclosed, non-commercial - provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - d. Churches, synagogues and temples.

- e. Group house.
  - f. Municipal buildings and uses.
  - g. Private club.
  - h. Two family dwelling.
  - i. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
  - j. Temporary use for a period not to exceed 15 days.
3. Accessory uses for above.
- C. MINIMUM LOT AREA.
- 1. PUD: 7,000 square feet.
- D. MINIMUM LOT WIDTH.
- 1. PUD: 50 feet.
- E. MINIMUM YARDS.
- 1. PUD: Front, side and rear yard minimums shall be determined according to specific site plans but shall not be less than those specified for MF-10 unless approved otherwise.
- F. MAXIMUM HEIGHT. None.
- G. MINIMUM FLOOR AREA.
- 1. Single Family detached dwelling: 800 square feet per dwelling unit.
  - 2. Two family dwelling and group house: 800 square feet per dwelling unit.
  - 3. Apartment building: 800 square feet per unit.
  - 4. Adult congregate living facility: 200 square feet per unit.
- H. MAXIMUM FLOOR AREA RATIO. 2.0
- I. MAXIMUM LOT COVERAGE.
- 1. PUD: 50%.

J. MAXIMUM DENSITY.

1. PUD: Density is determined by size of the site as specified below:

LOT AREA	7,500	15,000	22,500	30,000/Over
UNIT/ACRE	40	50	55	60

K. SITE PLAN APPROVAL.

1. When required a site plan shall be submitted, meeting the requirements of Section 14, and other information as may be required by the specific project.
2. Procedures: Approval of site plan shall be in accordance with Section 7-1, D, as applied to conditional uses.

6-5 RM-60 Multiple Family Medium Density District.

- A. DISTRICT PURPOSE. This is primarily a residential apartment district, which is not intended to provide tourist lodging accommodations.

- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:

1. Apartment building.
2. Group houses.
3. One- or two-family dwelling.
4. Rooming house.
5. Community garage.
6. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
7. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open, or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Camp, day or boarding.



- d. Church, synagogue and temple.
  - e. College, junior college, or institution of higher learning.
  - f. Day nursery.
  - g. Institution, educational or philanthropic, including museum and art gallery.
  - h. Marine dockage.
  - i. Municipal buildings and uses.
  - j. Private club.
  - k. Public and governmental buildings and uses.
  - l. Publicly owned and operated recreation facility, playground, playfield, park and beach.
  - m. Public utilities or public service uses, structures and appurtenances.
  - n. School, elementary or high, having a curriculum substantially equivalent to public schools of comparable grades and having approval of the State Department of Education.
  - o. Storage parking lots.
  - p. Temporary use for a period not to exceed 15 days.
8. Accessory use for above uses.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER UNIT.
- 1. Multiple family buildings other than adult congregate living facilities:
    - a. Dwelling Unit - Shall have a minimum of 400 square feet.
    - b. Sleeping Unit - Shall have a minimum of 400 square feet.
  - 2. Adult congregate living facility: 200 square feet per unit.

H. MAXIMUM FLOOR AREA RATIO.

1. 1.52 for sites comprised of one platted lot.
2. 2.00 for sites comprising two or more platted lots.

I. MAXIMUM DENSITY. 60 units per acre.

6-6 RM-100 Multiple Family Medium High Density District.

A. DISTRICT PURPOSE. This is a hotel and apartment district, which accommodates both long term residents and tourists.

B. USES PERMITTED. No land, water or structure may be used in whole or in part, except for one or more of the following permitted uses:

1. Apartment building and apartment hotel.
2. Group houses.
3. Hotel, motel and tourist residence.
4. One- or two-family dwelling.
5. Community garage.
6. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Bus terminal
  - d. Camp, day or boarding.
  - e. Church, synagogue and temple.
  - f. College, junior college, or institution of higher learning.
  - g. Day nursery.
  - h. Institution, educational or philanthropic, including museum and art gallery.

- i. Marina.
  - j. Marine dockage.
  - k. Municipal buildings and uses.
  - l. Private club.
  - m. Public and governmental buildings and uses.
  - n. Publicly owned and operated recreation facility, playground, playfield, park and beach.
  - o. Public utilities or public service uses, structures and appurtenances.
  - p. School, elementary or high, having a curriculum substantially equivalent to public schools of comparable grades and having approval of the State Department of Education.
  - q. Temporary use for a period not to exceed 15 days.
7. Accessory use for above uses.
- a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA
- 1. Multiple family buildings other than adult congregate living facilities:
    - a. Dwelling Unit - Shall have a minimum of 400 square feet.
    - b. Sleeping Unit - Shall have a minimum of 400 square feet.
  - 2. Adult congregate living facility: 200 square feet per unit.
- H. MAXIMUM FLOOR AREA RATIO. 3.0
- I. MAXIMUM DENSITY. 100 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

6-7 RM-125 Multiple Family High Density District.

- A. DISTRICT PURPOSE. This is a high-rise, high density tourist lodging and entertainment district.
- B. USES PERMITTED. No land, water or structure may be used in whole or in part, except for one or more of the following permitted uses:
1. Apartment building and apartment hotel.
  2. Group houses.
  3. Hotel, motel and tourist residence.
  4. One or two-family dwelling.
  5. Community garage.
  6. Night club, without exterior entrances or exits, accessory to a hotel or motel containing 100, or more, sleeping units.
  7. Restaurant, with or without an accessory bar, but not a drive-in restaurant, without exterior entrances or exits, the accessory to a hotel or motel containing 100, or more, sleeping units.
  8. The following uses may be permitted as a conditional use:
    - a. Adult congregate living facility subject to the following mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - c. Bus terminal.
    - d. Camp, day or boarding.
    - e. Church, synagogue and temple.
    - f. College, junior college, or institution of higher learning.
    - g. Day nursery.
    - h. Institution, educational or philanthropic, including museum and art gallery.
    - i. Marina.

- j. Marine dockage.
  - k. Municipal buildings and uses.
  - l. Private club.
  - m. Public and governmental buildings and uses.
  - n. Publicly owned and operated recreation facility, playground, playfield, park and beach.
  - o. Public utilities or public service uses, structures and appurtenances.
  - p. Storage parking lots.
  - q. Temporary use for a period not to exceed 15 days.
9. Accessory use for above uses.
- a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA
- 1. Multiple family buildings other than adult congregate living facilities:
    - a. Dwelling Unit - Shall have a minimum of 400 square feet.
    - b. Sleeping Unit - Shall have a minimum of 400 square feet.
  - 2. Adult congregate living facilities: 200 square feet per unit.
- H. MAXIMUM FLOOR AREA RATIO. 6.0.
- I. MAXIMUM DENSITY. 125 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

6-8 C-1 Neighborhood Business District.

- A. DISTRICT PURPOSE. This is a retail sales, personal services, and related convenience shopping district, designed to provide convenient shopping facilities to surrounding residential neighborhoods.

B. USES PERMITTED. No land, water or structure may be used in whole or in part, except for one or more of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.

1. Any use permitted in RM-60 Multiple Family District except those uses listed as Conditional Uses.
2. Automobile parking lot, open or enclosed, commercial or non-commercial.
3. Automatic ice distribution station or other drive-in automatic vending machine station. Groups of vending machines shall be contained in a completely enclosed building.
4. Retail bakery with sale of bakery products only and no baking on the premises.
5. Banks, savings and loan associations.
6. Bar.
7. Bicycle store, rental or sales, and bicycle repair shop.
8. Drug Store
9. Garden shop, florist shop, greenhouse, nursery and landscape office.
10. Grocery Store
11. Office, professional or business.
12. Personal service uses, conducted entirely within completely enclosed buildings. Such uses include barber shops, beauty parlors, photographic or artists studios, photographic developing or printing establishment, picture framing shop, shoe repair shop, tailor shop, travel bureau, ticket office, messenger service, taxicab office, newsstand, telephone exchange or telegraphic service stations, dry cleaning or laundry receiving stations, hat cleaning and blocking, self-service or coin operated laundry or dry cleaning establishment and other personal services uses of similar character.
13. Post office.
14. Private club, lodge, fraternity, sorority, meeting hall, and other private meeting places not operated for profit.
15. Repair or rental of household appliances, tools, bicycles, and items of a similar character, provided all activities, including storage and display, are conducted entirely within completely enclosed building.
16. Restaurant with or without outdoor table service but not a drive-in restaurant.

17. Retail stores, provided that all activities, including sale, storage and display, are conducted entirely within completely enclosed building.
18. Theatres.
19. Tutorial Center.
20. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Churches, synagogues and temple.
  - d. Day nursery.
  - e. Filling station, but with no lighting fixture or illuminated sign extending to a height greater than 15 feet.
  - f. Municipal buildings and uses.
  - g. Undertaking establishment or funeral home.
  - h. Temporary use for a period not to exceed 15 days.
21. Accessory uses for above uses.

C. MINIMUM LOT AREA.

1. Non-residential use: None.
2. Residential use: 5,500 square feet.

D. MINIMUM LOT WIDTH.

1. Non-residential use: None.
2. Residential use: 50 feet.

E. MINIMUM YARDS.

1. Residential use: As provided in Section 8.
2. Non-residential use:

- a. Front: None.
- b. Side: 10 feet when abutting a residential district; otherwise none.
- c. Rear: 20 feet when abutting a residential district; otherwise none.

F. MAXIMUM BUILDING HEIGHT. 40 feet.

G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None
- 2. Multiple Family buildings.
  - a. Dwelling Unit - Shall have a minimum of 400 square feet.
  - b. Sleeping Unit - Shall have a minimum of 400 square feet.

H. MAXIMUM FLOOR AREA RATIO. 2.0.

I. MAXIMUM DENSITY

- 1. Non-residential use: None.
- 2. Residential Use: 60 units per acre.

#### 6-9 C-2 General Office District.

A. DISTRICT PURPOSE. This district provides for supporting commercial activities, serves as a transitional area between general and residential districts, and is located generally adjacent to the central business district. It houses those offices and related facilities which serve the entire city.

B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.

- 1. Any use permitted in the RM-100 Multiple Family District; and in the C-1 Neighborhood Business District except the following:
  - a. Those uses listed as conditional uses in each of these districts.
  - b. Automatic ice distribution station or other drive-in automatic vending station.
  - c. Bicycle store, rental or sales, and bicycle repair shop.
- 2. Clinic.
- 3. Health or athletic club or studio, bath or massage parlor.



4. The following uses may be permitted as a conditional use:
    - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Municipal buildings and uses.
    - c. Private club.
    - d. Temporary use for a period not to exceed 15 days.
  5. Accessory uses for the above uses.
- C. MINIMUM LOT AREA. 6,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS
1. Non-residential use:
    - a. Front: 10 feet, but no point on a building shall be closer than one-half the height of the point above grade.
    - b. Side: 10% of the width of the lot or 10% of the height of the building whichever is greater, but no side yard adjacent to a street shall be less than 10 feet, and no point on the building shall be closer to the centerline of a side street than one-half the height of the point above grade.
    - c. Rear: 10 feet or 10% of the building height, whichever is greater.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA.
1. Non-residential use: None.
  2. Multiple Family buildings.
    - a. Dwelling Unit - Shall have a minimum of 400 square feet.
    - b. Sleeping Unit - Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 4, plus 0.5 for each 10 feet of front yard depth in excess of the minimum requirement.
- I. MAXIMUM DENSITY.

1. Non-residential use: None.
2. Residential use: 100 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

6-10 C-3 Central Business District.

- A. DISTRICT PURPOSE. This district is designed to accommodate a highly concentrated pedestrian oriented business core, in which businesses serving all residents and visitors of the City are located.
- B. USES PERMITTED. No land, water or structure may be used in whole or in part except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  1. Any residential use in RM-125 Multiple Family District.
  2. Antique stores.
  3. Appliance stores.
  4. Art Goods stores.
  5. Artists studios.
  6. Bakeries, baking not permitted on premises.
  7. Banks, including savings and loan associations.
  8. Barber shops.
  9. Beauty parlors.
  10. Bicycle stores.
  11. Book stores.
  12. Clothing and costume stores, selling new merchandise or rentals.
  13. Club, private.
  14. Confectionary or ice cream stores.
  15. Dental office.
  16. Drug stores selling pharmaceutical and medical supplies.
  17. Electronic stores.
  18. Florist shops.

19. Fruit shippers.
20. Gift shops.
21. Greeting card stores.
22. Interior design shops, office and display only.
23. Jewelry stores selling new or previously owned merchandise.
24. Leather goods and luggage shops.
25. Linen shops.
26. Medical offices.
27. Messenger service.
28. Music stores.
29. Newsstands.
30. Nite clubs.
31. Optical stores
32. Photography stores and studios.
33. Picture framing shops.
34. Pottery shops
35. Printing and developing establishments.
36. Professional offices.
37. Radio or television broadcasting station, studio, and office, but not sending or receiving towers.
38. Restaurants in which the roofed-in floor area of the room or portion of the building wherein food is served to guests is not less than 400 square feet with not less than 75 percent of the total of such roofed-in floor area being utilized for the seating of guests at tables or booths. The ratio of the number of seats at tables and booths to the number of seats at counters shall be not less than three to one, and the total number of seats shall not exceed the ratio of ten (10) square feet of such roofed-in area to one guest. Toilet facilities shall be so arranged as to provide the public direct accessibility thereto from within such roofed-in floor area, provided however, that the foregoing requirements shall not be applicable if the preparation and serving of food or beverages is a customary incident to the uses or businesses permitted in or by this section. Such restaurants and cafes having sidewalk cafes may also sell finished pastry products such as donuts, danishes, and coffee on a carry out basis.

39. Shoe stores.
40. Sporting goods stores.
41. Tailor shops.
42. Taxi-Cab offices
43. Telephone exchange or telegraph service station.
44. Theatre and cinema.
45. Ticket office.
46. Tobacco shop.
47. Travel bureau.
48. a. The following uses shall be permitted throughout the District with the exception of properties abutting Lincoln Road between Alton Road and the Atlantic Ocean where such uses shall only be located above the first floor level.
  1. Clubs, private.
  2. Dance or music school, modeling school, or athletic instruction.
  3. Health studio or club, reducing salon, and massage parlor.
  4. Hotel, apartment, apartment hotel. Entrances and lobbies shall be permitted on the first floor level provided that commercial uses front on Lincoln Road. Access to the lobby shall be permitted from Lincoln Road.
  5. Medical or dental clinic.
  6. Offices, business and professional.
- b. The following uses shall not be permitted on properties fronting on Lincoln Road from Alton Road to the Atlantic Ocean.
  1. Religious institutions.
  2. Stores selling staple foodstuffs, household supplies, meats, produce, and dairy products.
  3. Stores in which the principal products sold or exhibited include surgical supplies, hospital supplies, medical devices, prosthetic or orthopedic devices.

The following uses may be permitted as a conditional use:

- a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
- b. Personal service uses such as postal station, theatre ticket outlet, artists studios, book stores, music stores, florists, gift shops, greeting card store, fruit shippers selling prepackaged gift boxes and newsstands when associated with an existing store on Lincoln Road Mall may be located in the public right-of-way within a distance not to exceed 400 feet from such store for the sale of goods and services customarily associated with an existing permitted store. Such uses shall be subject to review and approval by the Planning Board. Such uses will not constitute or create unreasonable obstructions to the prior and paramount right of the public for passage upon public ways.

A suitable and appropriate plan or sketch showing the location of the proposed use in relationship to the main use required, hereby, shall be submitted to the Planning Board for approval prior to the issuance of any revocable permit granted by the City Commission. In instances where the location of said personal service use extends into the right-of-way of another property owner, the owner of the proposed use shall be responsible for securing a lease agreement with the affected property owner prior to the execution of a revocable permit by the City Commission.

- c. Public and governmental buildings and uses.
- d. Publicly owned and operated recreational facility, playground, playfield, park and beach.
- e. Public utilities or public service uses, structures and appurtenances.
- f. Sidewalk cafes, when associated with an existing restaurant on Lincoln Road Mall, may be located in the public right-of-way within a distance not to exceed 400 feet from such restaurant subject to prior findings and determinations by the Planning Board that such permitted sidewalk cafes will not constitute or create unreasonable obstructions to the prior and paramount right of the public for passage upon the public way.

A suitable and appropriate plan or sketch showing the proposed location of said sidewalk cafe in relationship to the main restaurant or cafe required hereby, and the proposed seating arrangement to be utilized by said sidewalk cafe shall be submitted to the Planning Board and the City Commission for approval prior to the issuance of any revocable permit for such sidewalk cafe. In instances where the location of said sidewalk cafe extends into the right-of-way of another property owner, the owner of the proposed use shall be responsible for securing a lease agreement with the affected property

owner prior to the execution of a revocable permit by the City Commission.

- g. Uses not listed above which are similar in character to one or more permitted uses, and which would not be inappropriate in this District.
- h. Temporary use for a period not to exceed 15 days.

50. Accessory uses for above uses.

C. MINIMUM LOT AREA.

- 1. Non-residential use: None.
- 2. Residential use: 7,500 square feet.

D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None.
- 2. Residential use: 50 feet.

E. MINIMUM YARDS.

- 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
- 2. Residential Use: As provided in Section 8.

F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 2. Multiple Family Buildings.
  - a. Dwelling Unit - Shall have a minimum of 400 square feet.
  - b. Sleeping Unit - Shall have a minimum of 400 square feet.

H. MAXIMUM FLOOR AREA RATIO. 10.0 plus 2.0 for every 10% of lot area developed and maintained as permanent open space at grade.

I. MAXIMUM DENSITY.

- 1. Non-residential use: None.
- 2. Residential use: 125 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

6-11 C-4 Business District.

- A. DISTRICT PURPOSE. This district is designed to accommodate a highly concentrated business core, in which businesses serving all residents and visitors of the City are located.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
1. Any use permitted in C-1, C-2, or C-3 except those uses listed as Conditional Uses.
  2. Cabaret.
  3. Night club.
  4. Retail meat and fish market provided that such use shall not occupy more than 2,500 square feet of floor area per establishment and no noxious odors shall be produced by improper storage and handling of refuse.
  5. The following may be permitted as a conditional use.
    - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Aquarium, commercial.
    - c. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - d. Beaches, commercial.
    - e. Bus terminals.
    - f. Churches, synagogue and temple.
    - g. Colleges, junior colleges, or institutions of higher learning.
    - h. Filling station.
    - i. Institution, educational or philanthropic, including museum and art gallery.
    - j. Marina.

- k. Municipal buildings and uses.
  - l. Private club.
  - m. Storage parking lots.
  - n. Uses not listed above which are similar in character to one or more permitted uses, and which would not be inappropriate in this District.
  - o. Temporary use for a period not to exceed 15 days.
- 6. Accessory uses for above uses.
  - a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA.
  - 1. Non-residential use: None.
  - 2. Residential use: 7,500 square feet.
- D. MINIMUM LOT WIDTH.
  - 1. Non-residential use: None.
  - 2. Residential use: 50 feet.
- E. MINIMUM YARDS.
  - 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
  - 2. Residential use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA.
  - 1. Non-residential use: None.
  - 2. Multiple Family Buildings.
    - a. Dwelling Unit - Shall have a minimum of 400 square feet.
    - b. Sleeping Unit - Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 10.0, plus 2.0 for every 10% of lot area developed and maintained as permanent open-space at grade.



I. DENSITY.

1. Non-residential use: None.
2. Residential use: 125 units per acre. All hotels and motels shall be permitted to increase their density by 40%.

6-12 C-5 General Business District.

A. DISTRICT PURPOSE. This is a mixed use district which permits high density residential, retail, and light and heavy service commercial development.

B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.

1. Any use permitted in C-4 except those uses listed as Conditional Uses.
2. Amusement enterprise, including a billard, pool or table tennis hall, games of skill, shooting gallery and the like if conducted wholly within a completely enclosed building.
3. Auction parlor.
4. Automobile accessories, new parts and equipment store, including new tires and sale of trade-in tires.
5. Automobile, truck sales or rentals, new, open or enclosed. All servicing or repairs shall be conducted wholly within a completely enclosed building.
6. Boat sales, or rentals, new or used open or enclosed.
7. Bowling alleys.
8. Grinding and sharpening shops.
9. Hospital or clinic for small animals, dogs, cats, birds, and the like, provided that such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable noise or odors outside its walls.
10. Laboratories, research and experimental, but not for testing internal combustion engines.
11. Mirror silvering or glass cutting or installation shops.
12. Moving or storage offices with or without storage warehouses.
13. Musical instrument sales and repair shops.

14. Printing, publishing, and engraving establishments, including blueprinting and photostating, provided that no use permitted in this item shall occupy more than 2,500 square feet of floor area.
15. Public dance halls.
16. Rental businesses.
17. Schools, commercial instructions of all kinds.
18. Sign painting and fabricating shops and venetian blind, window shade, or awning shops, custom, including repairs, limited to 2,500 square feet of floor area per establishment.
19. Skating rinks, swimming pools.
20. Storage garages, automobile and truck storage within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.
21. Trade expositions or convention halls with capacity in each case limited to 2,500 persons.
22. Retail meat and fish market.
23. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Bus terminals.
  - d. Churches, synagogues and temples.
  - e. Colleges, junior colleges, or institutions of higher learning.
  - f. Filling stations.
  - g. Institution, educational or philanthropic, including museum and art gallery.
  - h. Municipal buildings and uses.

- i. Private club.
  - j. Storage parking lots.
  - k. Undertaking establishment or funeral home.
  - l. Temporary use for a period not to exceed 15 days.
24. Accessory uses for above uses.
- a. Any accessory in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.

C. MINIMUM LOT AREA.

- 1. Non-residential use: None.
- 2. Residential use: 5,500 square feet.

D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None
- 2. Residential use: 50 feet.

E. MINIMUM YARD.

- 1. Non-residential use: 10 feet when adjacent to any residential district; otherwise none.
- 2. Residential use: As provided in Section 8.

F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 2. Multiple family Buildings.
  - a. Dwelling Unit - Shall have a minimum of 400 square feet.
  - b. Sleeping Unit - Shall have a minimum of 400 square feet.

H. MAXIMUM FLOOR AREA RATIO. 3.0.

I. MAXIMUM DENSITY.

1. Non-residential use: None.
2. Residential use: 100 units per acre.

6-13 C-6 Intensive Commercial District.

A. DISTRICT PURPOSE. This is a utilitarian district characterized by sales, storage, repair, processing, wholesaling and trucking activities and shall not include any residential uses.

B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.

1. Any non-residential use permitted in C-5 District except those uses listed as Conditional Uses.
2. Bakery.
3. Blacksmith, gas, steam fitting shop.
4. Boat or yacht storage and repair.
5. Building material storage yard.
6. Cabinet making, carpentry.
7. Contractors plant and storage yard, providing the area used is enclosed by a building or by a masonry wall not less than 6 feet in height.
8. Dry cleaning plant and dyeing establishment.
9. Garage for mechanical service provided work area is enclosed by a wall or fence not less than 6 feet in height. Such wall or fence shall be constructed of opaque material and shall totally screen work area from public view.
10. Laundry, including self-service laundry.
11. Machine shop.
12. Meat marketing, including fish and live poultry market.
13. Metal working shop.
14. Motion picture studio.
15. Painting and decorating shop.

16. Printing and publishing.
17. Roofer, plasterer, plumber or tinsmith.
18. Wholesale salesroom and storage room.
19. Any light manufacturing or processing use which creates no danger to health and safety in surrounding areas and no offensive noise, vibration, smoke, dust, lint, odor, heat or glare in excess of the Performance Standards set forth in Section 7 of this Ordinance.
20. The following uses may be permitted as a conditional use:
  - a. Aquarium, commercial.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Bus terminals.
  - d. Filling station.
  - e. Institution, educational or philanthropic, including museum and art gallery.
  - f. Municipal buildings and uses.
  - g. Private club.
  - h. Storage parking lots.
  - i. Uses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district.
  - j. Temporary use for a period not to exceed 15 days.

21. Accessory uses for above uses.

- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. 20 feet when adjacent to any residential district; otherwise none.
- F. MAXIMUM BUILDING HEIGHT. 40 feet.
- G. MINIMUM FLOOR AREA. None.

11. MAXIMUM FLOOR AREA RATIO. 1.0.

6-14 RH Hospital District.

- A. DISTRICT PURPOSE. This district is designed to accommodate hospital facilities.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
1. Hospital
  2. Accessory hospital facilities, consisting of laundry, centralized services, educational and research facilities, recreational facilities, staff offices, parking structures and lots. All structures and parking facilities must be subordinate to the main use and must be an integral part of hospital operations.

C. MINIMUM YARDS

<u>HOSPITAL</u>	<u>Front</u>	<u>Rear</u>	<u>Side</u>
St. Francis	25'	40'	15'
Mt. Sinai	25'	40'	15'
South Shore	20'	20'	15'
Heart Institute	20'	20'	15'
Island View	20'	20'	15'

The enlargement of existing RH Hospital Districts and the establishment of the new RH Hospital Districts with their respective yard setbacks shall be subject to City Commission approval.

6-15 MR Marine Recreation District.

- A. DISTRICT PURPOSE. This is a waterfront district designed to accommodate recreational boating activities and services.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
1. Marina.
  2. Boat docks, slips, piers, wharves, anchorages, and moorages for yachts and pleasure boats or for boats for hire carrying passengers on excursion, sightseeing, pleasure or fishing trips.
  3. Yacht clubs.

4. Boat rentals, boat livery, and boats for hire.
  5. Boat storage, including the incidental repair or painting of stored boats, restricted to boats 40 feet or less in length.
  6. Boat and marine motor services and minor repair while boats are in the water, restricted to boats 65 feet or less in length.
  7. Boat and marine engine sales and display, yacht broker, marine and insurance broker.
  8. Boat fuel sales for pleasure boats, with above-ground storage limited to 2,000 gallons.
  9. Retail sale or rental of boating, fishing, diving, and bathing supplies and equipment.
  10. Piers for fishing.
  11. Aquarium.
  12. Restaurants, outdoor cafes, refreshment stands, bars, or cabarets, but not drive-in restaurants.
  13. The following uses may be permitted as a conditional use:
    - a. Municipal buildings and uses.
    - b. Uses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district.
    - c. Temporary use for a period not to exceed 15 days.
  14. Accessory uses for the above uses.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. 20 feet when adjacent to any residential district; otherwise none.
- F. MAXIMUM BUILDING HEIGHT. 30 feet.
- G. MINIMUM FLOOR AREA. None.
- H. MAXIMUM FLOOR AREA RATIO. None.
- I. MAXIMUM LOT COVERAGE. 30% of the lot may be covered by structures.

6-16 MU Municipal Use District.

- A. DISTRICT PURPOSE. Upon ownership of any property by the City, said property shall automatically convert to an MU Municipal Use District.
- B. USES PERMITTED. The specific use shall be determined in accordance with the City's Comprehensive Plan and under the regulations set forth for Conditional Uses. No land, water, air or structure may be used in whole or in part, except for one or more of the following uses but not limited to permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
1. Publicly owned and operated recreational facility, playground, playfield, park and beach.
  2. Public and governmental buildings, services and uses such as governmental office, police headquarter, fire station, library, museum, auditorium.
  3. Municipal parking areas, parking structure, vehicle and equipment storage, maintenance and service areas.
  4. Public utilities or public service structures or appurtenances.
  5. Any use similar to those listed above and in accordance with the Comprehensive Plan for the specific area under consideration.
  6. Accessory uses for the above uses.
    - a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. Shall be determined by the adjacent Use District or Districts and consistent with Yard regulations of similar uses as designated in this Ordinance.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA. None.
- H. MAXIMUM FLOOR AREA RATIO. Shall be determined by the adjacent Use District or Districts and consistent with Floor Area Ratios of similar uses as designated in this Ordinance.
- I. MAXIMUM DENSITY. Applies only to residential uses and shall be determined by the adjacent use district or districts and consistent with maximum densities of similar uses as designated in this Ordinance.



6-17 HM Hotel-Motel District.

- A. DISTRICT PURPOSE. This district is designed to accommodate hotel and motel facilities.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
1. Hotels.
  2. Motels and Motor Lodges.
  3. Hotels containing 100 or more sleeping units may have the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building. Such service facilities shall not have exterior entrances or exits in accordance with the regulations contained in this Section.
  4. Coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries.
  5. Accessory off-street parking and loading spaces.
  6. Night club, with exterior entrances or exits, accessory to a hotel or motel containing 100 or more sleeping units.
  7. Restaurant, with or without an accessory bar, but not a drive-in restaurant, without exterior entrances or exits, accessory to a hotel or motel containing 100 or more sleeping units.
  8. The following uses may be permitted as an accessory use:
    - a. Uses enumerated under Section 7-3, Accessory Uses.
- C. MINIMUM LOT AREA. 10,000 square feet.
- D. MINIMUM LOT WIDTH. 100 feet.
- E. MINIMUM YARD. As set forth in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER UNIT. 200 square feet.

H. MAXIMUM FLOOR AREA RATIO. 6.0.

I. MAXIMUM DENSITY. 220 units per acre.

6-13 CCC Convention Center District.

A. DISTRICT PURPOSE. The general goals of this district include the following specific purposes:

1. to create a special district characterized by the facilities necessary to maintain the City's international reputation as a tourist and convention center;
2. to provide adequate support facilities for convention, cultural and civic activities on or over City-owned property within the District, as defined in this Ordinance, thereby enhancing and supporting the economic growth of the community; and
3. to promote the unique character of the district through environmental design and selected land uses in a harmonious and compatible manner so as to establish a connector to Lincoln Road Mall.

B. USES PERMITTED. No land, water, air or structure may be used in whole or in part, except for one of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.

1. Publicly owned and operated recreation facility or park.
2. Public and governmental buildings, services and uses such as governmental office, fire station, library, museum, auditorium, garden center.
3. Municipal parking areas, parking structures, vehicle and equipment storage, maintenance and service areas.
4. Public utilities or public service structures or appurtenances.
5. Hotels and the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, night clubs, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building; also such coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries. Such service facilities shall have entrances only from (1) the hotel lobby, or (2) the elevated pedestrian walkway system.
6. Merchandise Mart (National and International) and other exhibition/display facilities for non-retail purposes.
7. Retail Commercial and office development compatible and consistent with

the purpose set forth in Item A. Such uses shall be subject to the requirements and limitations described in the Request for Proposal issued by the City for each specific site within this District.

8. Accessory off-street parking, with or without valet service, and loading spaces.
  9. Other uses compatible and consistent with the purposes set forth in Item A, provided such uses shall be subject to the requirements and limitations described in the Request for Proposal issued by the City for each specific site within this District.
  10. Any use similar to those listed above and in accordance with the Development Plan for the specific area under consideration.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. As defined in the Request for Proposal issued by the City for each specific use or development.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER HOTEL GUEST ROOM. As defined in the Request for Proposal issued by the City for each specific use or development.
- H. MAXIMUM FLOOR AREA RATIO. None.
- I. MAXIMUM DENSITY.
1. Maximum number of hotel guest rooms in this district shall not exceed 3000.
  2. Minimum number of guest hotel rooms per hotel will be 500.
  3. Maximum allowable gross area of retail commercial and/or office space shall be as defined in Request for Proposal issued by the City for each specific use and development.
- J. PARKING. The determination of the required parking shall be by the Planning Department based upon the following criteria:
1. The amount of available parking within the Convention Center District at the time the Request for Proposal is issued by the City;
  2. The specific requirements of existing and proposed uses in the Convention Center District based upon the availability of parking facilities to meet the needs of such uses when these uses customarily require parking. The intent being, for purposes of determining the amount of required parking spaces, to allow any parking space to be counted more than once as a required space for more than one use.

3. Uses - One space for each two hotel rooms or fraction thereof; all of which are to be integral with the hotel itself. Required parking for hotel accessory uses, other permitted uses and their accessory uses shall be in accordance with criteria set forth in this Section;
  4. For purposes of achieving the goals of this Section, all of the existing parking spaces within the District at the time this Section is adopted by the City Commission, are to be considered as provided spaces and not required spaces for any existing use in this District;
  5. Parking requirements listed in Section 9 of the Ordinance are to be considered as guidelines in determining the required parking in accordance with criteria set forth in this Section; and,
  6. Required parking spaces may be provided within public facilities which are located in this District by means of lease arrangements with the City or as described in the Request for Proposal issued by the City.
- K. COMPREHENSIVE REVIEW PROCESS. Once a developer has been selected to develop a given site, such developer's proposals for development within the special CCC District shall be approved by the following: (1) City Administration; (2) Planning Board; and (3) City Commission. Such approvals shall be based on the following criteria:
1. Consistency and compatibility with the overall Development Plan for the Civic Convention Center.
  2. Request for Proposal issued by the City for each specific use or development.
  3. Overall compatibility with the surrounding districts.
    - a. Documents required:

The applicant shall be required to submit adequate design and development documents so as to fully describe the scope and extent of the proposed project, including those items listed in Section 14-3 of this Ordinance, and any other information which may be specifically requested during the review process.
    - b. Procedures:

An applicant shall file his application and all supportive documents, in duplicate, with the Department of Planning which will forward one copy to the Department of Public Works and copies to all Departments participating in the review process. To facilitate such process the applicant shall submit 12 copies of his application. Written comments and recommendations shall be provided by all appropriate departments and forwarded to the City Manager who

shall prepare a final Administrative recommendation which is to be completed within forty-five (45) days after the original receipt of the application by the Planning Department.

The application and Administrative recommendations shall then be submitted to the Planning Board at an advertised public hearing for its review and advisory recommendations.

The recommendations from both the Administration and the Planning Board shall then be forwarded to the City Commission which shall hold a public hearing to consider the application and may thereafter grant or deny by majority vote the application for the proposed development.

6-19 MD-I Marine District.

- A. DISTRICT PURPOSE. This district is designed to permit the non-commercial dockage of pleasure craft; live aboards shall not be permitted.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses:
  - 1. The non-commercial, wet dockage of pleasure craft.
- C. MINIMUM YARDS.
  - 1. Front: 7½ feet.
  - 2. Side: 7½ feet or 10% of the lot frontage whichever is greater. The side yard requirements shall be deemed to extend to the water side development as well as the land side. No use other than open space shall be permitted in side yards in this District.
- D. MAXIMUM STRUCTURE HEIGHT. Structures shall not exceed 10 ft. above the sidewalk elevation.
- E. MINIMUM LOT WIDTH. 40 feet.
- F. DENSITY. 0 units per acre.
- G. LANDSCAPE CRITERIA. A minimum of 85% of the lot area of any lot in this District shall be landscaped with plant materials or decorative paving surfaces. The Board of Adjustment shall have authority to grant variance from this provision in the same manner as other variances are granted.

6-20 MD-II Marine District.

- A. DISTRICT PURPOSE. This district is designed to accommodate wet dockage of pleasure craft, and commercial vessels strictly limited to the following: fishing boats, tour boats, sail boat charters and sport boat charters, subject to the strict compliance with conditions set below.

B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses:

1. Wet dockage of pleasure craft, not including house boats or house barges. Live aboards shall be limited as provided in subparagraph 2 (a) below.

2. Wet dockage of the following commercial vessels only: fishing boats, tour boats, charter sail boats, and charter sport boats, subject to the restrictions below. The following restrictions shall apply to the dockage of pleasure craft and commercial vessels in this district.

a. Live aboards on pleasure craft or permitted commercial vessels shall be limited to no more than one person serving as caretaker or crew of a pleasure craft, or permitted commercial vessel, provided that said person must maintain a residence at some place other than the pleasure craft or permitted commercial vessels of which he is either caretaker or crew; and further provided that in the case of any pleasure craft, or permitted commercial vessel, docked principally in Miami Beach for a period in excess of twenty-one (21) days in any calendar year, the owner of the vessel and such caretaker or crewman shall be required to register with the City and provide such documentation as shall establish to the satisfaction of the City that said person meets all the requirements of this provision.

b. The dockage of permitted commercial vessels shall be allowed solely as a subordinate use to a hotel facility having an excess of two hundred and fifty (250) sleeping units and which hotel facility is located adjacent to the dockage use or which is separated by a public way from such dockage use but is not more than one hundred and fifty (150) feet from such dockage site.

c. No signage advertising the existence or availability of any permitted commercial vessel shall be allowed except within the interior of the hotel structure which is the main use to which such permitted commercial vessel dockage is a subordinate use. Provided however that a permitted commercial vessel may have more than one sign, the appearance which is of professional quality, located on the vessel, visible to the public, and which conforms to the following criteria:

1. the signage shall be of no more than two colors on a neutral background;

2. the maximum length of permitted signage shall not exceed the lesser of 6 feet or 10% of the length of the vessel, measured at the mean waterline of said vessel;

3. the maximum height of permitted signage shall not exceed the lesser of 2½ feet or 10% of the length of the vessel, measured at the mean waterline of said vessel.

d. The cleaning, processing, storage, or selling of fish, fish products or other sea foods is specifically prohibited within this District.

C. MINIMUM YARDS.

1. Front: 20 feet.
2. Side: Minimum of 10 feet or 10% of the lot frontage whichever is greater. The side yard shall be deemed to extend to the water side development as well as the land side. No use other than open space shall be permitted in side yards in this District.

D. EXISTING HOUSEBOAT DOCKAGE.

Houseboat dockage existing on June 28, 1978, within the area described in Paragraph E of this Ordinance may be continued for a period of not more than three and one-half years from the date this ordinance takes effect; subject to the following conditions:

1. Houseboat dockage is permitted solely for houseboats or housebarges docked within the area described in Paragraph E of this Ordinance on June 28, 1978, and which houseboats or housebarges remain continuously docked within that area thereafter;
2. The houseboat or housebarge complies with all requirements for the control of water pollution imposed by federal, state and local law.

E. That portion of land lying along the eastern bank of Indian Creek Waterway between the southerly line of 55th Street extended and the northerly line of 41st Street and on the east by the westerly line of Collins Avenue by and the same is hereby rezoned from its present use classification of RS-4 to the classification of MD-II.

F. That portion of land lying along the eastern bank of Indian Creek Waterway and Lake Pancoast bounded on the north by the southerly line of 41st Street and on the south by the northerly line of 24th Street and on the east by the westerly line of Collins Avenue by and the same is hereby rezoned from its present classification of RS-4 to the classification of MD-I.

6-21 NH Nursing Home District

A. DISTRICT PURPOSE. This District is designed to accommodate facilities providing direct or supervised nursing care and rehabilitation services for the chronically ill, the physically disabled, and the aged who require services provided by medical professionals.

B. USES PERMITTED. No land, water, or structure may be used, in whole or in part, except for one or more of the following uses:

1. Nursing Homes provided, however, that a "Certificate of Need" has been issued by the State Department of Rehabilitative Services.

2. Accessory facilities necessary to the operation of a nursing home such as:
  - a. Chapel.
  - b. Dining Facilities including kitchens.
  - c. Laundry.
  - d. Offices for administrative personnel.
  - e. Recreation facilities and Employee Lounges.
  - f. Parking lots and structures.
- C. MINIMUM YARDS. Minimum yards shall be no less than the minimum required yards for the District in which the property was located immediately prior to the change of zoning to NH Nursing Home District.
- D. MINIMUM LOT AREA AND FRONTAGE. As provided in Section 16. Changes and Amendments. However, notwithstanding any other provision of this Zoning Ordinance, applications for Change of Zoning to a Nursing Home District shall contain an area of not less than 40,000 square feet.
- E. MINIMUM FLOOR AREA PER UNIT. No unit shall have less than 200 square feet, and, each unit accommodating more than 2 persons, shall contain 100 square feet of additional area for each person in excess of two.
- F. MAXIMUM DENSITY. The maximum density permitted shall be no greater than the permitted residential density for the District in which the property was located immediately prior to the change of zoning to NH Nursing Home district.
- G. MAXIMUM HEIGHT. The maximum building height for any Nursing Home shall not exceed four (4) stories or 45 feet.
- H. LOCATION. No application for a change of zoning to an NH Nursing Home District shall be considered for any property which is located within an RS-1, RS-2, RS-3 or RS-4 Single Family Residential District, C-6 Intensive Commercial District, MU Municipal Use District, as of the Effective Date of this Ordinance. In addition, no nursing home shall be located within 1,500 feet of another existing nursing home.



## SECTION 7

### SUPPLEMENTARY USE REGULATIONS

The regulations set forth in this Section qualify or supplement the District Regulations appearing elsewhere in this Ordinance.

#### 7-1 Conditional Uses.

- A. PURPOSE. The purpose of this Section is to establish a process which is designed to determine if certain uses, hereunder after referred to as Conditional Uses, should be permitted. Special review of Conditional Uses is required because these generally are of a public or semi-public character and are essential and desirable for the general convenience and welfare of the community; but because of the nature of the use and possible impact on neighboring properties, require the exercise of planning judgement on location and site plan.
- B. PROCEDURES Applications for approval of a conditional use shall be submitted to the Planning Department, who shall prepare a report and recommendation for consideration by Planning Board and City Commission. Within a reasonable time, but in no instance less than thirty (30) days after receipt of a complete application, the Planning Board shall hold a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Approximately fifteen (15) days prior to the public hearing date, a description of the request, the time and place of such hearing shall be posted on the property, advertised in a paper of general paid circulation in the community, and notice shall be given by mail to the owners of record of land lying within 375 feet of the property. Within thirty (30) days after the public hearing, the Planning Board shall submit a report and recommendations to the City Commission. The report may contain additional conditions which should be imposed by the City Commission in approving the conditional use. The City Commission may establish additional conditions for an approval by a simple majority vote, but shall require a vote of five-sevenths (5/7) of all members of the Commission to overrule a Planning Board recommendation for disapproval or to eliminate or substantially change any conditions attached to an approval by the Planning Board.
  1. Site Plan Required. Each application for approval of a conditional use shall be accompanied by a site plan meeting the requirements of Section 14, and such other information as may be required for a determination of the nature of the proposed use and its effect on the Comprehensive Plan, the neighborhood, and surrounding properties.
  2. Time Limitations
    - a. Approval of a conditional use under this Section shall become null and void if a building permit has not been issued within six (6) months after the date of approval. Such conditional use may also become null and void if a Certificate of Occupancy, Certificate of Completion or an Occupational License is not issued within two (2) years after Commission approval.

- b. When extenuating circumstances or compelling reasons prevent the applicant from complying with conditions of approval within the above stated time periods, the applicant may request the Planning Board to grant a nine (9) month extension of time to (1) obtain a building permit or (2) to complete all construction work and obtain a Certificate of Occupancy, Certificate of Completion or Occupational License. Notice Requirements for a request for an extension of time shall be satisfied by placing the request on the Planning Board Agenda.
- c. An approved and operational conditional use which remains idle or unused in whole or in part for a continuous period of six (6) months or for eighteen (18) months during any three (3) year period whether or not the equipment, fixtures, or structures remain, shall be required to seek re-approval of the Conditional Use from the Planning Board. Such use shall not be permitted to be re-used until the Planning Board approval has been granted.

3. Compliance with Conditions

- a. No licensing permit, Certificate of Occupancy, or Certificate of Completion shall be issued until all conditions of approval have been met. Permits issued under a conditional use approval may be revoked by the Building Official for failure to comply with conditions of approval or applicable regulations.
- b. Within a reasonable time after a conditional use application or amendment has been approved by the City Commission or approval of the Planning Board, the applicant shall record in the Circuit Court the action and conditions, if any. No Building Permit, Certificate of Occupancy, Certificate of Completion or licensing permit shall be issued until this regulation has been complied with.

4. Amendment of an Approved Conditional Use

- a. An approved conditional use may be amended upon a decision by the Planning Board who shall first determine whether the request is a substantial or minor amendment. The process for a substantial amendment shall be the same as for a new application. The process for a minor amendment shall include listing the request on the regular meeting agenda. In determining whether the request is a substantial or minor amendment, the Board shall at a minimum consider the overall impact of the change, increase or decrease in parking or floor area, landscaping and design, consistency with this Ordinance, efficient utilization of the site and circulation pattern. Any increase in lot area, parking requirements, floor area ratio, density, and/or lot coverage shall automatically be considered as a substantial amendment.

- 5. Fees - The below fees are for the purpose of defraying expenses of public notices and other administrative costs in connection with processing applications:

- a. Any applicant requesting and obtaining a public hearing before the Planning Board shall pay the following fees:
  1. Conditional Use - when a fee has not been established for a specific use \$400.00 plus \$0.50 per mailing address
  2. Planned Unit Development (PUD) as described in Sec. 6-4 K.2. \$200.00 plus \$0.50 per mailing address
  3. Adult Congregate Living Facility \$400.00 plus \$35.00 per bed plus \$0.50 per mailing address
- b. A request for minor amendment to an approved conditional use, clarification of conditions or an extension of time shall require a fee of \$100.00.
- c. A request for a substantial amendment to an approved conditional use shall require a fee of \$200.
- d. If an applicant withdraws his application prior to the date of the public hearing and requests a new hearing date, a fee of \$500 shall be required. The fee is to defray the costs of scheduling the new public hearing, to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date.

C. REVIEW GUIDELINES. Conditional Uses may be approved in accordance with the procedures and standards of this Section, provided that:

1. the application is consistent with the Comprehensive Plan;
2. structures and uses associated with the request are consistent with the Ordinance;
3. the public health, safety, morals, and general welfare will not be adversely affected;
4. that adequate off-street parking facilities will be provided;
5. that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values; and
6. the intended use or construction does not place a burden upon City services.

7-2 Control of Entrances and Exits.

Where these regulations specify that there shall be no exterior entrances or exits to an

accessory commercial use in a residential district, the general intent is that there shall be no exterior evidence of the existence of such use, and for this purpose, the following regulations shall apply:

- A. The entrance or exit shall be located so that it shall not be visible from any street, walk, or other public way.
- B. The entrance or exit shall not be accessible to patrons from a public street, walk, or other public way, or indirectly by means of any vestibule, foyer, entryway, or room unless such vestibule, foyer, entryway, or room is accessible only from the main entrance and main lobby of the building.
- C. The entrances or exits may be accessible from a patio, court, yard, bay or ocean frontage, or other open space adjoining the side or rear of a building, if such entrances or exits are obscured from all streets by a wall.
- D. No store fronts, show windows, or displays, or exterior signs or displays shall indicate the presence of the commercial use except as specifically permitted in these regulations.
- E. Exterior emergency exits may be permitted as required, provided such exits are identified as for emergency use only, are kept closed except for emergency use, and are constructed so as to be opened only from the inside.

### 7-3 Accessory Uses.

The following uses of structures, land or water are specifically permitted as an accessory use to a principal use of the type indicated in any District in which such principal use may be located. A use other than listed here may be permitted as an accessory use provided that it is a use customarily associated with the principal use to which it will be accessory, it will not be out of character with the general area, it will be used by residents primarily, and it will pose no problem to neighboring properties.

#### A. RM-60 MULTIPLE-FAMILY ACCESSORY.

- 1. Office located in a main building for administration of a multiple-family development, containing 10 or more dwelling units.
- 2. Laundry room for use of occupants of a multiple-family dwelling development.
- 3. Newsstand within and operated primarily for convenience of occupants of a multiple-family dwelling containing 100 or more dwelling units, such newsstand to have no exterior entrances or exits, in accordance with the regulations of this Section.
- 4. Public telephones, inside a main building.
- 5. Coin-operated vending machines for candy, tobacco, soft drinks, and postal stamps inside a building with 20 or more dwelling units. The number of machines shall not exceed two (2) machines per twenty (20) units. Machines are prohibited on the outside of a building.

6. A dining room within and operated primarily for convenience of occupants of a multiple-family dwelling containing one hundred (100) or more dwelling units, such dining room to have no exterior entrances or exits in accordance with the Regulations of this Section.
7. Accessory off street parking and loading spaces.
8. Valet Parking.
9. Washing and drying machines may be located inside or outside of a building. When located outside of the building, they shall not be in any required yard or visible from a right-of-way. The total number of machines on the site, whether inside or outside the building, shall not exceed two (2) pair per ten (10) units or fraction thereof. One pair shall mean one (1) washer and one (1) dryer.

B. RM-100 MULTIPLE-FAMILY MEDIUM HIGH DENSITY AND RM-125 MULTIPLE FAMILY HIGH DENSITY AND HOTEL-MOTEL ACCESSORY.

1. Any Single-Family Residential or Multiple-Family Low Density and Medium Density accessory.
2. An office for administration of a multiple-family dwelling, hotel, or motel, containing ten (10) or more dwelling units or guest rooms.
3. Coin-operated vending machines for candy, tobacco, ice, soft drinks, and sundries, inside a building with twenty (20) or more dwelling units or guest rooms.
4. Hotels containing one hundred (100) or more sleeping units may have the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building. Such service facilities shall not have exterior entrances or exits in accordance with the regulations contained in this Section.
5. Apartments and apartment hotels containing one hundred (100) or more units may have the following service facilities only: restaurants, solariums, saunas and massage services and sundry shops which shall be limited to the sale of the following items: tobacco and tobacco products, magazines and newspapers, candies, sodas, suntan oils, patent medicines, milk, bread, eggs, tea, coffee, toilet and facial tissues. House doctor with patients limited to residents of the building. Such service facilities shall have no exterior entrances or exits in accordance with the regulations contained in this Section.

Customer-Bank Communication Terminals and/or remote financial service units as an accessory use in apartment buildings having four hundred (400) or more dwelling units, and located in RM-100 and RM-125 zoning districts, provided that no agent or employee of the bank is to be stationed at the location of such facility.

- a. Accessory Restaurants shall be permitted in the RM-100 Multiple Family Medium High Density and RM-125 Multiple Family High Density Use Districts and may be used by the general public, and such accessory restaurant uses shall be permitted to advertise the existence of such accessory restaurant use to the general public; provided, however, that nothing herein contained shall authorize or permit the use of the exterior signs prohibited by Section 7-2,D except as provided for in Section 7-3, B-4 and 5 and Section 11-1, C-6.
- b. Any Apartment Hotel having one hundred (100) sleeping units or more for transients shall be considered a Hotel for purposes of permissible accessory uses as set forth in Section 7-3, B-4, subject, however, that such service facilities shall not be out of character with the general area; that the same shall be used by residents primarily; and that such service facilities will pose no problem to neighboring properties.

In addition to the stipulations set forth in Section 7-2, Control of Entrances and Exits, and 7-3, Accessory Uses, Apartment Hotels with one hundred (100) or more sleeping units shall comply with the following criteria to apply for accessory uses permitted in Hotels with one hundred (100) or more sleeping units:

1. Registration Desk - staffed twenty-four (24) hours.
2. Open key and mail compartments for one hundred (100) or more designated sleeping units.
3. Central telephone switchboard connecting in service to one hundred (100) or more designated sleeping units.
4. One hundred (100) or more designated sleeping units shall not have independent electrical or water meters.

Prior to the issuance of permits for such accessory uses, the applicant shall receive an annual written certification statement from the Development Services Department verifying compliance with the above listed requirements.

6. Accessory off street parking and loading spaces.
7. Retail stores selling primarily alcoholic beverages for consumption on the premises shall only be permitted to sell beer, wine, liquor, and other items that are directly related and associated with their consumption.
8. Coin-operated Vending Machines

- a. Washing and drying machines may be located inside or outside of a building. When located outside of a building they shall not be in any required yard or visible from a right-of-way. The total number of machines on the site, whether inside or outside of a building shall not exceed one (1) pair per ten (10) units or fraction thereof. One (1) pair shall mean one (1) washer and one (1) dryer.
- b. Vending machines for postage stamps, candy, tobacco, and soft drinks shall only be permitted inside a building with a total of twenty (20) or more dwelling units, sleeping units, or fraction thereof. Buildings with less than twenty (20) units shall not be permitted to have such vending machines. The number of machines shall not exceed one (1) per twenty (20) units or fraction thereof.

C. OFFICE AND BUSINESS ACCESSORY.

1. Storage of office supplies or merchandise normally carried in stock in connection with a permitted office or business use subject to applicable District regulations.
2. Accessory off street parking and loading spaces, subject to applicable District regulations.

D. INDUSTRIAL.

1. Storage of goods used in or produced by permitted industrial uses or related activities, subject to applicable District regulations.
2. Accessory off street parking and loading spaces.

E. R-PS 1-4 ACCESSORY

Permitted accessory uses shall include those listed in Sections 7-3A and B of this Ordinance provided, however, that such accessory uses shall: (1) be designed principally to accommodate and serve the residents/occupants of the principal use; (2) have limited accessibility to the general public; (3) be of size and character consistent with the needs of the residents/occupants of the principal use; (4) meet any increased parking requirements necessitated by such use; (5) not require additional loading facilities; and (6) not cause the need for any variance in minimum required yards, height, setback, bulk, parking, loading, floor area ratio, open space ratio, or other requirements of this Ordinance.

F. C-PS 1-3 ACCESSORY

Permitted accessory uses shall include those listed in Section 7-3C of this Ordinance for non-residential principal uses and those listed in Sections 7-3A and B, as modified by Section 7-3E of this Ordinance, for residential principal uses. Accessory uses in a mixed use development shall be subject to the requirements for residential principal uses if 25% or more of the total area of the building is used for dwelling purposes and to the requirements for non-residential principal uses if less than 25% of the total area of the building is used for dwelling purposes.

7-4 Performance Standards.

All Districts shall be so operated as to comply with the standards of performance described in this Section below. In addition to the performance standards hereinafter specified, all uses shall be so constructed, maintained, and operated as not to be injurious to the use of occupation of the adjacent premises by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, radiation, fire and explosive hazard or glare.

A. NOISE.

Any use in the locations specified above and below shall be so operated as to comply with the performance standards governing noise set forth below. Objectionable noises of an intermittent nature shall be controlled so as not to become a nuisance to adjacent uses.

Sound levels shall be measured with a sound level meter and associated octave band filter manufactured in compliance with standards prescribed by the American Standards Association.

At no point on a property line or district boundary as indicated, shall the sound intensity level of any individual operation or plant other than the operation of motor vehicles or other transportation facilities exceed the decibel levels in the designated octave bands shown in the following table.

Between 8:00 A.M. and 6:00 P.M.

<u>Octave Band</u>	<u>Maximum Permitted Sound Level (Decibels).</u>	
<u>(Frequency, Cycles per second)</u>	<u>Along Property Lines Abutting or within a Residential District</u>	<u>Along Property Lines Within a Business or Industrial District.</u>
63	72	79
125	67	74
250	59	66
500	52	59
1,000	46	53
2,000	40	47
4,000	34	41
8,000	32	39

Maximum permitted sound level shall be reduced by three decibels in each octave band between the hours of 6:00 P.M. and 8:00 A.M.

B. VIBRATION.

No use shall be operated so as to produce ground vibration noticable, without instruments, at the lot line of the premises on which the use is located.



C. SMOKE AND OTHER PARTICULATE MATTER.

No use shall be operated except in compliance with the prohibitions against air pollution of the Pollution Control Ordinance of Metropolitan Dade County.

D. ODORS.

No use shall be operated so as to produce the emission of objectionable or offensive odors in such concentration as to be readily perceptible at any point at or beyond the lot line of the property on which the use is located. The guides and standards contained in the prohibitions against air pollution of the Pollution Control Ordinance of Metropolitan Dade County are hereby adopted as a guide in determining the quantities of offensive odors.

E. TOXIC OR NOXIOUS MATTER.

No use shall for any period of time discharge across the boundaries of a lot on which it is located, toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or general welfare or cause injury or damage to persons, property, or the use of property or land.

F. RADIATION HAZARDS.

Applicable standards of the Florida State Board of Health Sanitary Code are hereby adopted.

G. ELECTROMAGNETIC INTERFERENCE.

No use, activity, or process shall be conducted which produces electromagnetic interference with normal radio or television reception in any residential or business district.

H. FIRE AND EXPLOSIVE HAZARDS.

Each use shall be operated so as to minimize the danger from fire and explosion and to comply with the regulations contained in the South Florida Building Code and Chapter 14, The Code of The City of Miami Beach.

I. HUMIDITY, HEAT, OR GLARE.

Any activity producing humidity in the form of steam or moist air, or producing heat or glare shall be carried on in such a manner that steam, humidity, heat or glare is not perceptible at any lot line.

## SECTION 8

### SUPPLEMENTARY YARD, AREA, HEIGHT AND BULK REGULATIONS

The regulations set forth in this section qualify or supplement the District Regulations appearing elsewhere in this Ordinance.

#### 8-1 Supplementary Yard Regulations.

##### A. GENERAL.

1. Public Alleys - Whenever a lot abuts upon a public alley, one-half (1/2) of the alley width may be considered as a portion of the required yard, however, a required yard of ten (10) feet shall be provided exclusive of the alley width and no portion of the building, including any allowable encroachment, shall be permitted within ten (10) feet of the alley.
2. Determination of Side Street - Where these regulations refer to side streets, the Code Enforcement Director shall be guided by the pattern of development in the vicinity of the lot in question in determining which of two (2) streets is the side street.
3. Established Right-of-Way - Where an official line has been established for the future widening or opening of a street upon which a lot abuts, the depth of a front or side yard shall be measured from such official line to the building line.
4. Through Lots - Except as otherwise provided in this Ordinance, on through lots the required front yard shall be provided on each street.
5. Minimum Side Yards, Public and Semi-Public Buildings - The minimum depth of interior side yards for schools, libraries, churches, community houses, and other public and semi-public buildings in residential districts shall be fifty (50) feet, except where a side yard is adjacent to a business district, in which case, the depth of that yard shall be as required for the district in which the building is located.

##### B. ALLOWABLE ENCROACHMENTS.

1. Projecting - Every part of a required yard shall be open to the sky, except as authorized by this Ordinance, and except ordinary projections of sills, belt courses, roof overhangs, window air conditioning units, chimneys, cornices, exterior unenclosed private balconies and ornamental features which may project into a required yard a distance not to exceed 25% of the width of the required yard provided such projections are not to exceed six (6) feet and provided that there should not be less than eight (8) feet clear height under any such projection where egress to more than one (1) unit is provided under such projection. Exterior unenclosed private balconies as herein described, may be contiguous provided access between such balconies is prohibited.

2. Awnings - Movable awnings attached to, and supported by a building wall may be placed over doors or windows in any required yard, but such awnings shall not project closer than three (3) feet to any lot line.
3. Canopies - A canopy shall be permitted to extend from the entrance door to the street line of any main building in a multiple-family residential district. Where a sidewalk or curb exist, the canopy may extend to within eighteen (18) inches of the curb line. Such canopies shall not exceed fifteen (15) feet in width or twelve (12) feet in height or be screened or enclosed in any manner and shall provide an unobstructed, clear space between the grade and the bottom of the valance of at least seven (7) feet.
4. Porches and Platforms - Open, unenclosed porches or platforms not covered by a roof or canopy, and which do not extend above the level of the first floor of the building and completely enclosed below the floor of the porch or platform, may extend or project into the front or side yard not more than six (6) feet; however, at least two and one half (2 1/2) feet of the required yard must be maintained as permanent landscaped open space excluding parking areas.
5. Fences, Walls, Hedges, Gates and Lightpoles are permitted as follows:
  - a. Single family districts
    1. Required Front Yard
      - a. Except as provided, the maximum height of fences and walls shall not exceed five (5) feet when located in any required yard. Ornamental fixtures or lamps are permitted to be placed on poles, walls or fences only when located in the required front yard or any yard facing a public street, alley, golf course, or body of water. The total height of the combined structure shall not exceed seven (7) feet. Ornamental fixtures and lamps shall be located with a minimum separation of eight (8) feet on center with a maximum width of two (2) feet.
      - b. Fences and walls shall be permitted to exceed the five (5) foot height limit; however, for every one (1) foot increase in height or fraction thereof, the fence or wall shall be set back two (2) feet from the front property line. Ornamental fixtures and lamps shall be permitted with the same size and space requirements listed above however their portion of the increased height shall not be computed in determining the setback requirement. In no instance shall the height of the wall or fence exceed seven (7) feet. The total height of the combined structure, including the ornamental fixture and lamp, shall not exceed a height of nine (9) feet.

- c. Open picket type gates are permitted to have a maximum height of ten (10) feet and a width of twenty (20) feet, however for every one (1) foot in height or fraction thereof in excess of the five (5) foot height limit, the gate shall be set back two (2) feet from the property line. Solid or opaque gates which exceed the five (5) foot height limit are prohibited.
  - d. Hedges shall not exceed a maximum height of seven (7) feet.
  - e. Lightpoles including ornamental fixtures and lamps shall not exceed a maximum height of ten (10) feet.
- 2. Required Side or Required Rear Yard
  - a. Fences and Walls - The maximum height, including ornamental fixtures shall not exceed seven (7) feet; except for the following as provided below:
    - 1. Tennis courts as listed in Section 8-1, B-5 (g).
    - 2. When any side or rear yard abutting the bay, a canal, waterway or golf course, the maximum height of a fence or wall shall not exceed five (5) feet.
  - b. Hedges - maximum height shall not exceed seven (7) feet.
  - c. Lightpoles - are only permitted pursuant to Section 8-1, B-5(g) or when not located within the side yard setback. All light shall be contained on site as required by Section 7-4, Performance Standards.
- 3. Chain Link Fences are prohibited in the required front yard, any required yard facing the bay or canal or in any required side yard adjacent to a street except as provided in Section 8-1, B-5 (g).
- b. C-6 Commercial Interior District
  - 1. The maximum height of a wall or fence in the required front, rear, or any side yard shall not exceed seven (7) feet, excluding barbed wire or materials of similar character. Provided that barbed wire or materials of similar character shall be elevated seven (7) feet above grade and be angled towards the interior of the lot. The combined height of a wall or fence plus barbed wire or materials of similar character shall not exceed nine (9) feet.

c. In any district except single family and C-6

1. The maximum height shall not exceed five (5) feet in the required front yard and seven (7) feet in the required side and rear yards. Ornamental fixtures and lamps are permitted to be placed on walls or fences only when located in the required front yard or when fronting on any yard facing a public street or alley, golf course, or body of water. The total height of the combined structure shall not exceed seven (7) feet.
- d. All surfaces of masonry walls and wood fences, when seen from adjoining properties, shall have a stucco or painted finish.
- e. Along the boundary between a residential and business district - ten (10) foot maximum height.
- f. The use of barbed wire or materials of similar character is prohibited in all districts except in the C-6 district.
- g. The following regulations shall apply for fences, lightpoles or other accessory structures associated with a tennis court, basketball court or similar court games in all single family districts.
  1. Required front yard - maximum height of fences shall be ten (10) feet when located at least ten (10) feet from the front property line.
  2. Required side and required rear yard - maximum height of fences shall be 10 feet when located seven and a half (7 1/2) feet from the interior property line. When the fence faces a street, the maximum height shall be ten (10) feet when located fifteen (15) feet from the property line.
  3. Any and all accessory lighting, customarily associated with the use of court games, shall be erected as to direct light on the premises only. The maximum height of light fixtures shall not exceed ten (10) feet when located in a required yard; otherwise, the maximum height shall not exceed twenty (20) feet.
  4. All chain link fences shall be coated with green or black materials.
  5. When fences are located in required yards, they shall be substantially screened from public view from adjacent properties, public right-of-ways, and waterways by landscape materials.
  6. Any play surface, whether paved or unpaved, when associated with said court games, shall have the following minimum required yards: front - twenty (20) feet; interior side - seven and one half (7½) feet, any side facing on a street - fifteen (15) feet, rear - seven and one half (7½) feet.

- h. Ornamental fixtures and lamps shall have a minimum separation of eight (8) feet on center and a maximum height of two (2) feet.
6. Swimming Pools - Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may occupy a required rear or side yard, provided:

a. Rear Yard Setback

- 1) Six (6) feet minimum setback from rear property line to pool deck or platform, or screen enclosure associated or not associated with a pool, provided, however, that pool decks may extend to the property line when abutting upon any bay or canal. There shall be a minimum seven and a half (7 1/2) feet setback from the rear property line to the water edge of the pool.

b. Side Yard Setback.

- 1) Nine (9) feet minimum required setback from side property line to the water edge of the pool.
- 2) Seven and one half (7 1/2) feet minimum required setback from side property line to pool deck or platform, or screen enclosures associated or not associated with a pool.
- 3) MF District - seven and one half (7 1/2) feet minimum required setback from an interior side property line to pool deck or platform and fifteen (15) feet minimum required setback facing a street.
- 4) Single Family District - Seven and one half (7 1/2) feet minimum required setback from an interior side property line to pool deck or platform except for corner lots which shall provide a minimum ten (10) feet setback from the property line to the pool, deck or platform or screen enclosure.

- c. The highest water level of all pools shall be no higher than the finished floor elevation of any adjacent and contiguous dwelling or sleeping units.

A walk space at least eighteen (18) inches wide shall be provided between pool walls and fences or screen enclosure walls. Every swimming pool shall be protected by a safety barrier and self-closing and self-locking gate approved by the Code Enforcement Director.

The minimum size of all commercial swimming pools shall be four hundred fifty (450) square feet with a minimum dimension of fifteen (15) feet and all required walkways shall have a minimum width of four (4) feet around the pool, exclusive of the coping. Commercial swimming pools shall also satisfy all requirements of the State Health Code.

7. Visual Barriers for Swimming Pools - Accessory swimming pools when located on the front or side yard, facing a public street, shall be screened from public view as provided for in Section 32-6E.
8. Accessory Buildings - Accessory buildings which are not a part of the main building may be constructed in a rear yard, provided such accessory building does not occupy more than thirty (30) percent of the area of the required rear yard and provided it is not located closer than seven and one half (7 1/2) feet to a rear or interior side lot line. A screen enclosure shall be included in the computation of area occupied in a required rear yard lot but an open uncovered swimming pool shall not be included.
9. Boat, Boat Trailer, Camp Trailer Storage - Permitted accessory storage of a boat, boat trailer or camp trailer shall not be conducted in a front yard.
10. Central Air Conditioners - Accessory central air conditioners may occupy a required side or rear yard, for one (1) or two (2) family homes or group houses provided:
  - a. They are not closer than five (5) ft. to a rear or side lot line.
  - b. They meet the sound level requirements of Section 7-4.
  - c. They shall not exceed a height of two (2) ft., six (6) inches above the sidewalk elevation.
  - d. They maintain any required sound buffering equipment outside the minimum five (5) ft. yard area specified in part a. above.
11. Hot Tubs, Showers, Saunas, Whirlpools, Toilet Facilities, Swimming Pool Equipment, Decks - Hot tubs, showers, whirlpools, toilet facilities, swimming pool equipment, decks and cabanas, are structures which are not required to be connected to the main building but may be constructed in a required rear yard, provided such structure does not occupy more than thirty (30) percent of the area of the required rear yard and provided it is not located closer than seven and one half (7 1/2) feet to a rear or interior side lot line. Free standing, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.
12. Marine Structures - Seaward sideyard setbacks for boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind shall be equal to landward sideyard setbacks. The minimum setback shall not be less than seven and one half (7 1/2) feet. These setback requirements pertain to the enlargement of existing structures as well as the construction of new structures. It is further provided that any boat, ship, or vessel of any kind shall not be docked or moored so that its projection extends into the required seaward side yard setback.

13. Carports - An open carport which is constructed of canvas and pipe for the express purpose of shading automobiles shall have a minimum required interior sideyard setback of four (4) feet and shall be permitted to extend into the required front yard setback of a single family residence, provided such carport is at least eighteen (18) inches from the property line or sidewalk. Carports shall not be permitted to exceed twenty (20) feet in width, twenty (20) feet in length and ten (10) feet in height or be screened or enclosed in any manner. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained. Only one (1) carport shall be erected on a single building site. For setback purposes only, carports constructed prior to the adoption of this Section shall be considered as legal non-conforming uses, however, the degree of non-conformity shall not be compounded although they may be repaired or replaced.
14. Driveways - All driveways in single family residential districts shall have a minimum four (4) foot setback from the side property line.

#### 8-2 Corner Visibility.

- A. On a corner lot, there shall be no structure or planting which materially obstructs traffic visibility between the height of two (2) feet and ten (10) feet above the street corner grade, within the triangular space bounded by the two (2) intersecting right-of-way lines and a straight line connecting the right-of-way lines fifteen (15) feet from their intersection.

#### 8-3 Minimum Yard Regulations for Multiple-Family Zoning Districts.

##### A. MF DISTRICTS ESTABLISHED.

1. For the purpose of establishing setback regulations for multiple-family zoning districts and for residential uses in commercial districts, the City of Miami Beach shall be divided into eleven (11) area districts as described on the Multiple-Family Zoning Area District Map included herein, and hereafter referred to as MF-1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. Districts 1 through 4 include ocean front properties. Districts 5 through 8 include waterway and bayfront properties. Districts 9, 10 and 11 include interior properties.
2. Any property located within a multiple-family, HM, or commercial zoning district that is not assigned a specific MF District by ordinance or by provisions contained herein, shall be automatically included in the following: MF-1 for oceanfront properties; MF-5 for waterway and bayfront properties; and MF-10 for interior properties.

##### B. FRONT AND REAR - MINIMUM YARDS.

Front and Rear Yards shall be provided in accordance with the following table. No minimum yard requirement for an upper level shall be less than the minimum yard requirement for any lower level.



DISTRICT	LEVEL	FRONT	REAR
MF-1	Sub	50	50
	Ground	50	50
	Pedestal	50	90
	Tower	50	90 + .4 height**
MF-2	Sub	20	50
	Ground	20	50
	Pedestal	40	75
	Tower	40	.5 height**
MF-3	Sub	20	50
	Ground	20	50
	Pedestal	20	50
	Tower	40	.5 height**
MF-4	Sub	20	50
	Ground	20	50
	Pedestal	20	50
	Tower	20	.33 height**
MF-5	Sub	20	0
	Ground	20	10
	Pedestal	20	40
	Tower	40	40
MF-6	Sub	20	0
	Ground	20	10
	Pedestal	20	20
	Tower	20	20
MF-7	Sub	25	0
	Ground	25	10
	Pedestal	25	40
	Tower	25	40
MF-8	Sub	20	0
	Ground	20	20
	Pedestal	20	20
	Tower	*	30

DISTRICT	LEVEL	FRONT	REAR
MF-9	No subterranean area shall be allowed in this district.		
	Ground	20	10
	Pedestal	20	10
	Tower	20	.3 height**
MF-10	No subterranean area shall be allowed in this district.		
	Ground	20	10
	Pedestal	20	10
	Tower	*	.3 height**

DISTRICT	LEVEL	FRONT	REAR	SIDE	
				INTERIOR	ST. OR ALLEY
<u>MF-11</u>					10' -Grade
	Sub.	20	0	0	0 -Below
	Ground	20	10	10% or 7.5' Min.	10'
	Pedestal	20	20	10% or 7.5' Min.	10'
	Tower	20	30	.3 ht.**	.3 ht.**

\*There shall be a minimum front yard of twenty (20) feet. No point on a building or structure shall be closer to the center line of a street than .5 the height above sidewalk elevation, however, no minimum front yard shall be required to exceed forty (40) feet.

\*\*The minimum front and rear yard for the tower, when based on height, shall not exceed the setback required for a height of two hundred and one tenth (200.1) feet. The minimum front yard for the tower shall be constant.

C. SIDE YARD MINIMUMS. No minimum yard requirement for an upper level shall be less than the minimum yard requirement for a lower level.

1. RM-14 and RM-24 Multiple-Family District - The sum of the side yard widths shall be at least twenty five (25) percent of the lot width, but no side yard adjacent to a street shall be less than fifteen (15) feet and no interior side yard shall be less than seven and one half (7 1/2) feet.

2. RM-60, RM-100, RM-125 Multiple-Family Districts.

a. Subterranean. This portion of the building is not permitted in districts MF-9 and MF-10. Where permitted, subterranean areas that abut a side lot line, shall provide an open and unencumbered access from the front yard to the roof of such area by means of ramp or stairs. Minimum yards shall be as follows:

1) Interior sides. None required.

2) Streets and Alleys. A ten (10) feet minimum yard shall be required adjacent to a street or alley and shall be developed and maintained as a landscaped area.

b. Ground and Pedestal. The sum of the side yards shall be at least twenty five (25) percent of the lot width.

1) Interior sides. No interior side yard shall be less than ten (10) percent of the lot width or seven and one half (7 1/2) feet, whichever is greater.

2) Streets. No side yard adjacent to a street shall be less than fifteen (15) feet or ten (10) percent of the lot width, whichever is greater. The first ten (10) feet shall be developed and maintained as a landscaped area.

c. Tower. The minimum side yard shall not exceed 0.33 of the lot width.

1) Interior sides. The minimum side yard setback shall be constant and equal to 0.3 of the building height.

2) Side streets. No point on the tower shall be closer to the center line of a side street than 0.50 of the building height. The resulting minimum yard shall be constant.

#### 8-4 Lot Coverage for Multiple-Family Zoning Districts.

##### A. EXEMPTIONS.

1. On a lot with a total area less than 10,000 square feet, there shall be no lot coverage restrictions.

2. That portion of a building or structure which is equal to or less than twenty (20) feet in height and is utilized solely and exclusively for the purposes of parking, equipment, public spaces, access ways, swimming pools, cabanas, lobbies, shops, and offices, but under no circumstances used for apartment units or sleeping units, shall be excluded from lot coverage computation. Open balconies, awnings and porte cocheres shall not be included in determining the building area.

B. MAXIMUM LOT COVERAGE.

1. On a lot with a total area of 10,000 square feet or greater, the lot coverage permitted shall be determined by the height of the building in accordance with the following table; provided that the maximum lot coverage permitted shall be fifty (50) percent for the pedestal level, as described herein, of any building or group of buildings, regardless of the total height of the building.

In determining compliance with the provisions of this section, maximum lot coverage requirements shall vary based upon the total height each portion of the building is above grade as noted below:

<u>Height of Building</u>	<u>Lot Coverage</u>
50 ft. or less .....	50%
50.1 - 60 ft. ....	31%
60.1 - 70 ft. ....	29%
70.1 - 80 ft. ....	28%
80.1 - 90 ft. ....	27%
90.1 - 100 ft. ....	26%
100.1 - 150 ft. ....	25%
150.1 - 200 ft. ....	20%
200.1 or greater .....	15%

C. OFF-SITE FACILITIES EXCLUDED.

1. Required off-street parking not located on the same lot with building or use served as specified in Section 9-3, Off-Site Facilities, shall not be included in the lot coverage computation.

8-5 Mixed Use - Yards, Area and Bulk Requirements.

- A. Where more than twenty five (25) percent of the total floor area of any building in a business district is used for dwelling purposes, the height, area and bulk requirements for residential development as described in this Ordinance shall apply, in accordance with the appropriate Multiple-Family Area District regulations imposed on such business districts as described on the Multiple-Family Zoning Area District Map subject to the yard modification for mixed uses contained elsewhere in this article. However, no minimum yard required for a residential use shall be less than that required for a non-residential use. Where twenty five (25) percent or less of the total area of such building is used for dwelling purposes, the buildings shall be subject to non-residential buildings in the district.
- B. Where a building containing both residential and non-residential uses is subject to the height, area and bulk requirements applicable to residential development, a minimum required front yard of ten (10) feet shall be provided and developed and maintained as a landscaped area. The minimum required side yard, when adjacent to a street, shall be ten (10) feet and be developed and maintained as a landscaped area. Yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contain more than twenty-five (25%) percent of its area used for dwelling space. Yard requirements for non-residential development shall be those required in the applicable business or MF district.
- C. Whenever a lot in a business district abuts upon a public off-street parking area, residential rear yard requirements may be reduced by one half (1/2) however, a minimum rear yard of ten (10) feet shall be provided for those areas of residential development as described herein.

8-6 Oceanfront Lots - For purposes of this section, the term Oceanfront Lot shall mean all lots, in whole or in part, whose district boundary includes the established Bulkhead Line. Land located between the Erosion Control Line and the established Bulkhead Line are not included in this definition.

- A. Oceanfront lots shall have a minimum required rear yard setback of fifty (50) feet measured from the bulkhead, in which there shall be no construction of any dwelling, hotel, motel, apartment building, commercial building, seawall, revetment or other structure incidental to or related to such structure except in accordance with the following provisions:
  - 1. All structures, applicants for any occupational license, or building permit, whether new or renewal applications, and uses shall be approved by the Design Review Board.
  - 2. Permitted uses are limited to the following: shade structures, sidewalk cafes, swimming pools, cabanas, hot tubs, showers, whirlpools, toilet facilities, swimming pool equipment, decks, patios, and court games when said games require no fences.

3. There shall be a minimum required fifteen (15) feet setback from a side lot line and a minimum required ten (feet) setback from the bulkhead line.
4. The maximum height of any structure, shall not exceed one (1) story or twelve (12) feet, whichever is greater.
5. The finished floor elevation of decks, patios, platforms, or any other structure shall have a maximum height of two and one half (2 1/2) feet above the top of the dune.
6. The maximum floor area shall be four hundred (400) square feet for any structure.
7. Lot Coverage - At least fifty (50) percent of the required rear yard setback is to be open to the sky and landscaped. All areas covered by permitted uses, other than portable beach furniture, shall be considered in the lot coverage calculation.
8. View Corridor - A minimum of fifty (50) percent of the required rear yard setback shall represent an open and unencumbered view, apart from landscaping and decorative open picket type fences, from the Erosion Control Line to the Rear Setback Line.
9. Comply with Chapter 161 of Florida Statutes and any governmental agencies having jurisdiction.
10. The required rear yard setback area shall not be used for off-street parking.

#### 8-7 Modification of Height Regulations.

- A. The height regulations as prescribed in this Ordinance shall not apply to the following when not used or intended to be used for habitation.
  1. Belfries.
  2. Chimneys.
  3. Church spires.
  4. Conveyors.
  5. Cooling towers.
  6. Elevator bulkheads.
  7. Fire towers.
  8. Flag poles.
  9. Monuments.
  10. Ornamental towers and spires.
  11. Smoke stacks.
  12. Stage towers or scenery lofts.
  13. Tanks.
  14. Water towers.
  15. Radio and television towers less than 125 feet in height.

3. There shall be a minimum required fifteen (15) feet setback from a side lot line and a minimum required ten (ten) feet setback from the bulkhead line.
4. The maximum height of any structure, shall not exceed one (1) story or twelve (12) feet, whichever is greater.
5. The finished floor elevation of decks, patios, platforms, or any other structure shall have a maximum height of two and one half (2 1/2) feet above the top of the dune.
6. The maximum floor area shall be four hundred (400) square feet for any structure.
7. Lot Coverage - At least fifty (50) percent of the required rear yard setback is to be open to the sky and landscaped. All areas covered by permitted uses, other than portable beach furniture, shall be considered in the lot coverage calculation.
8. View Corridor - A minimum of fifty (50) percent of the required rear yard setback shall represent an open and unencumbered view, apart from landscaping and decorative open picket type fences, from the Erosion Control Line to the Rear Setback Line.
9. Comply with Chapter 161 of Florida Statutes and any governmental agencies having jurisdiction.
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  12. Stage towers or scenery lofts.
  13. Tanks.
  14. Water towers.
  15. Radio and television towers less than 125 feet in height.

- B. The height of all allowable items in Paragraph A. above shall not exceed twenty-five (25) feet in height above the height used to establish a required minimum yard.
- C. Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to one (1) structure and natural growth.



## SECTION 9

### PARKING REGULATIONS

#### 9-1 Parking Districts Established.

For the purpose of establishing off-street parking requirements, the City of Miami Beach shall be divided into three parking districts.

A. PARKING DISTRICT NO. 1 - Parking District No. 1 is that area of the City of Miami Beach, Florida, not included in Parking District No. 2 or in Parking District No. 3.

B. PARKING DISTRICT NO. 2 - Parking District No. 2 includes the following area:

Commencing at the north side of 44th Street and the east side of Collins Avenue extended as point of beginning; thence run westerly along the north side of 44th Street to the east bank of Indian Creek; thence run northerly along the east bank of Indian Creek to the south side of 63rd Street; thence run easterly along the south side of 63rd Street to the east side of Collins Avenue; thence run northerly along the east side of Collins Avenue to the southside of 69th Street; thence run easterly along the south side of 69th Street extended to the established bulkhead line; thence run southerly along the established bulkhead line to the north side of 44th Street extended; thence run westerly along the north side of 44th Street to the point of beginning.

C. PARKING DISTRICT NO. 3 - Parking District No. 3 is that area of Miami Beach, Florida bounded by the established bulkhead line and the erosion control line extended to the northern and southern boundary of the City.

#### 9-2 Off-Street Parking Required.

Except as otherwise provided in this Ordinance, when any building or structure is erected or structurally altered, accessory off-street parking spaces shall be provided for the building, structure, or additional floor area as follows:

A. PARKING DISTRICT NO. 1 -

1. Single-family detached dwelling - 2 spaces.
2. Two, three and four-family - 1 1/2 spaces for each unit.
3. Group House - 1 1/2 spaces for each unit.
4. Apartment building and apartment-hotel - 1 space for each 1 efficiency unit; 1 space per one-bedroom unit; 3 spaces per 2 dwelling units with two or more bedrooms. Dwelling unit with more than three bedrooms shall provide 1 extra space per bedroom unit for any bedroom exiting upon the corridor; and 1 space per sleeping room. For the purpose of computing parking requirements, an efficiency unit shall have a maximum of 750 square feet, and a one-bedroom unit a maximum of 1,200 square feet.

5. Rooming, boarding, or lodging house - 1 space per sleeping unit plus 2 spaces for the building.
6. Hotel - 1 space for each 1 sleeping unit.
7. Motel or motor lodge - 1 space per sleeping unit.
8. Church, synagogue or temple, auditorium or place of assembly - 1 space per 6 seats, or bench seating spaces in main auditorium.
9. College - 1 space per 5 seats in the main auditorium, or 1 space per 3 seats per classroom, whichever is greater.
10. High school - 1 space per 12 seats in the main auditorium, or 2 spaces per classroom, whichever is greater.
11. Junior high, elementary, or nursery school - 1 space per 15 seats in main assembly room, plus 1 space per classroom.
12. Private clubs, country clubs, fraternities, sororities, and lodges - 1 space per 250 square feet of floor area.
13. Funeral home - 1 space per 6 seats or bench seating spaces in chapel.
14. Auditorium, theatre, gymnasium, stadium, arena, or convention hall - 1 space per 4 seats.
15. Grocery stores, fresh fruit, fish, meat, poultry - 1 space per 250 square feet of floor area.
16. "RH" Hospital Districts. The following parking regulations shall apply to structures situated in the "RH" Hospital District:

The number of off-street parking spaces required for any structure shall be determined by the primary use of the structure in accordance with the requirements as follows:

- a. Hospital - 1 1/2 spaces per hospital bed.
  - b. Educational facility - 1 space per 5 seats in the main auditorium or 1 space per 3 seats per classroom, whichever is greater.
  - c. Offices, clinics - 1 space for each 400 square feet of floor area.
  - d. Research facility - 1 space for each 1,000 square feet of floor area.
17. Accessory Uses.

Parking requirements for permitted accessory uses in an apartment building, apartment-hotel, hotel, motel, or motor lodge and containing 100 or more dwelling units and/or sleeping units, shall be provided as follows:

- a. One space per 600 square feet of retail, personal services, and/or office floor space, utilized as rental space.
  - b. One space per 10 seats of total, combined seating capacity in public eating and drinking facilities and 1 space per 5 seats of available seating area in assembly and meeting rooms.
  - c. One space per 5 boat berths.
  - d. One space per two cabanas.
- 18. Retail store or personal service establishment - 1 space per 300 square feet of floor area including stock brokerage.
  - 19. Furniture store, hardware, machinery, equipment and automobile and boat sales and service - 1 space per 400 square feet of floor area.
  - 20. Nursing homes - 1 space for each 2 beds.
  - 21. Office or office building - 1 space per 400 square feet of floor area, however, medical offices and clinics shall provide 1 space per 300 square feet.
  - 22. Restaurants or other establishment for consumption of food or beverages on the premises - 1 space per 4 seats.
  - 23. Animal hospital - 1 space per 400 square feet of floor area.
  - 24. Bus or other mass transit station - 1 space per 50 square feet of floor area.
  - 25. Bowling alley or pool room - 2 spaces for each alley or per billiard or pool table.
  - 26. Amusement place, dance hall, skating rink, swimming pool, natatorium or exhibition hall without fixed seats - 1 space for each fifty (50) feet of floor area available for seats.
  - 27. Banks and savings and loan associations - 1 space per 300 square feet of floor area.
  - 28. General service or repair establishment, printing, publishing, plumbing, heating, broadcasting - 1 space per 1,000 square feet of floor area.
  - 29. Laundry - 1 space per 500 square feet of floor area.
  - 30. Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, wholesale, warehouse or similar establishment - 1 space per 1,000 square feet of floor area.
  - 31. Telephone exchanges or equipment buildings - 1 space per 1,500 square feet of floor area.

32. Marina - 1 space per boat berth.
33. Dormitory - 1 space for each 150 square feet of dormitory floor area plus 1 space per 10 students based on maximum enrollment at time of conditional use approval.
34. Adult Congregate Living Facility - 1 space for each 2 beds.

B. PARKING DISTRICT NO. 2

The off-street parking required in this district shall be the same as set forth in Parking District No. 1 above, except as follows:

1. Apartment building and apartment-hotel - 1 space for each efficiency unit, 3 spaces for every 2 one-bedroom units, 3 spaces for every 2 dwelling units with 2 or more bedrooms. Dwelling units with more than three bedrooms shall provide 1 extra space per bedroom unit for any bedroom exiting upon the exterior of the building or upon a corridor; and 1 space per sleeping room. For the purpose of computing parking requirements, an efficiency unit shall have a maximum of 750 square feet, and a one-bedroom unit a maximum of 1,200 square feet.

C. PARKING DISTRICT NO. 3

There shall be no off-street parking required for any permitted use in this district.

- D. Exemptions to Required Parking - Any permitted use located within 50 feet of an oceanfront bulkhead line shall have no parking requirement; except for those uses and structures permitted by the Board of Adjustment. In these cases, said uses and structures shall provide parking spaces as required in this section.

9-3 Off-Site Facilities.

- A. All parking spaces required herein shall be located on the same lot with the building or use served, or within a distance not to exceed 400 feet from such lot.
- B. Where the required parking spaces are not located on the same lot with the building or use served and used as allowed in paragraph 9-2 A, preceding a written agreement thereby assuring their retention for such purposes, shall be properly drawn and executed by the parties concerned, approved as to form by the City Attorney and shall be filed with the application for a building permit.

9-4 Interpretation of Off-Street Parking Requirements.

- A. The parking required herein is in addition to space for storage of trucks or other vehicles used in connection with a business, commercial, or industrial use.
- B. Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.

- C. The parking space requirements for a use not specifically listed in this Section shall be the same as for a listed use of similar characteristics of parking demand generation.
- D. In the case of mixed uses, uses with different parking requirements occupying the same building or premises, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, except that parking requirements for permitted accessory uses in an apartment building, apartment-hotel, hotel, motel, or motor lodge and containing 100 or more dwelling units and/or sleeping units, shall be as provided in Section 9, Parking Regulations.
- E. Whenever a building or use, constructed or established after the Effective Date of this Ordinance, is changed or enlarged in floor area, number of dwelling or sleeping units, seating capacity or otherwise, to create a requirement for an increase in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change.
- F. Thirty-five (35) percent of the required parking spaces may be provided for compact cars, provided each such space shall be clearly designated for "compact vehicles only".

#### 9-5 Design Standards.

- A. MINIMUM AREA. For the purpose of this Ordinance, a standard off-street parking space is an all-weather surfaced area, not in a street or alley, and having a width of not less than nine (9) feet and length of not less than twenty (20) feet except for parallel parking where such space shall be twenty-three (23) feet in length. A compact off-street parking space shall be not less than eight (8) feet in width and 17.5 feet in length except for parallel parking where such space shall be twenty-one (21) feet in length. The length required shall be measured on an axis parallel with the vehicle after it is parked. The width required is to be column-free clear space, except those standard off-street spaces immediately adjacent to a structural column within an enclosed parking structure may have a width of 8'6" and those compact spaces adjacent to a structural column may have a width of 7'6". The required area is to be exclusive of driveways, permanently reserved for the temporary parking of one automobile and connected with a street or alley by an all-weather surfaced driveway. This driveway must be contiguous to the parking space and afford unobstructed ingress and egress for an automobile to be moved, except in the case of attendant parking. For the purpose of this Ordinance, attendant parking spaces shall not apply toward the computation of the minimum parking requirements.
- B. DRAINAGE AND MAINTENANCE. Off-street parking facilities shall be drained to prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable city specifications. Off-street parking areas shall be maintained in a clean, orderly, and dust free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles, equipment, materials or supplies.

- C. SEPARATION FROM WALKWAYS AND STREETS. Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, or curbing or other approved protective device, as specified by Dade County Ordinance No. 67-75.
- D. ENTRANCES AND EXITS. Location and design of entrances and exits shall be in accord with the requirements of applicable traffic regulations and standards. Landscaping, curbing, or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians, as specified by Dade County Ordinance No. 67-75.
- E. RAMPS. A maximum grade of five (5%) percent shall be permitted for sloped portions of sloping floor garages where ramps provide direct access to stalls. Interfloor ramps and ramps to and from the established grade of any street shall not exceed twelve (12%) percent, and no parking shall be permitted directly off these ramps.
- F. INTERIOR DRIVES. Interior drives shall be of adequate width to serve a particular design arrangement of parking spaces, the following being minimum widths permitted:

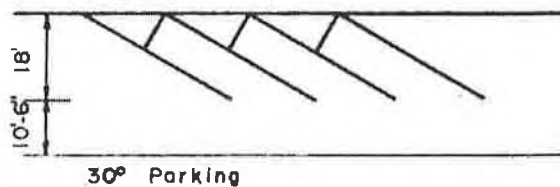
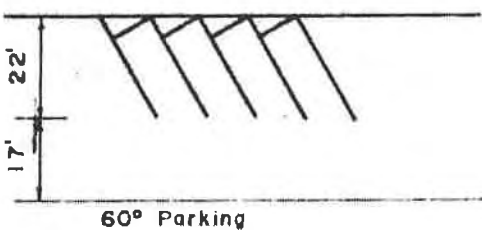
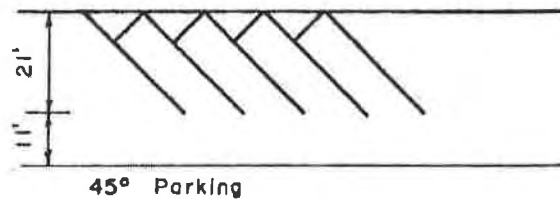
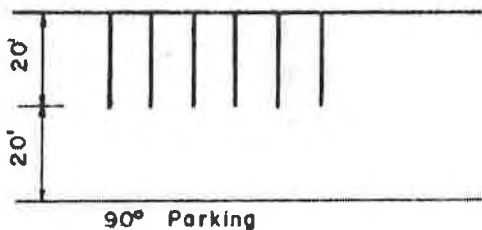
90° parking - twenty (20) feet, with columns parallel to the interior drive on each side of the required drive set back an additional one (1) foot six (6) inches, measured from the edge of the required interior drive to the face of the column.

45° parking - eleven (11) feet.

60° parking - seventeen (17) feet.

30° parking - ten (10) feet, six (6) inches.

Further defined by the following illustrations:



- G. MARKING. Parking spaces in lots of more than ten (10) spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Each individual space shall be provided with a car stop or curb or other similar device to prevent vehicular encroachment. Signs or markers shall be used as necessary to ensure efficient traffic operations of the lot.
- H. LIGHTING. Adequate lighting shall be provided in lots of more than ten (10) spaces if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to minimize glare on property in a residential district.
- I. SCREENING AND LANDSCAPING. At grade parking lots and parking garages shall conform to the minimum Landscape Standards as set forth in Section 32-6.

9-6 Parking in Front Yards.

A. Single-Family Residential Districts.

- 1. Required parking spaces may be located in the minimum front yard setback area.
- 2. Accessory carport structures within the front yard shall not be permitted in the minimum sideyard setback pursuant to Section 8-1, B-13 of this Ordinance.
- 3. Parking or storage of vehicles in the minimum required front yard setback shall be restricted to automobiles. No Commercial vehicles shall be parked or stored in any yard.

B. Multiple Family Districts.

- 1. On lots under 10,000 square feet, the required parking may be located in the minimum front yard setback.
- 2. On lots under 10,000 square feet which do not locate parking in the minimum front yard, the density and floor area ratio may be increased by 20%.
- 3. On lots of 10,000 square feet or more parking spaces shall not be located in the minimum front yard setback.

C. Commercial Districts, C-1 to C-6.

- 1. On lots under 10,000 square feet, parking spaces may be located in the minimum front yard setback.

## SECTION 10

### OFF-STREET LOADING

#### 10-1 Off-Street Loading Required

Except as otherwise provided in this Ordinance, when any building or structure is erected, structurally altered, or converted in use, accessory off-street loading spaces shall be provided for the building, structure, additional floor area or new use in accordance with the following schedule:

- A. For each retail store, department store, restaurant, wholesale house, warehouse, repair, general service, manufacturing or industrial establishment, or similar use, which has an aggregate floor area in square feet of:
- |   |          |
|---|----------|
| 1. Over 2,000 but not over 10,000         | 1 space  |
| 2. Over 10,000 but not over 20,000        | 2 spaces |
| 3. Over 20,000 but not over 40,000        | 3 spaces |
| 4. Over 40,000 but not over 60,000        | 4 spaces |
| 5. For each additional 50,000 over 60,000 | 1 space  |
- B. For each office building, hospital or similar institutions, places of public assembly, or similar use, which has an aggregate floor area in square feet of:
- |   |          |
|---|----------|
| 1. Over 5,000 but not over 10,000           | 1 space  |
| 2. Over 10,000 but not over 100,000         | 2 spaces |
| 3. Over 100,000 but not over 200,000        | 3 spaces |
| 4. For each additional 100,000 over 200,000 | 1 space  |
- C. For each apartment building, apartment-hotel, hotel or motel:
- |  |          |
|--|----------|
| 1. Over 36 units but not more than 50 units                          | 1 space  |
| 2. Over 50 units but not more than 100 units                         | 2 spaces |
| 3. Over 100 units but not more than 200 units                        | 3 spaces |
| 4. For each additional 100 units or fraction thereof, over 200 units | 1 space  |



## 10-2 Interpretation of Off-Street Loading Requirements

- A. The loading space requirements apply to all districts except the C-3 Central Business Districts and properties fronting 41st Street from Alton Road to Indian Creek, where no requirements are imposed.
- B. The loading requirements in this Section do not limit special requirements which may be imposed in connection with Conditional Uses, Section 7.
- C. For uses which contain less than 10,000 square feet of floor area, the Code Enforcement Director may waive or reduce the loading requirements whenever the character of the use is such as to make unnecessary the full provision of loading facilities or where such provision would impose an unreasonable hardship upon the use of the lot.

## 10-3 Design Standards

- A. SIZE AND LOCATION. For the purpose of these regulations a loading space is a space within the main building or on the same lot, logically and conveniently located for bulk pick-ups and deliveries, scaled to delivery vehicles expected to be used but not less than 10 x 20, and accessible to such vehicles when required off-street parking spaces are filled.
- B. DRAINAGE AND MAINTENANCE. Off-street loading facilities shall be drained to prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable city specifications. Off-street loading areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and not used for the sale, repair, dismantling, or servicing of any vehicles, equipment, materials, or supplies.
- C. ENTRANCES AND EXITS. The location and design of entrances and exits shall be in accordance with applicable traffic regulations and standards. Where the entrance or exit of a building is designed for truck loading and unloading, such entrance or exit shall be designed to provide at least one off-street loading space. However, no such loading space shall be located in the required front yard setback.

## SECTION 11

### SIGNS

To achieve the purposes of this Ordinance and of Part I, Div. II, Article VI, Related Laws, The Code of the City of Miami Beach, Florida, and provide for the general welfare and safety of the public, it is necessary that regulations be established for the location, size, purpose and lighting of signs erected or displayed in the City.

#### 11-1 General Sign Regulations.

The following regulations apply generally to all signs and are in addition to the regulations contained elsewhere in this Ordinance.

- A. PERMIT REQUIRED. No sign, unless herein accepted, shall be erected, constructed, posted, painted, altered, maintained, or relocated, except as provided in this Section, until a permit has been issued by the Building Official. Before any permit is issued, an application, especially provided by the Code Enforcement Division, shall be filed, together with such drawings and specifications as may be necessary to fully advise and acquaint the Division with the location, construction, materials, manner of illuminating, and securing or fastening and number of signs applied for and the wording of the sign or advertisement to be carried on the sign. All signs which are electrically illuminated by neon or by any other means shall require a separate electrical permit and inspection. Each sign requiring a permit shall be clearly marked with the permit number and name of the person or firm placing the sign on the premises.
- B. CODE REQUIREMENTS. Structural and safety features and electrical systems shall be in accordance with the requirements of the South Florida Building Code. No sign shall be approved for use unless it has been inspected and found to be in compliance with all the requirements of this Ordinance and applicable technical codes.
- C. EXEMPT SIGNS. The following signs are exempt from the provisions of these regulations and may be erected or constructed without a permit but in accordance with the structural and safety requirements of the South Florida Building Code:
  - 1. Official traffic signs or sign structures, or municipal information signs and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency, and temporary signs indicating danger.
  - 2. Changing of the copy on a bulletin board, poster board, display encasement, or marquee.
  - 3. Temporary non-illuminated signs not more than fifty (50) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress, one such sign for each street frontage. These signs shall be removed upon issuance of the Certificate of Occupancy.

4. Non-illuminated signs, not exceeding six (6) square feet in area with letters not exceeding eight (8) inches in height, painted, stamped, perforated, or stitched on the surface area of an awning, canopy, roller curtain, or umbrella, but not in Zoning Districts RS-1, RS-2, RS-3, RS-4 and RM-14.
  5. Sign on truck, bus or other vehicle, while in use in the normal course of a business.
- D. ERECTION OF SIGNS IN SPECIAL CASES. The Board of Adjustment shall grant approval or deny signs not conforming to the requirements of this Section. For purposes of this Section signs considered by the Board of Adjustment shall only be those exceeding the maximum size, location, or those relating to graphics and illustrations; in other cases when this Ordinance does not contain specific sign regulations, they shall be considered by the City Commission.
- E. PENNANTS, BANNERS, STREAMERS. Pennants, banners, streamers, and all other fluttering, spinning or similar type signs and advertising devices are prohibited except for national flags and flags of political subdivisions of the United States, and except for flags of bona fide civic, charitable, fraternal, and welfare organizations, and except during nationally recognized holiday periods, pennants, banners, streamers, and other fluttering, spinning, or similar type advertising devices pertaining to said holiday periods may be displayed on a temporary permit basis as provided in paragraph 11-1 D., preceding.
- F. SIGNS OVER PUBLIC PROPERTY.
1. No sign of any character shall be suspended across any public street, alley or waterway; nor shall any sign of any description be painted on or applied to any curb, sidewalk, tree, light standard, utility pole, hydrant, bridge, wall, or any structure, other than an awning, which is within the property lines of any street, alley or waterway within the city; except on a temporary permit basis as provided in paragraph 11-1 D, preceding, and with permission of the City Commission.
  2. No portion of any flat sign which extends over a public sidewalk or alley shall be less than nine (9) feet above such sidewalk or fifteen (15) feet above such alley, measured vertically directly beneath the sign.
  3. No projecting sign, except a marquee, and no detached, ground or pole sign shall extend or project over any portion of any sidewalk, street, alley, waterway or any other public way or any public property.
- G. CAMPAIGN SIGNS. A candidate for public office may construct or maintain signs advertising his candidacy at each of not more than four (4) of his headquarters, provided no such signs shall be located in a residential district.
1. Political signs, except political signs appearing as copy on general advertising structures, political signs on the premises of an authorized campaign headquarters, or political signs as permitted window signs in accordance with the regulation applicable to window signs shall be prohibited. This prohibition shall not apply to political signs on moving

vehicles or to political signs on operable vehicles which are parked on private property, for a period not in excess of eight continuous hours on any one lot, during the time between qualification and election.

2. All political candidates shall deposit with the City \$150 as security for his undertaking to remove his political signs within seven days following the date of the general election involving his campaign.

H. GENERAL ADVERTISING SIGNS. No general advertising sign shall be constructed, erected, used, operated or maintained in the City of Miami Beach.

I. YARD REQUIREMENTS.

1. Unless otherwise specified in these regulations, all signs shall comply with the yard requirements of the district in which they are located.
2. One accessory sign may occupy required yards in a district where such sign is permitted by these regulations, provided such sign is not more than thirty (30) square feet in area, does not contain flashing, moving, or intermittent illumination, and provided other requirements of these regulations are complied with.
3. No sign, portable or otherwise, is to be placed or located to conflict with the vision clearance requirements of Section 8 of this Ordinance.
4. In addition to the side yards required elsewhere in these regulations, any sign exceeding thirty (30) square feet in area shall be set back from interior side property lines as follows: ten (10%) percent of the street frontage of the property in question, if such frontage does not exceed one hundred (100) lineal feet; twenty (20%) percent of the street frontage of the property if such frontage exceeds one hundred (100) lineal feet, but does not exceed two hundred (200) lineal feet; thirty (30%) percent of the street frontage of the property in question if such frontage exceeds two hundred (200) lineal feet.

J. LIGHTING.

1. Any sign may be indirectly illuminated if illumination is not otherwise limited by the provisions of these regulations.
2. No sign may be a flashing sign, intermittent, moving or revolving.

K. NONCONFORMING USES.

1. Permitted signs for a nonconforming business, commercial, or industrial use in a residential district shall consist of those signs permitted in the C-1 Zoning District.
2. Except as otherwise specifically provided in these regulations, all signs shall be subject to the provisions of Section 12, Non-Conforming Structures and Uses.

L. REMOVAL REQUIRED.

1. All signs shall be maintained in good condition and appearance. The Building Official may cause to be removed any sign which shows gross neglect or becomes dilapidated where the area around such sign is not well maintained after due notice has been given as provided below.
2. Any accessory sign previously associated with a vacated premises shall be either removed from the premises by the owner or lessee not later than six (6) months from the time such activity ceases to exist, or said signs shall be altered or resurfaced by the owner or lessee within the same six-month time period, so that the sign will not display letters, numerals, symbols, figures, designs, or any other device for visual communication that would pertain to the activity formerly associated with the vacated premises.
3. The Building Official shall remove or cause to be removed, any sign erected or maintained in conflict with these regulations if the owner or lessee of either the site or the sign fails to correct the violation within thirty (30) days after receiving written notice of violation from the Code Enforcement Department. Removal of a sign by the Building Official shall not affect any proceedings instituted prior to removal of such sign.
4. In any district where a sign does not comply with the provisions of this Ordinance, such sign and any supporting structures other than a building shall be removed not later than five years from the Effective Date of this Ordinance. Supporting structures for nonconforming signs may continue in use for a conforming sign if they comply in all respects to the applicable requirements of the regulations contained herein and other codes and ordinances.
5. Any sign which does not comply with the provisions of this Ordinance and which is damaged, by any cause, to an extent that the cost of repairing the sign equals fifty (50%) percent, or more, of the original installation cost of the sign, shall be removed.

M. SIGNS AND SIGN DEVICES PROHIBITED.

1. No sign shall be constructed, erected, used, operated, or maintained so as to display intermittent lights, to move or to revolve.
2. No sign shall be constructed, erected, used, operated or maintained which uses the word "Stop" or "Danger" or presents or implies the need or requirement for stopping, or the existence of danger, or which is a copy or imitation of an official sign. This provision regarding the words "Stop" and "Danger" does not apply when the words are a part of attraction titles for a broadcast, motion picture, theatre event, opera or concert, or when they are used in descriptive lines of advertising, so long as they are not used to stimulate, copy or imply any official traffic warning, either for vehicles or for pedestrians.

3. No sign shall be constructed, erected, used, operated or maintained so as to provide a background of colored lights blending with the traffic signals to the extent of confusing a motorist when viewed from a normal approaching position of a vehicle at a distance of twenty-five (25) to three hundred (300) feet.
4. No sign shall be attached or otherwise applied to trees, utility poles, bus benches, trash receptacles, or any other unapproved supporting structures.
5. No sign shall have spinning, or strings of spinning, or similar type devices.
6. Signs which are not securely affixed to the ground, or otherwise affixed in a permanent manner to an approved supporting structure, shall be prohibited.
7. Political signs, except political signs on the premises of an authorized campaign headquarters, or political signs as permitted window signs in accordance with the regulations applicable to window signs shall be prohibited. This prohibition shall not apply to political signs on moving vehicles, during the time between qualification and election.
8. Except where permitted within certain zoning districts, no sign indicating the presence of an accessory commercial use in a hotel, motel, apartment-hotel, or apartment building located in a residential district shall be constructed, erected, used, operated, or maintained so as to be visible from a public street, walk, or other public way.
9. Detached signs, when permitted, shall not exceed a height of twenty-five (25) feet above grade except as elsewhere provided.

#### 11-2 Zoning District Sign Regulations.

All signs permitted in these regulations shall be Establishment Identification Signs unless otherwise specified.

##### A. SIGNS PERMITTED IN THE RS-1, RS-2, RS-3, RS-4 and RM-14-DISTRICTS

1. A name plate, one (1) square foot in area, to identify the owner or occupant of a dwelling or building.
2. Private directional sign, one (1) square foot in area.
3. A sign, limited in area to ten (10) square feet for identification of a subdivision.
4. A customary church bulletin board, limited in area to thirty (30) square feet.
5. A sign, limited in area to thirty (30) square feet for identification of permitted public and semi-public uses or clubs.

6. A temporary, non-illuminated sign, advertising real estate for sale or lease, subject, however, to the following conditions:

- a. No such sign shall be displayed, constructed, reconstructed, situated, maintained or erected by any other than the owner or lessee, of the lot, parcel of land or premises, except only on the lot or premises as herein set forth.
- b. There may be only one (1) such sign on the lot or parcel of land or on the improvements thereon, regardless of the size of such lot, parcel or improvements, and such sign may contain only one of the following designation, to wit: For lease, for sale, for sale or lease, open for inspection, for rent.

Such sign may have the following appearing thereon:

- 1) The name of the real estate broker or realtor as the same is registered with the Florida Real Estate Commission, in letters not exceeding one inch in height.
- 2) A designation following such name, as being either; (a) "Realtor", or (b) "Broker".
- 3) The telephone number of said Realtor or Broker.
- 4) By appointment only.

Provided, however, that nothing herein contained shall prohibit the use of an additional strip sign, not exceeding two (2) inches by eighteen (18) inches, which will provide for one (1) inch letters, and placed immediately beneath the sign authorized by this paragraph, and containing the information set forth in Items (1) through (4) of this paragraph; and, further provided, that nothing herein contained shall be deemed to prohibit the use of the name, address, and telephone number of the owner or lessee in lieu of that of the Real Estate Broker or Realtor.

- c. The face surface of such sign shall not exceed a height of fourteen (14) inches nor a width of eighteen (18) inches, and the top of the sign shall not be more than five (5) feet above the ground. Color of the sign shall be plain black on white or plain white on black, no iridescent or other lighting permitted. The sign shall be securely placed in the ground or attached to the building. The date and permit number shall be placed on the bottom of the face of the sign.
- d. Said sign shall not be nearer than ten (10) feet from any property line if placed upon vacant property, and if placed on land improved by building, it shall not be placed nearer than five (5) feet from any property line, unless the main part of the building is less than five (5) feet from the property line, in which case it may be placed in or upon a front or side door or window of the building; if there is a wall upon the property line, then such sign may be placed on or against such wall.

- e. Permits for such signs may be issued by the Building Official upon application by the owner or lessee, in person and giving proof of such ownership or tenancy, and all such permits shall automatically expire within six (6) months from the date of issuance.

B. SIGNS PERMITTED IN THE RM-60 DISTRICT.

1. Any sign permitted in an RM-14 District.
2. A flat, awning or marquee sign, non-illuminated and limited in total area to fifteen (15) square feet, giving the name and/or address or management of a multiple-family dwelling or group of multiple-family dwellings. The height or letters shall not exceed one (1) foot on a marquee or awning sign.

C. SIGNS PERMITTED IN THE RM-100 AND RM-125 DISTRICTS.

1. Any sign permitted in an RM-14 District.
2. Any sign permitted in an RM-60 District, illuminated or non-illuminated, for a multiple-family dwelling, hotel, apartment-hotel, or motel, containing less than fifty (50) dwelling units.
3. For a multiple-family dwelling, hotel, apartment-hotel, or motel containing fifty (50) or more dwelling units, accessory signs, flat, projecting, or detached, illuminated or non-illuminated with total aggregate sign area limited to forty (40) square feet for each two hundred (200) feet or fraction thereof, of street frontage and limited to no more than two (2) separate signs for each street frontage. Detached and projecting signs shall be limited in area to twenty (20) square feet for each sign. A flat sign shall be limited in area to forty (40) square feet plus any premium permitted for height of location.
4. Two (2) directional signs with sign area not exceeding eight (8) inches by twenty-four (24) inches.
5. Flat signs may be increased in area by ten (10) square feet for each story above the fourth story on which the sign is located and such increased area shall not be included in the computation of the total aggregate sign area.
6. In addition to signage permitted elsewhere in this Ordinance, only a hotel, motel or apartment-hotel may have one (1) sign, flat, single or double faced pole or mounted, illuminated or non-illuminated, indicating the presence of an accessory commercial use if the following criteria are met:
  - a. The hotel, motel, or apartment hotel must contain a minimum of one hundred (100) sleeping units for the private use of transients. Permitted accessory use signage includes flat, single or doubled faced pole or mounted signs.



- b. The accessory sign may be located in the required front yard with a minimum ten (10) foot setback from any property line.
- c. The area of flat or mounted signs may not exceed one-half (1/2) of the total aggregate sign area permitted by this Ordinance. Single or doubled faced pylon signs shall have a maximum area of twenty-four (24) square feet and a maximum height of four (4) feet measured from grade to the top of the sign. Signage erected under this section shall be in addition to the total permitted aggregate sign area.

Pole signs are prohibited in these Districts.

- d. Sign copy may only advertise the names of entertainment accessory uses. For purposes of this Section, entertainment is confined to restaurants, bars, and meeting areas that feature live (not recorded) musicians, singers, bands, and comedians or pre-recorded music if accompanied by a professional announcer. The entertainment use which is the subject of the sign copy shall appear within the area occupied by the hotel, motel, or apartment hotel. Sign copy advertising room rates, price of meals or price of entertainment is prohibited.
- e. A sign or sign structure erected pursuant to this Section shall by January 1 of each year receive written certification from the Code Enforcement Director verifying compliance with the provisions of this Ordinance. Failure to receive such certification will result in a termination of the sign permit.
- f. Signage permitted by this Section shall be consistent with Section 7-2, Control of Entrances and Exits.

D. SIGNS PERMITTED IN THE C-1 AND C-2 DISTRICTS.

- 1. Any sign permitted in an RM-60 District.
- 2. Flat signs, illuminated or non-illuminated, with total aggregate sign area not more than ten (10%) percent of the area of walls fronting on a street and no one (1) sign with sign area of more than thirty (30) square feet. Illuminated signs inside of show windows and within five (5) feet thereof shall be included in the computation of sign area, and in addition, shall be limited to ten (10%) percent of the total glass area of the window in which they are placed. Neon tubing outlining a show window shall be included in sign area and measured by multiplying the length of the tubing by six (6) inches.
- 3. Projecting signs, illuminated or non-illuminated, one (1) for each business on the premises, with sign area limited to twenty (20) square feet.
- 4. Detached signs, if there are no projecting signs, illuminated or non-illuminated, one (1) for each business on the premises, with sign area limited to ten (10) square feet.

5. Marquee signs, illuminated or non-illuminated, two (2) for each business on the premises, with sign area limited to three (3) square feet.
6. Temporary, non-illuminated paper or painted signs in windows, limited to twenty (20%) percent of the total glass area of the window in which they are placed.
7. Directional signs limited in area to four (4) square feet, shall only provide directions to motorists regarding the location of parking areas and access drives, shall be permitted as accessory signs and not included in any computation of sign area.

E. SIGNS PERMITTED IN THE C-3 AND C-4 DISTRICTS.

1. Any sign permitted in an RM-125 District.
2. Flat signs in C-3 with a total aggregate sign area not more than ten (10%) percent and in C-4 with total aggregate sign area not more than twenty (20%) percent of the area of walls fronting on a street, and no one (1) sign with sign area of more than one hundred twenty-five (125) square feet. Illuminated signs inside of show windows and within five (5) feet thereof, shall be included in the computation of aggregate sign area, and in addition, shall be limited to ten (10%) percent of the total glass area of the window in which they are placed.
3. Total aggregate sign area for all signs listed above in this group shall be limited to one hundred and fifty (150) square feet for each fifty (50) feet of street frontage.
4. Temporary, non-illuminated paper or painted signs in windows shall be limited to ten (10%) percent of the total glass area of the window in which they are placed.
5. Directional signs limited in area to four (4) square feet, giving directions to motorists regarding the location of parking areas and access drives shall be permitted as accessory signs and not included in any computation of sign area.
6. Permitted sign area of one (1) accessory flat sign may be increased by ten (10) square feet for each story above the fourth (4th) story on which the sign is located and not included in the computation of the total aggregate sign area.

F. SIGNS PERMITTED IN THE C-5 DISTRICT.

1. Any sign permitted in an RM-125 District.
2. Flat signs, with total aggregate sign area not more than twenty (20%) percent of the area of walls fronting on a street, and no one sign with sign area of more than one hundred twenty-five (125) square feet. Illuminated signs inside of show windows and within five (5) feet thereof, shall be

included in the computation of aggregate sign area, and in addition, shall be limited to twenty (20%) percent of the total glass area of the window in which they are placed. Neon tubing outlining store windows shall not be included in the computation of aggregate sign area.

3. Projecting signs, one (1) for each business on the premises, with sign area limited to forty (40) square feet.
4. Detached signs, limited in area to thirty (30) square feet, one (1) for each business or one (1) for each fifty (50) feet of street frontage.
5. Marquee signs, illuminated or non-illuminated, one for each business on the premises, with sign area limited to three (3) square feet.
6. Total aggregate sign area for all signs listed above in this group shall be limited to two hundred (200) square feet for each fifty (50) feet of street frontage.
7. Temporary, non-illuminated paper or painted signs in windows shall be limited to twenty (20%) percent of the total glass area of the window in which they are placed.
8. Directional signs limited in area to four (4) square feet, giving directions to motorists regarding the location of parking areas and access drives shall be permitted as accessory signs and not included in any computation of sign area.
9. Permitted sign area of one (1) accessory flat sign may be increased by ten (10) square feet for each story above the fourth story on which the sign is located and not included in the computation of the total aggregate sign area.

G. SIGNS PERMITTED IN THE C-6 AND MR DISTRICTS.

1. Flat signs limited in area to one hundred (100) square feet, for each business.
2. Detached signs, if there are no projecting signs, limited in area to thirty (30) square feet, one for each business.
3. Projecting signs, if there are no detached signs, limited in area to thirty (30) square feet, one (1) for each business.
4. Directional signs of any type limited in area to four (4) square feet, in such number and such locations as required for proper management of the premises. Such signs shall not be included in computation of sign area.
5. Total aggregate sign area for all signs shall be limited to two (2) square feet for each lineal foot of lot frontage.

#### H. SIGNS ERECTED PURSUANT TO DUNE OVERLAY REGULATIONS

All signs shall be approved by the Design Review Board pursuant to Section 24 of their regulations. However, one sign shall be permitted per site or Promenade linkage; whichever is greater. Said sign is required to have copy only pertaining to the street address, name and function of the Use with each sign(s) having a maximum size not to exceed six (6) square feet.

#### I. SIGNS PERMITTED IN THE R-PS 1-4 DISTRICTS

<u>Zoning District</u>	<u>Notes</u>	<u>Awning/ Marquee</u>	<u>Flat</u>	<u>Projecting</u>	<u>Detached (Pole/Pylon)</u>
R-PS 1 R-PS 2		15 sq. ft.	15 sq. ft.	not permitted	not permitted
R-PS 3 R-PS 4	Aggre- gate Sign Area 40 sq. ft./ 100' of street frontage	15 sq. ft.	60 sq. ft.	not permitted	not permitted

#### J. SIGNS PERMITTED IN THE C-PS 1-3 DISTRICTS

<u>Zoning District</u>	<u>Notes</u>	<u>Awning/ Marquee</u>	<u>Flat</u>	<u>Projecting</u>	<u>Detached (Pole/Pylon)</u>
C-PS 1		15 sq. ft.	10% of wall 40 sq. ft. max.	20 sq. ft.	not permitted
C-PS 2	Aggre- gate Sign Area 150 sq. ft./ 100' of street frontage	15 sq. ft.	15% of wall 70 sq. ft. max.	20 sq. ft.	20 sq. ft.

Zoning  
District

Notes

Awning/  
Marquee

Flat

Projecting

Detached  
(Pole/Pylon)

C-PS 3

Aggre-  
gate Sign  
Area 200  
sq. ft./  
100' of  
street  
frontage

15 sq.  
ft.

15% of  
wall 100  
sq. ft.  
max.

40 sq. ft.

40 sq. ft.

## SECTION 12

### NONCONFORMING STRUCTURES AND USES

#### 12-1 Nonconforming Use of Land.

- A. In any district where open land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two (2) years from the date of passage of this Ordinance. During the two (2) year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to such use of land shall be removed at the end of the two (2) year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.

1. A use approved as a Conditional Use shall be considered a conforming use so long as the conditions of the approval are met.

#### 12-2 Nonconforming Signs.

- A. Nonconforming signs shall be removed as provided in Section 11-1 L, Signs of this Ordinance. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs.

#### 12-3 Nonconforming Use of Buildings.

- A. Except as otherwise provided herein, the lawful use of a building existing at the Effective Date of this Ordinance may be continued, although such use does not conform to the provisions hereof. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use. The nonconforming use of a building may be hereafter extended throughout those parts of a building which were lawfully and manifestly arranged or designed for such use at the time of passage of these regulations.

#### 12-4 Discontinuance of Nonconforming Uses.

- A. No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part, for a nonconforming use which remains idle or unused for a continuous period of six (6) months, or for eighteen (18) months during any three (3) year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.

12-5 Destruction of Nonconforming Uses.

- A. No building which has been damaged by any cause whatever to the extent of more than fifty (50%) percent of the County tax-assessed value of the building shall be restored except in conformity with the regulations contained in this Ordinance and all rights as a nonconforming use are terminated. If a building is damaged by less than fifty (50%) percent of the tax-assessed value, it may be repaired and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage.

12-6 Intermittent or Illegal Uses.

- A. The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

12-7 Existence of a Nonconforming Use.

- A. The Director of Code Enforcement shall make an initial determination of the existence of a non-conforming use and in so doing may make use of affidavits and investigation as he may determine necessary and in a particular case.

The question as to whether a nonconforming use exists shall be a question of fact and in case of doubt or challenge raised to the initial determination made, the question shall be decided by the Board of Adjustment after public notice and hearing and in accordance with the rules of the Board.

12-8 Building Nonconforming in Height, Area, or Bulk.

- A. A building nonconforming only as to height, area, yards, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect.

## SECTION 13

### BOARD OF ADJUSTMENT

#### 13-1 Membership.

- A. The City's Planning Director and Public Works Director shall be ex officio members without the right to vote, and whose presence shall not be counted for the determination of a quorum. The remaining five (5) members shall consist of the following:

One (1) member shall be appointed from one (1) of the following professions or callings: Law, Architecture, Engineering, Real Estate Development, Certified Public Accounting, Financial Consultation and General Business. The members representing the professions of Law, Architecture, Engineering and Public Accounting shall be duly licensed by the State of Florida; the member representing General Business shall be of responsible standing in the community, and each member shall be bound by the requirements of the Conflict of Interest Ordinance of the City and shall be subject to removal from office for the violation of the terms thereof. No member shall have any financial or other interest in any matter coming before the Board. Members shall be appointed for a term of one (1) year by a five-sevenths (5/7) vote of the City Commission.

#### 13-2 Notification of Hearings.

- A. The Board shall not vary or modify any regulation or provision of this Ordinance until a public hearing has been held. Notice of the public hearing shall appear in a newspaper of general paid circulation at least fifteen (15) days prior to the public hearing date and be given by mail to the owners of record of land lying within 375 feet of the property. The notice shall indicate the use, construction or alteration of which is proposed to be changed.

#### 13-3 Meetings and Records.

- A. Meetings of the Board shall be held at least once monthly, or at such other times as the Board may determine, or upon call of the chairman. All meetings of the Board shall be open to the public. The Board shall adopt its own rules or procedures and keep minutes of its proceedings showing its action on each question considered. All records of the Board and its official actions shall be filed in the office of the Board and shall be a public record.

#### 13-4 Determination of Jurisdiction.

- A. All variance requests shall be first submitted to the City Attorney for a determination whether the requested variance is properly such, and does not constitute a change or amendment to the Zoning Ordinance. The jurisdiction of the Board of Adjustment shall not attach unless and until the Board has before it a written certificate of the City Attorney that the subject matter of the request is properly before the Board. The separate written recommendations of the Planning Director and of the Public Works Director shall be before the Board prior to its consideration of any matter before it.



### 13-5 Procedure.

- A. Any person appearing before the Zoning Board of Adjustment on an application for a variance from the provisions of this Ordinance shall be administered the following oath by any person duly authorized under the laws of Florida to administer oaths:

'I, \_\_\_\_\_, do hereby swear, under oath that any and all testimony to be given by me in this proceeding is the truth, the whole truth, and nothing but the truth, so help me God.'

1. Any person giving false testimony before the Zoning Board of Adjustment on an application for a variance from the provisions of this Ordinance shall be deemed to have violated the provisions hereof and shall be subject to the maximum penalty prescribed by Section 2 of the Code of the City of Miami Beach, Florida. (1647)
- B. Upon the withdrawal or final denial of an application for a variance from the provisions of this Ordinance, no new application may be filed for such variance within six (6) months following such withdrawal or denial, unless, however, the decision of the Zoning Board of Adjustment taking any such final action is made without prejudice, or unless the withdrawal of such application is permitted to be made without prejudice. An application may be withdrawn without prejudice by the applicant as a matter of right, if such request is signed by the applicant and filed with the appropriate agency prior to the giving of any notice required by this Ordinance; otherwise, all such requests for withdrawal shall be without prejudice, save and except that the Zoning Board of Adjustment may permit withdrawals without prejudice at the time the application for said variance is considered by the said Board; provided further, that no application may be withdrawn after final action has been taken. (1682)
- C. Within a reasonable time after a request has been properly considered by the Board of Adjustment, the City shall record in the Circuit Court the action and conditions, if any. No building permit, Certificate of Occupancy, Certificate of Completion or licensing permit shall be issued until the recordation has been complied with. Prior to the recordation, the City Attorney shall approve the instrument and is empowered to release the conditions only upon agreement with the Board of Adjustment that the conditions are no longer applicable. If a question should arise as to the release of any conditions, the Board of Adjustment is authorized to make the appropriate determination.

### 13-6 Powers and Duties.

- A. The Board of Adjustment shall have the following powers and duties:
1. To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Ordinance.

In exercising this power, the Board of Adjustment, may upon appeal, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass under Ordinance.

2. a. To authorize upon appeal such variance from the terms of this Ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this Ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this Ordinance, the Board of Adjustment must find:
  - 1) That 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;
  - 2) That the special conditions and circumstances do not result from the action of the applicant;
  - 3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
  - 4) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
  - 5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
  - 6) That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- b. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
- c. The Board of Adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall begin

or be completed or both. Notwithstanding the above, the applicant shall obtain a building permit within two (2) years from the date the Board approved the variance request. If a building permit has not been issued for the work or if the work has not commenced within the two (2) year period, then the applicant may request an extension of time for a period not to exceed one (1) year. Said request shall occur within the two (2) year period. If the building permit is not issued within the two (2) year period or an extension of time is not granted then the original approval is void. If the request for an extension of time is within the two (2) year period, notice requirements as listed in Section 13-2 shall not apply; however, the request shall be placed on the agenda and a notice shall be placed in a paper of general paid circulation within fifteen (15) days of the public hearing date.

- d. Under no circumstances except as permitted above shall the Board of Adjustment grant a variance to permit a use not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this Ordinance. No nonconforming use of neighboring lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
- e. The Board shall fix a reasonable time for the hearing of the appeal taken within the time specified by its rules, give public notice thereof as well as due notice to the parties in interest, and decide same within a reasonable time.

B. FEES - The below fee schedule is established for the purpose of defraying expenses of public notices, postage, printing, determining the impact of the request and other administrative costs in connection with variance requests; when it is alleged there is an error in any administrative order, requirement, decision, or determination made by an administrative official; or a request for the Board to clarify a condition, finding, or amend a decision.

1. Variances, Appeals from Administrative Decisions and Signs:

(a) Single-Family Residences	\$100 filing fee plus \$25 for each individual variance requested
(b) Parking Requirements for allowable Commercial Use in existing structures	\$200 filing fee plus \$100 for each individual variance requested
(c) Multi-Family and Commercial properties	\$400 filing fee plus \$100 for each individual variance requested
(d) Appeal from Administrative Decision	\$250
(e) Signs	\$200

With the exception of variances associated with single family residences, the fixed application fee shall be supplemented by an additional \$0.50 per mailing address:

2. If a deferment is requested by the applicant, an additional fee shall be assessed as follows:

(a) Single-Family Residences	\$50
(b) Parking Requirements for Allowable Commercial Use	\$75
(c) Multi-Family and Commercial Properties	\$150
(d) Appeal from Administrative Decision	\$150
(e) Signs	\$100

3. When an applicant requests a clarification of a previous Board of Adjustment finding, a fee of \$250.00 shall be assessed. Public Notice requirements listed in Section 13-2 shall be applied.
4. If a deferment is given by the Board of Adjustment, and not at the request of an applicant, there will be no additional fee.
5. If the applicant removes his file from the Agenda after it has been accepted by the appropriate agency, the Board shall refund 50% of all fees paid by the applicant and no further refund shall be made.
6. No public hearing shall be scheduled until the responsible agency has determined the application be complete and the fee paid.

#### 13-7 Stay of Work and Proceedings on Appeal

An appeal to the Board of Adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from unless the official from who the appeal was taken shall certify to the Board of Adjustment that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

**SECTION 14**  
**ADMINISTRATION**

**14-1 Enforcement.**

- A. It shall be the duty of the Director of the Code Enforcement Division to enforce the provisions of this Ordinance and to refuse to approve any permit for any building or for the use of any premises, which would violate any of the provisions of this Ordinance. It shall also be the duty of all officers and employees of the City to assist the Code Enforcement Director by reporting to him any seeming violation in new construction, reconstruction or land uses.
- B. For the purpose of inspection, the Code Enforcement Director and his authorized representatives shall have free access to materials and work at all times and either or both shall have the power to stop work pending investigation as to materials, work, grades, use and other provisions of these regulations.
- C. The Code Enforcement Director is authorized, where he deems it necessary for enforcement of these regulations, to request the execution of an agreement for recording.
- D. In case any building is erected, constructed, reconstructed, altered, repaired, or converted, or any building or land is used in violation of this Ordinance, the Code Enforcement Director, or the City, or the City in his behalf is authorized and directed to institute any appropriate action to put an end to such violation.
- E. Upon good cause and upon presentation of proper credentials, the Code Enforcement Director or his authorized representative, may enter at any reasonable time, any building, structure or premises, for the purpose of determining whether this Ordinance is being violated. In the event it is found and determined that there are violations of this Ordinance, the Code Enforcement Director, or his authorized representative, is empowered to issue a summons to the person or persons violating the same.

**14-2 Permits and Plot Plans.**

- A. A building permit shall not be issued for any building or structure to be erected, constructed, altered, moved, converted, extended, enlarged or used, or for any land or water to be used, except in conformity with the provisions of this Ordinance.
- B. A license or permit shall not be issued by any Department, Agency or Official of the City of Miami Beach for the use of any premises or the operation of any business, enterprise, occupation, trade, profession or activity which would be in violation of any of the provisions of this Ordinance.

**14-3 Site Plans.**

- A. Where this Ordinance requires the submittal of site plans, said site plans shall contain all of the information required by applicable laws and ordinances governing the approval of subdivisions and, in addition, shall show the following:

1. The proposed title of the project and the name of the engineer, architect, or landscape architect, and the developer.
  2. The northpoint, scale, and date.
  3. Existing zoning and zoning district boundaries.
  4. The boundaries of the property involved, all existing easements, section lines, and property lines, existing streets, buildings, waterways, watercourses, or lakes, and other existing physical features in or adjoining the project.
  5. Topography of the project area with contour intervals of one (1) foot or less.
  6. The location and sizes of sanitary and storm sewers, water mains, culverts, and other underground structures in or near the project.
  7. Proposed changes in zoning, if any.
  8. The location, dimensions, and character of construction of proposed streets, alleys, driveways, curb cuts, entrances and exits, loading areas (including numbers of parking and loading spaces), outdoor lighting systems, storm drainage and sanitary facilities.
  9. The location and dimensions of proposed lots, setback lines, and easements, and proposed reservations for parks, playgrounds, open spaces, and other common areas.
  10. Location with respect to each other and to lot lines of all proposed buildings and structures, or major excavations, accessory and main.
  11. Preliminary plans and elevations of the building or buildings, as may be necessary.
  12. Location, height, and material of all fences, walls, screen planting, and landscaping.
  13. Location, character, size, and height and orientation of proposed signs, if any.
  14. A tabulation of the total number of dwelling units of various types in the project and the over-all project density in square feet of lot area per dwelling unit, gross or net as required by district regulations.
- B. The Planning Director may establish additional requirements for site plans, and in special cases, may waive a particular requirement if, in his opinion, the requirement is not essential to a proper decision on the project.

14-4 Certificates of Occupancy.

- A. No building or structure, or part thereof, or premises, which are hereafter erected or altered, or changed in occupancy, or land upon which a new or different use is established, shall be occupied or used until a Certificate of Occupancy shall have been applied for and issued.
- B. Certificates of Occupancy shall not be issued until the premises have been inspected and found to comply with all requirements of the Code of the City of Miami Beach and of this Ordinance, and with all other agencies when required, such as Hotel Commission, Dade County Health Department, etc.
- C. A record of all Certificates of Occupancy issued hereunder shall be kept on file in the office of the Code Enforcement Director.
- D. All applications for Certificates of Occupancy shall be approved or disapproved within three (3) days following application.

**SECTION 15**  
**INTERPRETATION**

**15-1 Interpretation, Purpose and Conflict.**

- A. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreement between parties, provided, however, that where the regulations in this Ordinance impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces, or yards or lot areas than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern. If, because of error or omission in the Zoning District Map, any property in the City of Miami Beach is not shown as being in a zoning district, the classification of such property shall be classified RS-1 Single Family Residential District, until changed by amendment.



## SECTION 16

### CHANGES AND AMENDMENTS

#### 16-1 General.

A. The City Commission may, from time to time, amend, supplement, or change, by ordinance the boundaries of the districts or the regulations herein established in accordance with the following provisions:

1. In cases in which the proposed rezoning involves less than five (5%) percent of the total land area of the City, the City Commission shall direct the Clerk of the City of Miami Beach to notify by mail each real property owner whose land the City will rezone by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. Provided further, notice shall be given by mail to the owners of record of land lying within 375 feet of the land, the boundaries of which are proposed to be changed. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least thirty (30) days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the City Clerk. The City Commission shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the Ordinance.
2. In cases in which the proposed ordinance deals with more than five (5%) percent of the total land area of the City, the City Commission shall provide for public notice and hearings as follows:
  - a. The City Commission shall hold two (2) advertised public hearings on the proposed ordinance. Both hearings shall be held on a weekday, and the first shall be held approximately seven (7) days after the day that the first advertisement is published. The second hearing shall be held approximately two (2) weeks after the first hearing and shall be advertised approximately five (5) days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.
  - b. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than eighteen (18) point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the City of Miami Beach and of general interest and readership in the community, not one of limited subject matter. Whenever possible, the advertisement shall appear in a newspaper that is published at least five (5) days a week unless the only newspaper in the community is published less than five (5) days a week.

- c. The advertisement shall be in the following form.

NOTICE OF ZONING CHANGE

The \_\_\_\_\_ proposes to rezone the land within the area shown in the map in this advertisement.

A public hearing on the rezoning will be held on \_\_\_\_\_ at \_\_\_\_\_

- d. The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.
- e. In lieu of the publishing the advertisement set out in this paragraph, the City may mail a notice to each person owning real property within the area covered by the Ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance.
3. An affirmative vote of 5/7ths of all members of the City Commission shall be necessary to enact any ordinance which amends, supplements, changes, modifies or repeals the regulations and boundaries herein established, and provided further, that such ordinance can only be enacted after having held a public hearing following at least fifteen (15) days notice of time, place, and object of such hearing published in an official paper, or a paper of general circulation in said City of Miami Beach. On final passage, the vote of each member of the City Commission voting shall be entered on the official record of the meeting. The effective date of any ordinance shall be prescribed therein, but the effective date shall not be earlier than ten (10) days after its enactment.
4. All changes and amendments shall be consistent and compatible with the Comprehensive Plan.
- B. Before taking any action on any proposed amendment, supplement, or change, the City Commission shall submit the same to the Planning Board for its recommendations and report.
- C. The Planning Board shall, within sixty (60) days, hold a public hearing thereon and submit its report and recommendations on the proposal to the City Commission within thirty (30) days from the date of the public hearing. Notice of public hearings before the Board shall be given by publishing the time, place, and nature of the hearing not more than thirty (30) nor less than fifteen (15) days, before the hearing, at least in one (1) or more newspapers of general circulation in the City, and the Board shall cause to be posted conspicuously on the property, in accordance with the rules of the Board. In addition, the Board shall give fifteen (15) days notice by mail to the owners of record of land lying within 375 feet of land, the boundaries of which are proposed to be conspicuously

posted on the property, in accordance with the rules of the Board. In addition, the Board shall give fifteen (15) days notice by mail to the owners of record of land lying within 375 feet of land, the boundaries of which are proposed to be changed. The Planning Board may swear witnesses on their own volition or on request of any party to a hearing and may compel appearance of witnesses.

- D. Any application for a change of zoning, amendment to the Zoning Ordinance, or conditional use may be withdrawn by a request in writing from the applicant at any time before a decision of the Planning Board, but if withdrawn after advertisement for a public hearing or posting of the property, the same or a substantially similar petition covering the same property shall not be resubmitted for at least one (1) year after the date established for the prior hearing. Filing fees shall not be refunded once the public hearing has been advertised.
- E. Any person appearing before the City Commission at a public hearing in regard to an application for a change of zoning or other amendment to this Ordinance shall be administered the following oath by any person duly authorized under the laws of Florida to administer oaths:

"I, \_\_\_\_\_, do hereby swear, under oath, that any and all testimony to be given by me in this proceeding is the truth, the whole truth and nothing but the truth, so help me God."

- F. Any person giving false testimony before the City Commission at a public hearing in regard to an application for a change of zoning or other amendments to this Ordinance shall be deemed to have violated the provisions hereof and shall be subject to the maximum penalty prescribed by Section 2 of the Code of the City of Miami Beach.

#### 16-2 Petition for Changes and Amendments

- A. A petition for an amendment, supplement or change may be submitted to the Planning Director by the City Manager or upon an adopted motion of the City Commission, Planning Board, Board of Adjustment, or by the owners of a majority of frontage in any area. Said area shall contain not less than four hundred (400) feet of frontage on at least one (1) public street or a parcel not less than eighty thousand (80,000) square feet.
- B. The petition shall be in accord with a form approved by the City Attorney. The Planning Director shall forthwith forward notice of the petition to the City Manager for notation in the record of Commission business.
- C. The petitioner or appointed agent shall be responsible for filing an application with the Planning Department in accord with a form approved by the City Attorney. All applications shall be received not less than thirty (30) days prior to the Planning Board meeting at which the hearing on said application is to be held. Any application submitted to the Planning Department shall be complete, as required by Section 14-3.

D. Any petitioner requesting and obtaining a public hearing on any application for change of zoning or other amendment to this Ordinance shall pay, upon submission of the application the following fees:

1. Change of Zoning - when an applicant requests one of the below districts, the following fee schedule shall apply plus \$0.50 per mailing address.
  - a. Single-Family Residential District - \$0.03 per square foot of lot area.
  - b. Multiple Family Residential District - \$0.06 per square foot of lot area.
  - c. Commercial District - \$0.10 per square foot of lot area.
  - d. All other Districts - \$0.08 per square foot of lot area.
  - e. When an applicant requests a change of zoning involving multiple districts, the fee shall be based on the lot area in each requested district according to the above schedule.
2. Amendment to the Zoning Ordinance not involving a zoning change. plus newspaper notice. \$350 per section of the Ordinance requiring language modification
3. Amendment to Zoning Ordinance requiring individual mailing, plus newspaper notice. \$500 plus \$0.50 per mailing address

The above fees are for the purpose of defraying expenses of public notices, primarily postage and other administrative costs associated with processing and analyzing the request.

#### 16-3 Reconsideration of District Boundary Changes.

- A. When a proposed change in district boundaries has been acted upon by the City Commission and disapproved or failed of passage, such proposed change, in the same or substantially similar form shall not be reconsidered by the City Commission for a period of at least one (1) year following the date of such action.

#### 16-4 Withdrawal of a Petition

- A. Any petition for amendment, supplement, or change, may be withdrawn by a request in writing from the petitioner at any time before a decision of the City Commission, but if withdrawn after advertisement for a public hearing or posting of the property, the same property shall not be resubmitted, except by a public official or a member of the City Commission, sooner than one (1) year after the date established for the prior hearing. Filing fees shall not be refunded upon any withdrawal.

16-5 Periodic Review

- A. It shall be the duty of the Planning Board, in cooperation with the Planning Director and the City Attorney to continuously review the provisions of the regulations in this Ordinance, including the District Maps, and from time to time, to offer recommendations to the City Commission as to the sufficiency thereof, in accomplishing the development plans of the City.

**SECTION 17**  
**PLANNING BOARD**

**17-1 Composition.**

- A. The Board shall be composed of eleven (11) members, four (4) of whom shall be appointed by a majority vote of the City Commission and each member of the City Commission shall be entitled to appoint one (1) of the remaining seven (7) members. Each member shall serve for a term of two (2) years.

**17-2 Eligibility.**

- A. No person except a resident of the City of Miami Beach, or an individual having their main business interest in the City of Miami Beach shall be eligible for appointment to said Board. In the event any member of the Board fails to attend more than two consecutive meetings without due cause or bona fide excuse, as found and determined by a majority of the Board, said member shall cease to be a member of said Board.

**17-3 Meetings and Procedures.**

- A. The Board created hereby shall elect a Chairman, a Vice Chairman, and a Secretary. It shall have authority to adopt rules and regulations for its guidance in the transactions of its business, subject to the limitations of the City's Charter and ordinances. The Board shall, appropriate rules, establish the time, place and manner of holding regular and special meetings. The Board is also authorized to call public hearings and to create committees and sub-committees when deemed appropriate or convenient for the performance of its duties.

**17-4 Powers and Duties.**

- A. To acquire, compile and collate all available data, materials, statistics, maps, photographs, reports and studies necessary to obtain an understanding of past trends and present conditions, which affect the City and the economic and general welfare of its residents and the forces now at work which are and will continue to affect the future of the City.

The Board shall evaluate the data so acquired and derive there from the past, present and future trends as they relate to population, property values, economic bases, land use, and to evolve the principles and policies required to guide the direction and type of future development and expansion of the City.

- B. To conduct such public hearings as may be helpful in gathering information and data necessary for the drafting of suitable and appropriate plans for the comprehensive and systematic development of the City and to transmit the same to the City for consideration thereof by said City Commission.
- C. To make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities of the City. These may include, but are not limited to, studies on single and multiple family housing, including hotels,

apartment houses, cooperatives and condominiums, commercial and industrial conditions and facilities, beaches, parks, playgrounds and other recreational facilities, public buildings, public and private utilities, traffic, transportation and parking. The Board shall be authorized to study and consider any and all studies in this field made and published by the Federal, State and County governments.

- D. To make appropriate studies of the location and extent of present and anticipated use of land, population, social and economic resources and problems, and to submit such data, with the recommendations of said Board, to the City Commission.
- E. To consider and to act upon any and all matters referred to it by the City Commission or by the provisions of any City ordinance pertaining to the development of the City of Miami Beach, and to submit its findings and recommendations on such matters to the City Commission.

## SECTION 18

### VIOLATIONS AND PENALTIES

#### 18-1 Violations and Penalties.

- A. Any person, firm or corporation who shall violate or fail to comply with any of the provisions of this Ordinance or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be brought before the Code Enforcement Board of the City of Miami Beach. The Code Enforcement Board may assess a fine and impose a lien to the maximum allowed by City Ordinance and Florida Statute or in the alternative, may be brought to the Dade County Court as a violation of municipal ordinance. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises, or part thereof, where anything in violation of these regulations shall be placed or shall exist, and any agent, person, or corporation employed in connection therewith and who has assisted in the commission of any such violation may be guilty of a separate offense, and upon conviction, fined as hereinbefore provided.



## **SECTION 19**

### **VALIDITY**

#### **19-1 Validity.**

- A. If any section, paragraph, subdivision, clause, phrase, or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part of provisions thereof, other than the part so declared to be invalid.

## SECTION 20

### CONFLICTING ORDINANCES REPEALED

#### 20-1 Conflicting Ordinances Repealed.

- A. All ordinances or laws in conflict with the provisions of this Zoning Ordinance or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Zoning Ordinance full force and effect.

**SECTION 21**  
**FORCE AND EFFECT**

**21-1 Force and Effect.**

- A. This Ordinance shall take effect as provided by the laws of The City of Miami Beach.

## SECTION 22

### MAPS

22-1 Designation of Zoning Districts, MF Districts, overlay zones on the Official Zoning Map. The Official Zoning Map shall indicate the location of zoning districts, MF Districts, and Overlay Zones. The below tables explain the symbols used for each designation:

A. Explanation of Symbols.

<u>Zoning Districts</u>		
<u>Symbol</u>	<u>Use</u>	<u>Density (U/A)</u>
RS-1	Single Family Residential	1.452
RS-2	Single Family Residential	2.42
RS-3	Single Family Residential	4.356
RS-4	Single Family Residential	7.26
RM-14	Multiple Family Low Density	14
RM-24	Multiple Family Medium Low Density	24
RM-60	Multiple Family Medium Density	60
RM-100	Multiple Family Medium High Density	100
RM-125	Multiple Family High Density	125
PUD	Planned Unit Development Res. District	<u>as specified</u>
C-1	Neighborhood Business	60
C-2	General Office	100
C-3	Central Business	125
C-4	Business	125
C-5	General Business	100
C-6	Intensive Commercial	0
RH	Hospital District	0
MR	Marine Recreational	0
MU	Municipal Use	0
HM	Hotel-Motel	220
CCC	Convention Center District	<u>as specified</u>
MD-I	Marine District	0
MD-II	Marine District	0
NH	Nursing Home District	<u>as specified</u>
R-PS 1	Residential Medium Low Density	N/A
R-PS 2	Residential Medium Density	N/A
R-PS 3	Residential Medium High Density	N/A
R-PS 4	Residential High Density	N/A
C-PS 1	Commercial Limited Mixed Use	N/A
C-PS 2	Commercial General Mixed Use	N/A
C-PS 3	Commercial Intensive Mixed Use	N/A

Note: All city-owned properties are zoned MU although they may not be designated on the map.

N/A - means not applicable

B. Explanation of MF Districts

MF Districts

<u>Symbol</u>	<u>Location</u>
MF-1	Ocean Front
MF-2	Ocean Front
MF-3	Ocean Front
MF-4	Ocean Front
MF-5	Bay or Waterway
MF-6	Bay or Waterway
MF-7	Bay or Waterway
MF-8	Bay or Waterway
MF-9	Interior
MF-10	Interior
MF-11	Interior

C. Explanation of Overlay Zones and Districts.

<u>Symbol</u>	<u>Explanation</u>
DOD	Dune Overlay District
DOZ	Dune Overlay Zone
HOD	Hotel Overlay District
HOZ	Hotel Overlay Zone
HPD	Historic Preservation District
POD	Parking Overlay District
POZ	Parking Overlay Zone

## SECTION 23

### PS - PERFORMANCE STANDARD DISTRICT

#### 23-1. Short Title.

This Ordinance shall be known and cited as the "Performance Standard District Ordinance of Miami Beach Florida."

#### 23-2. Definitions.

- A. For the purposes of this Ordinance, words and terms used herein are defined in Section 3 of the Miami Beach Zoning Ordinance.
- B. In addition, as used in this section, the following words and terms shall have the following meaning, unless another meaning is plainly intended:
  - 1. APPLICANT means any person, including a governmental agency, seeking to undertake any development as defined herein.
  - 2. AREA or PLAN AREA means the area included within the boundaries of the South Shore Redevelopment Project as established pursuant to Fla. Stat. §163.330 et seq. and as specified in the Redevelopment Plan.
  - 3. BUILDING PERMIT means a permit issued by the designated Building Official or authorized agency or department of the City which allows a building or structure to be erected, constructed, altered, moved, converted, extended, enlarged or used, for any purpose, in conformity with applicable City Codes and Ordinances.
  - 4. CITY means the City of Miami Beach, Florida.
  - 5. CITY COMMISSION means the City Commission of the City of Miami Beach, Florida, the governing body of the City.
  - 6. COMMUNITY REDEVELOPMENT AGENCY OF 1969 means and refers to the community redevelopment law, Fla. Stat. §163.330 et seq.
  - 7. COMMUNITY REDEVELOPMENT AGENCY or AGENCY means the Redevelopment Agency of the City of Miami Beach, Florida, a public agency created pursuant to Fla. Stat. §163.330 et seq.
  - 8. DESIGN REVIEW means the process and includes the requirements as set forth in Section 24 of the Zoning Ordinance.
  - 9. DEVELOPMENT means the undertaking of any building or construction, including new construction, rehabilitation, renovation or redevelopment, the making of any material changes in the use or appearance of property or structures, the subdivision of land, or any other action for which development approval is necessary.

10. DEVELOPMENT AGREEMENT means and refers to an agreement entered into by the City and the Property Owner with respect to the project, by which the development, use, timing, capital improvements and other elements of the project may be specified.
11. DEVELOPMENT APPROVAL includes any zoning, rezoning, conditional use, special exception, variance or subdivision approval, or any other official action of local government having the effect of approving the development of land.
12. DEVELOPMENT RIGHTS means and refers to the equivalent number of dwelling units per acre calculated as the difference between 60 dwelling units per acre and the number of dwelling units per acre for which development approval is being sought by the applicant; development rights are transferable to properties in the receiving area only.
13. MIAMI BEACH PROPERTY MAINTENANCE STANDARDS means and refers to Chapter 17B of the Miami Beach City Code, as amended.
14. OPEN SPACE RATIO means and refers to a percentage calculated as the area of open space, including required yards, at grade to the gross lot area of a parcel.
15. PERFORMANCE STANDARD USE means any development in the PS - Performance Standard District for which a building permit or development approval is required, and, which use is permissible as of right or by conditional use in the PS district.
16. PROJECT means the performance standard use or development for which a development approval is being sought by the applicant.
17. PROPERTY OWNER means the person or persons having a legal or equitable interest in real property, including property that is the subject of a development agreement, and includes the property owner's successor in interest.
18. REDEVELOPMENT PLAN means the South Shore Revitalization Strategy prepared pursuant to Fla. Stat. §163.330 et seq., adopted by the City Commission on February 15, 1984, and constituting the Redevelopment Plan for the area as well as the redevelopment element of the City's Comprehensive Plan.
19. SITE PLAN means a plan meeting each of the requirements as set forth in Section 14-3 and 24 of the Zoning Ordinance.
20. SITE PLAN APPROVAL means final approval by the properly designated City agency, department or official pursuant to the procedure set forth in Section 7 or 24 of the Zoning Ordinance.

21. SOUTH FLORIDA BUILDING CODE means Chapter 8, Sections 8-1 through 8-4 of the City Code, as amended.
22. SUBSTANTIAL REHABILITATION means the expenditure of funds in an amount not less than 50% of the assessed valuation of the subject property for the reconstruction and improvement of buildings, accessory uses and structures; for the construction or improvement of parking and open space; and for site development, that will result in such project then meeting all applicable performance standards and requirements of this Ordinance.
23. ZONING DISTRICT MAP means the City of Miami Beach Zoning District Map as amended, dated and signed by the Mayor and City Clerk of the City of Miami Beach, upon adoption.
24. ZONING ORDINANCE means the City of Miami Beach Zoning Ordinance, Ordinance No. 1891, as amended.

#### 23-3. Establishment of District and Divisions

The PS - Performance Standard District is hereby established as shown on the map designated as the City of Miami Beach Zoning District Map. The PS district generally consists of all privately-owned land in the South Shore Redevelopment area and consists of two divisions: a Residential-Performance Standard (R-PS) district and a Commercial-Performance Standard (C-PS) district, each of which is further subdivided based upon the type and density or intensity of permitted uses.

#### 23-4. District Purpose and Subdistricts

- A. Residential-Performance Standards. The residential-performance standards district is designed to accommodate a broad spectrum of medium-low to high density residential development including townhomes and multiple-family development pursuant to "performance standards" which shall control the permissible type and density of residential development. Performance standards development will allow for modification of certain individual lot requirements, greater flexibility, particularly for large-scale development, and incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development, in accordance with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan.

In order to adequately and properly distinguish between permissible types and densities of residential development in the Redevelopment Area, the Residential-Performance standards district is further divided into the following subdistricts:

R-PS 1	Medium - Low Density
R-PS 2	Medium Density
R-PS 3	Medium - High Density
R-PS 4	High Density



B. Commercial Performance Standards.

The Commercial-Performance Standards district is designed to accommodate a range of business, commercial, office and hotel uses, as well as medium to high density residential development pursuant to "performance standards" which shall control the permissible type, density or intensity, and mix of development. Performance standards development will allow for modification of certain individual lot requirements, greater flexibility, particularly for large-scale development and incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development in accordance with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan.

In order to adequately and properly distinguish between types, densities and intensities of uses and mix of permitted development in the Redevelopment Area, the Commercial-Performance Standards district is divided into the following sub-districts:

C-PS1	Limited Mixed-use Commercial
C-PS2	General Mixed-use Commercial
C-PS3	Intensive Mixed-use Commercial

23-5. Use Regulations

A. Uses Permitted By Right, Uses Permitted by Conditional Use Permit and Uses Not Permitted.

No building, structure or land shall be used or occupied except as a main permitted use, a conditional use, or an accessory use to a main permitted use, in accordance with the Table of Permitted Uses. A use in any district denoted by the letter "P" is a use permitted by right in such district or subdistrict, provided that all requirements and performance standards applicable to such uses have been met. A use in any district denoted by the letter "C" is permissible as a conditional use in such district or subdistrict, provided that all requirements and performance standards applicable to such use have been met and provided that all requirements of Section 7 of the Zoning Ordinance have been met. A use in any district denoted by the letter "N" is not permitted in such district or subdistrict. Uses permitted by right, as a conditional use, or as an accessory use shall be subject to all use regulations and performance standards contained herein and to such other regulations as may be applicable, including site plan review and/or design review. Uses not listed in the Table of Permitted Uses are not permitted in the district or subdistrict. No use is permitted on a parcel, whether listed by right, as a conditional use or as an accessory use in such district, unless it can be located on such parcel in full compliance with all of the performance standards and other requirements of the Zoning Ordinance applicable to the specific use and parcel in question.

B. Table of Permitted Uses

Districts and Subdistricts

General Use Category	Residential-Performance Standards				Commercial-Performance Standards		
	<u>R-PS 1</u>	<u>R-PS 2</u>	<u>R-PS 3</u>	<u>R-PS 4</u>	<u>C-PS 1</u>	<u>C-PS 2</u>	<u>C-PS 3</u>
Residential	P	P	P	P	P	P	P
Hotel/Motel	N	N	C	P	C	P	P
Commercial	N	N	N	N	P	P	P
Office	N	N	N	N	P	P	P
Institutional	P	P	P	P	P	P	P
Accessory	P	P	P	P	P	P	P

P - Main Permitted Use

C - Conditional Use

N - Not Permitted

C. General Use Categories

1. Residential: includes single-family dwelling, two-family dwelling, multi-family dwelling, townhouse, group home, apartment building.
2. Hotel/Motel: includes hotel, motel, and apartment hotel.
3. Commercial: includes retail sales, personal services, restaurants, theatre, clinics, clubs and similar uses.
4. Offices: includes professional, business, medical, laboratory, research, and similar office uses.
5. Institutional: includes public buildings and uses, public utilities, post office, educational and philanthropic uses, museums, religious institutions, public recreation, and other similar uses.
6. Accessory: as defined in Section 3-2A.2 and subject to the regulations of Section 7-3 of this Ordinance.

D. Non-Conforming Uses, Lots and Structures

1. Applicability. Non-conforming uses, lots and structures shall be subject to the regulations contained in Section 12 of this Ordinance and the additional and supplemental regulations prescribed herein.

2. Supplemental Regulations As To Non-Conforming Structures.

- a. Any structure in existence in the PS district as of the effective date of this Section that is non-conforming as to height, area, yard, bulk, setback, open space ratio, floor area ratio, parking, loading, or floor area per unit may be maintained.
- b. If such non-conforming structure has been cited by the Dade County Unsafe Structures Board, the owners shall bring the structure into conformance with the applicable codes within the time period specified by the Dade County Unsafe Structures Board. If it is not brought into compliance within said time period, the building shall not again be used except in compliance with the zoning regulations of the PS district.
- c. If such non-conforming structure is unused as of the effective date of this ordinance and either (1) has remained idle or unused for a continuous period of six (6) months, or (2) has remained idle or unused for eighteen (18) months during any three (3) year period whether or not the equipment or fixtures are removed, the structure shall not again be used except in conformity with the regulations of the PS district.
- d. If such non-conforming structure has been damaged by any cause whatever to the extent of more than fifty (50%) percent of the County tax-assessed value of the building, it shall not be restored except in conformity with the regulations of the PS district. If a building is damaged by less than fifty 50% of the tax-assessed value, it may be repaired and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage; provided that such repairs or rehabilitation result in such structure meeting all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code; and provided that such structure meets the minimum floor area per unit and minimum average floor area per unit requirements of the PS district.
- e. Supplemental Regulations As To Rehabilitation of Non-Conforming Structures. Except as provided above, no building or other permit(s) shall be issued by the City for repair or rehabilitation of an existing non-conforming structure for residential use (i) where the cost of such repair or rehabilitation is less than fifty (50%) percent of the assessed valuation of the structure or fifty (50%) percent of the replacement value as determined by the Dade County Tax Appraisor, whichever is greater. After such repair or rehabilitation, the structure will then meet all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code as determined by an on-site inspection and no other building or City permit for repair or rehabilitation has been issued during the preceding calendar year; and (ii) where the cost of such repair or rehabilitation is equal to or greater than fifty (50%) percent of the

assessed valuation of the structure or fifty (50%) percent of the replacement value as determined by the Dade County Tax Appraisor, whichever is greater, after such repair or rehabilitation, the structure will then meet all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code as determined by an on-site inspection; not less than eighty-five (85%) percent of all dwelling units in the structure(s) shall have a minimum gross floor area of not less than 750 square feet; and not more than fifteen (15%) percent of the dwelling units in the structure(s) shall have a minimum gross floor area of not less than 400 square feet, unless a variance is granted pursuant to Section 13 of this Ordinance.

#### 23-6 Performance Standard Regulations

- A. General Requirement. No building, structure or land shall be used or occupied except in conformance with the performance standards applicable to the use and subdistrict as set forth in the applicable Table of Performance Standards. The purpose of the performance standards is: to provide detailed regulations by means of minimum criteria which must be met by all uses in order to ensure development consistent with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan; to protect the integrity of the Comprehensive Plan and the Redevelopment Plan and the relationships between uses and densities that are essential to the viability of the Plan and the redevelopment of South Shore; and to promote and protect the public health, safety, and general welfare by requiring all development to be consistent with the land use, circulation and amenities components of the redevelopment element of the Comprehensive Plan and the capital improvements program for the area.

All minimum performance standards applicable to a given use and subdistrict must be met, unless a variance is granted pursuant to Section 13 of this Ordinance.

B. Table of Residential Performance Standards

		<u>Residential Subdistricts</u>			
<u>Performance Standard</u>		<u>R-PS1</u>	<u>R-PS2</u>	<u>R-PS3</u>	<u>R-PS4</u>
1.	Minimum Lot Area	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.
2.	Minimum Lot Width	100 ft.	100 ft.	100 ft.	100 ft.
3.	Required Open Space Ratio	.60	.65	.70	.70
4.	Maximum Building Height (in feet) (excluding enclosed parking)* for parcels less than 40,000 square feet	30	40	60	None
5.	Maximum Building Height (in feet) (excluding enclosed parking)* for parcels of 40,000 square feet or more	60	60	80	None
6.	Maximum FAR (without bonus)	.75	1.0	1.25	1.5
7.	Maximum FAR (with bonus)	1.5	1.75	2.00	2.25
8.	Minimum Floor Area Per Dwelling Unit (in square feet)	750	600	500	400
9.	Minimum Average Floor Area Per Dwelling Unit (in square feet)	1000	900	800	750
10.	Minimum Floor Area Per Sleeping Unit (in square feet)	N.A.	N.A.	400	400
11.	Minimum Yards	Pursuant to Section 8 of Zoning Ordinance, except as modified by 23-6G herein.			
12.	Minimum Parking Requirement	Pursuant to Section 9 of Zoning Ordinance and Section 23-6H herein.			

13. Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance.

14. Signs Pursuant to Section 11 of Zoning Ordinance.

\*enclosed parking shall meet the requirements set forth in Section 9-5 I of this Ordinance, shall be covered by a roof and shall contain no residential use.

C. Table of Commercial Performance Standards

Commercial Subdistricts

<u>Performance Standard</u>	<u>C-PS 1</u>	<u>C-PS 2</u>	<u>C-PS 3</u>
1. Minimum Lot Area	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.
2. Minimum Lot Width	100 ft.	100 ft.	100 ft.
3. Maximum Building Height (in feet) (excluding enclosed parking)*	40 ft.	None	None
4. Maximum Floor Area Ratio (without bonus)	1.0	2.0	2.5
5. Maximum Floor Area Ratio (with bonus)	2.0	2.5	3.5
6. Residential Development	Pursuant to all R-PS2 district regulations.	Pursuant to all R-PS3 district regulations.	Pursuant to all R-PS4 district regulations, except maximum floor area ratio shall be 3.5 and open space ratio shall be .60 measured at or above grade.

7.	Minimum Floor Area Per Sleeping Unit (in square feet)	400	400	400
8.	Minimum Yards	Pursuant to Section 8 of Zoning Ordinance except as modified by 23-6G herein.		
9.	Minimum Parking Requirements	Pursuant to Section 9 of Zoning Ordinance except as modified by 23-6I herein.		
10.	Minimum Off-Street Loading	Pursuant to Section 10 of Zoning Ordinance.		
11.	Signs	Pursuant to Section 11 of Zoning Ordinance.		

\*enclosed parking shall meet the requirements set forth in Section 9-5 I of this Ordinance, shall be covered by a roof and shall contain no residential use.

D. Performance Standard Bonuses. In order to encourage the aggregation of parcels, an appropriate mix and scale of development, and architectural and site design compatible with the standards and guidelines of the Comprehensive Plan and the Redevelopment Plan, floor area ratios may be increased up to the maximums specified, in accordance with the applicable Table of Performance Standard Bonuses and the criteria enumerated therein. Floor area ratio bonuses may be accumulated by meeting one or more of the criteria as set forth in the applicable Table; provided, however, that in no event shall any use be permitted an increase in floor area ratio greater than the maximum specified in the applicable Table of Residential or Commercial Performance Standards, except through the use of development rights transfers. Bonuses shall be determined, in accordance with the applicable Table of Residential or Commercial Performance Standard Bonuses and the urban design and development guidelines incorporated in the adopted Redevelopment Plan, during the Design Review process pursuant to Section 24 of this Ordinance.

E. Table of Residential Performance Standard Bonuses

<u>Residential Bonus Factors</u>	<u>Maximum Bonus</u>
1. Parcel Aggregation	
a) for each 10,000 sq.ft. above minimum lot area, up to 40,000 sq. ft.	.15 increase in FAR
b) for each 20,000 sq. ft. above 40,000 sq.ft. up to 80,000 sq. ft.	.1 increase in FAR

2. Dwelling Unit Size

- a) for each 100 sq.ft increase in minimum average floor area per dwelling unit up to 200 sq. ft. increase

.1 increase in FAR

- b) For each 100 sq. ft. increase in minimum floor area per dwelling unit for all units, up to 200 sq. ft. increase

.1 increase in FAR

3. Design Features.

All site plans shall be consistent with Urban Design guidelines for the redevelopment area as set forth in the adopted Redevelopment Plan and the adopted Private Sector Development Controls and Guidelines (Ordinance No. 77-2099). The Design Review Board may recommend that the applicant receive a bonus, within the ranges herein specified, for exceptional achievement in urban design in any of the following areas:

.75 increase in FAR (but in no event, whether alone or in combination with other bonus factors as established herein, to cause the project to exceed the "maximum floor area ratio with bonus" as set forth in Section 23-6B herein).

Maximum Permissible  
Bonus Range

- a) Planting and landscaping (considering type of plant materials, lushness, shading and cooling effect, screening, wind control effect, buffering effect, color, size and area of planting, maturity at time of initial planting, maintenance provisions, irrigation and relationship to buildings and street scape)

.05 - .15



- |    |   |           |
|----|---|-----------|
| b) | Paving<br>(considering surface material,<br>solar reflection and absorption,<br>texture and color, richness and<br>unity, transition with public<br>spaces, creation of arrival<br>plaza and internal paving)   | .05 - .10 |
| c) | grading<br>(considering slope, drainage,<br>use of ground cover, air movement,<br>use separation, public and private<br>circulation, form and scale, visual<br>interest, space creation, public-<br>private transitions and continuity,<br>and architectural integration)                                   | .05       |
| d) | water features<br>(considering movement, sound,<br>reflection, recreation, cooling<br>effect, architectural effect,<br>coordination with plaza or other<br>special place, public-private<br>transition, visual impact, and<br>relation to overall project design)   | .05 - .10 |
| e) | signs and graphics<br>(considering function and purpose<br>scale, orientation, size, style,<br>aesthetics, location, relationship<br>to architecture, visual impact,<br>consistency and uniformity, view<br>blockage, illumination, movement,<br>conflict and relationship to public<br>and private spaces) | .05       |
| f) | street furniture<br>(considering pedestrian orientation,<br>function, seating capacity, visual<br>impact, integration with architectural<br>and other design elements, integration<br>with use of public spaces, and activity<br>areas, uniformity of style,<br>location and scale)                         | .05       |

- g) lighting .05  
(considering function, circulation, security, identification, aesthetics, lighting of exterior spaces, lighting of planting, lighting of architectural and/or design features, lighting of parking area, lighting levels, impact beyond project, uniformity and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)
- h) arcades .05 - .10  
(considering pedestrian access, accommodation of activities, linkage in circulation pattern, relationship to architectural and urban design features, shading and cooling effect, protective effect, relationship to public and private spaces, accessibility and usability)
- i) site planning .05 - .15  
(considering vehicular and pedestrian circulation and orientation, parking location and access, quality and amount of open space, building setbacks, views and vistas, building orientation, relation to adjacent buildings and structures, relation to public and private spaces)
- j) building design .05 - .25  
(considering scale, height, mass, facade, surface materials, rooftop, aesthetics, integration with urban design features, color, relationship to adjacent buildings and spaces and continuity with respect to architectural design)

F. Table of Commercial Performance Standard Bonuses

<u>Commercial Bonus Factors</u>	<u>Maximum Bonus</u>
1. Parcel Aggregation	
a) for each 10,000 sq. ft. above minimum lot area, up to 40,000 sq. ft.	.15 increase in FAR
b) for each 20,000 sq. ft. above 40,000 sq. ft., up to 80,000 sq. ft.	.1 increase in FAR
2. Design Features	
All site plans shall be consistent with Urban Design guidelines for the redevelopment area as set forth in the adopted Redevelopment Plan and the adopted Private Sector Development Controls and Guidelines (Ordinance No. 77-2099). The Design Review Board may recommend that the applicant receive a bonus, within the ranges herein specified, for exceptional achievement in urban design in any one or more of the following areas:	.5 increase in FAR (but in no event, whether alone or in combination with other bonus factors as established herein, to cause the project to exceed the "maximum floor area ratio with bonus" as set forth in Section 23-6C herein, except through use of development rights as provided in this Ordinance.
	<u>Maximum Permissible Bonus Range</u>
a) planting and landscaping (considering type of plant materials, lushness, shading and cooling effect, screening, wind control effect, buffering effect, color, size and area of planting, maturity at time of initial planting, maintenance provisions, irrigation and relationship to buildings and street scape)	.05 - .15
b) paving (considering surface material, solar reflection and absorption, texture and color, richness and unity, transition with public spaces, creation of arrival plaza and internal paving)	.05 - .10

- c) grading .05  
(considering slope, drainage, use of ground cover, air movement, use separation, public and private circulation, form and scale, visual interest, space creation, public-private transitions and continuity, and architectural integration)
- d) water features .05 - .10  
(considering movement, sound, reflection, recreation, cooling effect, architectural effect, coordination with plaza or other special place, public-private transition, visual impact, and relation to overall project design)
- e) signs and graphics .05 - .10  
(considering function and purpose, scale, orientation, size, style, aesthetics, location, relationship to architecture, visual impact, consistency and uniformity, view blockage, illumination, movement, conflict and relationship to public and private spaces).
- f) street furniture .05 - .10  
(considering pedestrian orientation, function, seating capacity, visual impact, integration with architectural and other design elements, integration with use of public spaces and activity areas, uniformity of style, location and scale)
- (g) lighting .05 - .10  
(considering function, circulation, security, identification, aesthetics, lighting of exterior spaces, lighting of planting, lighting of architectural and/or design features, lighting of parking areas, lighting levels, impact beyond project, uniformity and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)

h) arcades .05 - .15  
 (considering pedestrian access, accommodation of activities, linkage in circulation pattern, relationship to architectural and urban design features, shading and cooling effect, protective effect, relationship to public and private spaces, accessibility and usability)

i) site planning .05 - .15  
 (considering vehicular and pedestrian circulation and orientation, parking location and access, quality and amount of open space, building setbacks, views and vistas, building orientation, relation to adjacent buildings and structures, relation to public and private spaces)

j) building design .05 - .25  
 (considering scale, height, mass, facade, surface materials, rooftop, aesthetics, integration with urban design features, color, relationship to adjacent buildings and spaces and continuity with respect to architectural design)

### 3. C-PS 2 Only

a) Outdoor cafe (with minimum of 500 square feet) .05 - .15 increase in FAR

b) First Floor Commercial Use (with minimum of 1,000 square feet) .05 - .15 increase in FAR

c) Development Rights Transfer - for each development right 1,000 gross square foot increase in maximum permissible floor area

### G. Supplementary Yard Regulations

1. Applicability. The yard regulations set forth in this section (a) supplement the regulations set forth in Sections 8-1, 8-2, 8-6, 8-7 and 8-8 of this Ordinance, which remain applicable to all development in the PS district; and (b) substitute for the yard regulations set forth in Sections 8-3, 8-4 and 8-5 of this Ordinance, which shall not be applicable in the PS district.

2. Minimum Required Yards for R-PS 1-4 Districts. The following minimum yards are required for development in the R-PS 1-4 districts at and above grade level:

Front and Rear

20' + 1' for each 10' in height above 60 feet measured from grade up to a maximum front and rear setback of 40' each.

Side

the sum of the side yard widths shall be at least 25% of lot width, but no interior side yard shall be less than 10% of the lot width or 10' whichever is greater; and no side yard adjacent to a street shall be less than 15 feet or 10% of the lot width, whichever is greater. The first 10' of such side yard adjacent to a street shall be developed and maintained as a landscaped area.

Provided, however, that townhouse residential development as defined by and pursuant to the regulations established in Section 26 of this Ordinance on parcels not less than 21,000 square feet and at a height not greater than 30 feet above grade including enclosed parking shall be exempt from the side yard setback specified above and shall be subject in-lieu thereof to a minimum side yard setback of 10 feet; and shall be exempt from the minimum open space ratio otherwise required pursuant to Section 23-6B herein and shall be subject in-lieu thereof to a minimum open space ratio of .40.

3. Minimum Required Yards in Relation to Minimum Open Space Ratio. In all cases, except as otherwise provided herein, an applicant must comply with both minimum required yard and minimum open space requirements. Where the minimum open space ratio results in greater required open space at grade than that resulting from the minimum yards requirements alone, the applicant must provide not less than 50% of the difference in the form of open space at grade and the remainder either at or above grade. Open space above grade may be in the form of recreational facilities above the pedestal portion of the building. Required yards and open space, whether at or above grade, may not be utilized for parking or accessory structures except as set forth above; however, at-grade drives in the C-PS 3 District shall be permitted when said drive is not less than 7½ feet from the property line.

4. Minimum Required Yards for C-PS 1-3 Districts.

- a. The following minimum yards are required for non-residential development in the C-PS 1-3 districts and residential development in the C-PS 3 District at and above grade levels:

<u>Front</u>	<u>Rear</u>	<u>Side (total)</u>
10 feet, but no point on a building shall be closer to the front lot line than one-half the height of the point above grade; not withstanding the above no front setback shall be required for buildings in the C-PS 2 district whose front lot line is on Fifth Street (Miami Beach Boulevard) and the minimum required setback in the C-PS 3 District for buildings fronting on the east side of Washington Avenue shall be a constant twelve (12) feet.	10 feet or 10% of the building height, whichever is greater.	10% of the width of the lot or 10% of the height of the building, whichever is greater; provided, however, that no side yard adjacent to a street shall be less than 10 feet and no point on the building shall be closer to the centerline of a side street than one-half the height of the point above grade. Not withstanding the above, the minimum required side yard setback in the C-PS 3 District along Biscayne Street east of Washington Avenue shall be 15 ft. provided however all other side yard setback requirements shall remain applicable.

- b. Residential development in the C-PS 1-3 districts shall be subject to the yard and other regulations applicable to the appropriate R-PS district as shown in Section 23-6C and Section 23-6G (1) - (3) of this Ordinance.
- c. Mixed use development in the C-PS 1-3 districts shall be subject to the minimum required yards for non-residential development pursuant to Section 23-6G4(a) if 25% or less of the total area of such building is used for dwelling purposes. If 25% or more of the total area of such building is used for dwelling purposes, the building shall be subject to the minimum required yards for residential development pursuant to Section 23-6G4(b) as modified by the following:
- (1) where such use abuts a public off-street parking area, the residential rear yard requirement may be reduced by one-half, but shall, in no event, be less than 10 feet;
  - (2) minimum required yards for residential development shall be applied only to the lowest floor (and all floors above it) which contain one or more dwelling units; otherwise, applicable non-residential yard requirements shall apply; and

- (3) where the applicant incorporates an atrium or other interior space at the ground level and extending to the top floor of the structure, an "interior setback" credit shall be applied for such square footage at ground level against the otherwise required exterior setbacks, but, in no event shall any exterior setbacks be less than that required for non-residential development in the C-PS 1-3 districts. For purposes of this subsection only, hotels and motels shall be considered as non-residential uses.

II. Alternative Parking Requirement for Multi-Family Residential Development in R-PS Districts.

In lieu of meeting the multi-family residential parking requirement as set forth in Section 9-2A(4) of this Ordinance, the applicant may provide one (1) parking space per dwelling unit, regardless of size of unit or number of bedrooms, on site, and pay a fee in the amount of Five Thousand Dollars (\$5,000.00) per space in lieu of providing the otherwise required parking pursuant to Section 9-2A(4), representing the difference between one (1) parking space per unit and the requirements of Section 9-2A(4). The fee shall be paid prior to issuance of a building permit for such development and all fees collected shall be placed in a special interest-bearing South Pointe Development Area Off-Street Parking Fund, and such fees and interest thereon shall be dedicated toward and used solely and exclusively for the development of off-street parking in the South Pointe Redevelopment area pursuant to the adopted Redevelopment Plan and any amendments thereto.

I. Supplemental Parking Regulations: C-PS3 District

1.25 parking spaces per dwelling unit, 1 parking space per sleeping unit, and 2.5 parking spaces per 1,000 square feet of commercial space. Up to forty percent (40%) of the total parking spaces created on the parcel may be for compact cars. Required parking for hotel, hotel accessory uses and club uses may be satisfied through the provision of valet parking spaces. Twenty percent (20%) of dwelling unit parking spaces may be satisfied through the provision of valet parking spaces.

Parking spaces shall be sized in accordance with the following chart:

<u>Parking Angle</u>	<u>Standard Spaces</u>	<u>Compact Spaces</u>
90°	9'0" Wide 18'0" Long	7'8" Wide 15'0" Long
60°	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long
45°	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long
Parallel	9'0" Wide 23'0" Long	7'8" Wide 20'0" Long
Handicapped	12'0" Wide 18'0" Long	--



Access aisles shall be provided in accordance with the following chart:

<u>Size/Car</u>	<u>Angle of Parking</u>	<u>Width of Aisle: One-Way Traffic Double Loaded</u>	<u>Width of Aisle: Two-Way Traffic Double Loaded</u>	<u>Width of Aisle One-Way Traffic Single Loaded</u>
Standard	90°	23.0 feet	23.0 feet	23.0 feet
Standard	60°	11.8 feet	19.3 feet	12.7 feet
Standard	45°	9.5 feet	18.5 feet	10.8 feet
Compact	90°	20.0 feet	21.0 feet	20.0 feet
Compact	60°	9.5 feet	19.0 feet	10.3 feet
Compact	45°	9.2 feet	18.7 feet	10.6 feet
Standard & Compact	Parallel Parking	10.0 feet	20.0 feet	10.0 feet

23-7. Development Rights Transfer

A. Transfer Areas

The R-PS 1 and 2 subdistricts are designated, for purposes of this section, as the transferor area and the C-PS 2 subdistrict is designated, for purposes of this section, as the receiving area.

B. Attachment of Development Rights

Any owner of property in the transferor area may, upon construction of a new development or substantial rehabilitation of an existing development with a density less than 60 units per acre, acquire and transfer development rights to properties in the receiving area.

C. Calculation of Development Rights Equivalencies

Each development right shall be equivalent, upon transfer, to a 1,000 gross square foot increase in the maximum permissible floor area otherwise permitted on the receiving area site in the first three (3) years following the effective date of this subsection as provided in E, below. Thereafter, each development right shall have the following equivalent values:

<u>Year</u>	<u>Gross Square Foot Increase in Floor Area in Receiving Area</u>
Year 4	900
Year 5	800
Year 6	700
Year 7	600
Year 8	500
Year 9	400
Year 10	300
Year 11	200
Year 12	100
Year 13 and after	0

Development rights shall accrue at the following rate: One (1) per dwelling unit if resulting from substantial rehabilitation on the transferor area site; one and a half (1 1/2) per dwelling unit if resulting from new construction on the transferor area site, if such site is less than forty thousand (40,000) square feet; and two (2) per dwelling unit if resulting from new construction on the transferor area site, if such site is 40,000 square feet or greater.

D. Limitations on Development Rights Transfers in C-PS 2 Subdistrict

Development rights may be transferred to properties in the receiving area only. The maximum increase in permissible square footage of development on a site in the receiving area on which development rights are being used may not exceed 50% of the total square footage otherwise permissible pursuant to this Ordinance without use of development rights.

E. Development Right Administration

The City Commission shall formulate and adopt appropriate rules and regulations to guide the implementation of this provision consistent with the language herein and the intent of this section. This subsection will become effective when such rules and regulations have been adopted by the City Commission.

23-8

Procedure for Review and Approval of Uses in the Performance Standards District

- A. Permitted Uses: Applicants for a building permit for the construction, or for the repair or rehabilitation of a permitted use in the Performance Standards District shall be subject to the requirements of Section 14 and Section 23 as to required site plan review and design review.
- B. Conditional Uses: Applicants for a conditional use in the Performance Standard District shall be required to obtain such approval in accordance with the procedures and subject to the requirements of Section 7 of the Zoning Ordinance, and shall additionally be subject to the requirements of Section 14 and Section 24 of the Zoning Ordinance as to required site plan review and design review. To the maximum extent possible, these processes and the requirements therefor shall be coordinated so as to avoid unnecessary duplication and expense.
- C. Variances: Applications for variances may be made by the applicant pursuant to the procedure and subject to all requirements as set forth in Section 13 of the Zoning Ordinance.
- D. Development Agreements: As a condition of site plan and/or design review, the City and the applicant may enter into a Development Agreement by which the applicant may be assured that upon approval, the project will be permitted to proceed in accordance with existing ordinances and regulations, and by which the applicant and the City may agree to certain terms and conditions relating to the timing of development, provision of public facilities, vacation, dedication and such other matters as may reasonably relate to the project.

Administration

- A. Enforcement: Enforcement of this Ordinance shall be pursuant to the provisions of Section 14-1 of the Zoning Ordinance.
- B. Interpretation: Interpretation of this Ordinance shall be pursuant to the provisions of Section 15 of the Zoning Ordinance.
- C. Violations and Penalties: Violations of this Ordinance and penalties therefore shall be pursuant to the provisions of Section 18 of the Zoning Ordinance.

## SECTION 24

### DESIGN REVIEW REGULATIONS

#### 24-1 Purpose.

The primary purpose of the design review is to insure a high degree of aesthetics, promote quality and compatible development of land uses, buildings, and structures which enhance the value of property and the physical environment of the community in certain highly visible, tourist, commercial and residential areas of the City.

#### 24-2 Scope of Review.

Design Review encompasses the examination of the below criteria with regard to the aesthetics, appearances, and function of the structure in relation to the site, adjacent structures and surrounding community. The Design Review Board and Planning Department shall review plans based upon the below criteria and Section 24-5A as established in this Section of the Zoning Ordinance. If the Board determines that an application is not consistent with the criteria, it shall set forth in writing and with specificity the reasons substantiating its finding.

- A. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
- B. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures and signs, and lighting and screening devices.
- C. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably required to determine compliance with this Ordinance.
- D. The color, design, selection of landscape materials and architectural elements of exterior building surfaces for developments requiring a building permit in areas of the City identified in Section 24-3,A.
- E. The proposed structure is in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines, and plans insofar as the location and appearance of the buildings and structures are involved.
- F. The proposed structure indicates a sensitivity to and is compatible with the environment, adjacent structures, and enhances the appearance of the surrounding properties.
- G. The design and layout of buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety and fire protection, relationship to the surrounding neighborhood impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

- H. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that all parking spaces are usable and are safely and conveniently arranged. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.
- I. Lighting shall be reviewed to ensure safe movement of persons and vehicles; for security purposes and to minimize glare and reflection on adjacent properties.
- J. Landscape and paving materials shall be reviewed so as to ensure an adequate relationship with and enhancement of the overall site plan design.
- K. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are purposely shielded from public view and pedestrian areas.
- L. Storm drainage, sanitary waste disposal, and water supply shall be reviewed and considered in terms of the adequacy of existing systems, and the need for improvements, both on-site and off-site, to adequately carry runoff and sewage, and to maintain an adequate supply of water at sufficient pressure.
- M. Garbage disposal shall be reviewed to ensure freedom from vermin and rodent infestation. All disposal systems shall meet municipal specifications as to installation and construction.
- N. The overall project shall be reviewed for compliance with the City's Comprehensive Plan or special plans that apply to or affect the subject property.

#### 24-3 Applicability and Exemptions.

- A. APPLICABILITY. All building permits for new construction, alterations, or additions to existing buildings within the following areas shall be subject to review by the Design Review Board. No building permit shall be issued without the express written approval by the Design Review Board or otherwise provided for in these regulations for the following areas:
  - 1. Any use, structure or building located between the oceanfront bulkhead line and the erosion control line.
  - 2. Any use, structure or building within the fifty (50) foot bulkhead rear yard setback for oceanfront lots.
  - 3. Any use, structure or building within Marine Districts (MD) I and II, the Municipal Use (MU) District, and Convention Center (CCC) District except for the following projects which have been either conceptually approved and submitted to the City Commission for consideration prior to the effective date of this subsection: The Convention Center Expansion, TOPA, Miami Beach Marina, South Pointe Park and Specialty Restaurant, Island View Park, Police and Justice Center, 21st Street Recreation Center and Fire Station No. 2
  - 4. Any use, structure or building located within a designated redevelopment area.

B. EXEMPTIONS. Exemptions to these regulations include all the following provided no new construction and/or additions to existing buildings are required:

1. all permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building; however, the Planning Director may approve such building permit applications for minor work on the exterior of buildings.
2. any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall or Public Works Director related to the immediate public health or safety.
3. all permits for interior alterations and repairs.
4. all permits for demolition or wrecking.

#### 24-4 DESIGN REVIEW BOARD POWERS AND DUTIES

##### A. POWERS AND DUTIES

1. Responsible for promoting excellence in urban design.
2. Responsible for reviewing all applications requiring Design Plan Review.
3. Responsible for preparing and recommending adoption of design plans for areas subject to its review authority.

##### B. MEMBERSHIP

1. Composition - The Design Review Board shall be composed of seven (7) regular members and two (2) ex-officio members. The seven (7) regular members shall consist of two (2) registered architects, one (1) registered landscape architect, one (1) professional engineer, one (1) professional land planner and two (2) citizens at-large. The two (2) ex-officio members shall be the Planning Director and Public Works Director. The City Attorney's office shall provide legal counsel.
2. Appointment - The two (2) architects, one (1) landscape architect, one (1) professional engineer, and one (1) professional land planner shall be appointed by the City Manager in consultation with the Planning Board from an eligibility list solicited from their representative professional associations as listed below:
  - a. American Institute of Architects, local chapter
  - b. American Society of Landscape Architects, local chapter
  - c. Florida Engineer Society, local chapter
  - d. American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

1. all permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building; however, the Planning Director may approve such building permit applications for minor work on the exterior of buildings.
2. any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall or Public Works Director related to the immediate public health or safety.
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  - a. American Institute of Architects, local chapter
  - b. American Society of Landscape Architects, local chapter
  - c. Florida Engineer Society, local chapter
  - d. American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

3. Residency and Place of Business - All regular members shall reside in or have their primary place of business in Dade County; however, three (3) professional members shall not reside in or have their place of business in the City of Miami Beach. The two (2) citizen-at-large members shall be residents of the City.

C. TERMS OF OFFICE

The term of service on the Design Review Board shall be two (2) years. No regular member shall serve more than three (3) consecutive terms.

The members of the first Board shall be appointed as follows: one (1) architect, one (1) citizen-at-large, the professional engineer, and the professional land planner shall be appointed for a one (1) year term and the remaining three (3) members shall be appointed for two (2) year terms. Thereafter, every member appointed shall be appointed to serve a two (2) year term.

D. REMOVAL

Removal of appointed members shall be by the City Manager for cause. Failure to attend three (3) consecutive meetings shall be considered cause for removal.

E. QUORUM AND VOTING

A quorum shall constitute five (5) regular members. An affirmative vote of four (4) regular members shall be required to approve an application for design review. Prior to a decision of the board, the ex-officio members shall submit a recommendation for each item on the agenda, in addition, the City Attorney shall determine whether a request is properly before the Board. If an application is denied, the Board shall provide a written statement in support of its finding.

F. MEETINGS

The Board shall meet within a reasonable time upon receipt of an application, at the call of the Chairperson or the Planning Director. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.

G. ORGANIZATION

1. The Chairperson and Vice-Chairperson shall be elected from the members of the Board by a majority vote.
2. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.

H. CONFLICT OF INTEREST

A member of the Board should not vote on an application if it involves the members' own property or property owned by members of his or her family or



current business associates either individually or of a company. Any board member is prohibited from conducting business with any applicant for as long as the board member remains on the board. Failure to comply with this requirement will result in the automatic removal of all approvals received by the applicant. All other state, county and municipal laws governing the ethical conduct of public officials shall apply to members of the board.

## 24-5 DESIGN REVIEW PROCEDURE

### A. CONSISTENCY WITH DESIGN REVIEW BOARD STANDARDS

All plans shall be consistent with the Design Review Board's adopted guidelines for the area in which the site is located and with the criteria listed.

### B. APPLICATION FOR DESIGN REVIEW

Any applicant requesting a hearing before the Design Review Board shall pay, upon the submission of an application to the Planning Department, a fee of 1% of the estimated value of construction; but not to exceed a sum of \$200.00. An application pertaining only to signs shall require a fee of \$50.00. If a deferment or clarification hearing is requested by the applicant, a \$50.00 fee shall be assessed. If a deferment or clarification of conditions is requested by the Board, there will be no additional fee. If the applicant removes his file from the agenda after it has been accepted by the Planning Department, the City shall retain 50% of the application fee.

The above fee schedule is provided to defray the costs associated with the Administration of this Section.

Should a question arise as to compliance with the conditions as outlined by the Design Review Board, a clarification hearing before the Board may be called by any City Department having jurisdiction or the applicant.

### C. PRELIMINARY DESIGN REVIEW

The applicant shall submit a Preliminary Design Review Application to the Planning Department. The Planning Department, with the assistance of any other applicable City Department, will review the zoning, architectural and other plan elements of the application and provide written comments to the applicant within ten (10) days of the application.

### D. FINAL DESIGN REVIEW

The applicant shall obtain a Design Review application from the Planning Department which shall be responsible for the overall coordination and administration of the Design Review Process. Once the application and appropriate set(s) of plans have been received by the Planning Department and determined to be complete, the Planning Department shall within ten (10) working days conduct a Staff review and prepare a recommendation to the Design Review Board.

The Design Review Board shall consider the application and Planning Department recommendation within a reasonable time from the date of submission of a complete application to the Planning Department. The Board shall announce its decision within three (3) working days of the hearing. The Design Review Board shall have mandatory powers to approve or disapprove applications, with or without conditions.

The Design Review Board may require such changes in said plans and specifications as in its judgment may be requisite and appropriate to the maintenance of a high standard of architecture, as established by the standards contained in this Ordinance and as more specifically outlined in the City's Comprehensive Plan and other specific plans pertaining to the areas identified in Section 24-3A.

Upon approval of an application by the Design Review Board, the Planning Director or his authorized representative shall stamp and sign three (3) sets of plans. Two (2) sets of plans shall be returned to the applicant who may only then submit an application for a building permit. The remaining approved plan shall be part of the Board's official record and shall be maintained on file with the Planning Department.

#### **E. BUILDING PERMIT APPLICATION**

The applicant or his authorized agent shall make application for a building permit. The application shall include, at a minimum, the two (2) sets of plans which were approved by the Design Review Board and stamped and signed by the Planning Director or his authorized representative.

No building permit, certificate of occupancy, certification of completion, or occupational license shall be issued unless all the plans, including amendments, notes, revisions, or modifications, have been approved by the Planning Director. Minor modifications to plans that have been approved by the Design Review Board shall be permitted when approved by the Planning Director.

No building permit shall be issued for any plan subject to design review except in conformance with the approved plans. The applicant shall have up to one (1) year from the date of design plan approval to obtain all necessary building permits required to proceed with construction. If the applicant fails to obtain said building permit(s) within the time period, all Staff and Design Review Board approvals shall be null and void and the applicant shall be required to re-initiate the design review process; however, an extension for cause, not to exceed one (1) year, may be granted by the Board.

An applicant may submit an application for a building permit simultaneously with a design plan review in order to expedite processing, however, no building permit shall be issued until the Final Design Plan has been stamped and signed by the Planning Director or his authorized representative in accordance with this Ordinance.

F. SPECIAL REVIEW PROCEDURE

For minor work associated with alterations and additions to existing buildings, the Planning Director or his designated representative, upon the written authorization of the Chairman of the Design Review Board, shall have the authority to approve, approve with conditions or deny an application on behalf of the Design Review Board. Appeal of the Planning Director's finding shall be to the Board and scheduled at the next regular meeting date.

24-6 APPEAL

The applicant or any city department having jurisdiction may appeal any decision of the Design Review Board to the City Commission. The appeal shall be in writing and submitted to the Planning Director within twenty (20) days of the date the Design Review Board reached a decision on an application. The Planning Director shall place the appeal on the City Commission agenda within thirty (30) days of receipt of the appeal. In order to reverse, amend, or modify any decision of the Design Review Board, the City Commission:

1. Shall find that the Design Review Board acted arbitrarily and capriciously in abuse of its discretionary powers; and
2. The vote to reverse, amend or modify shall be by a five-sevenths (5/7) majority of the entire City Commission.

Appeal from a decision of the City Commission shall be to the court of appropriate jurisdiction pursuant to the laws of Florida and within the time period as set forth in those laws.

## SECTION 25

### FACADE REVIEW REGULATIONS

#### 25-1 Purpose.

- A. The purpose of Facade Review is to enhance the tropical environment of Miami Beach by establishing guidelines for the choice of primary paint color for the exterior surfaces of buildings and structures.

#### 25-2 Scope of Review.

- A. Facade Review encompasses the regulations of the primary paint color of exterior building surfaces for all developments.

#### 25-3 Applicability and Exemptions.

- A. All public and private development in the City of Miami Beach including new buildings, additions or alterations requiring painting and existing buildings requiring repainting shall be subject to Facade Review with the exception of single family homes.

#### 25-4 Criteria for Facade Review

- A. A Miami Beach Facade Review Color Chart shall be approved by the Planning Board and shall serve as a basic criteria for facade review. For the purposes of this Section, no less than 75% of the total paint to be used on the exterior of a building shall be the primary paint color selected from the Miami Beach Facade Review Color Chart. There shall be only one primary paint color selected for each building subject to the regulations of this Section.

#### 25-5 Color Selection Procedure

- A. The Miami Beach Facade Review Color Chart shall be available in the Code Enforcement Department. When an applicant has made a color selection, he must provide a paint chip or dry sample sufficient to indicate that the specified paint to be used is shown on the Miami Beach Facade Review Color Chart or is a color which is lighter in shade than any other color on the Color Chart.
  - 1. EXISTING STRUCTURES. No permits for repainting shall be issued until the applicant has made a color selection from the Miami Beach Facade Review Color Chart and has submitted the required color sample, pursuant to this section. The color selection shall be approved and indicated on the painting permit and the building card. The color sample shall be retained by the Code Enforcement Department for future reference.
  - 2. NEW CONSTRUCTION AND ADDITIONS. When applying for the original building permit, the applicant must follow the same procedures as provided in Section 25-5A.

- B. If the structure to be painted requires Site Plan Review, the applicant may submit an application for a painting or building permit simultaneously with Site Plan Review to expedite processing. However, no painting permit shall be issued until the Final Site Plan has been approved and a building permit issued by the Code Enforcement Department.

25-6 Appeal.

- A. The applicant may appeal a decision regarding Facade Review to the Board of Adjustment.

## SECTION 26

### TOWNHOME RESIDENTIAL DEVELOPMENT REGULATIONS

#### 26-1 Purpose.

- A. These regulations provide for the arrangement of townhome dwelling units so as to result in the efficient and aesthetically pleasing use of land; create meaningful open spaces; and provide for the protection of the surrounding residential area.

#### 26-2 Uses Permitted.

- A. No land, body of water or structure shall be used, in whole or in part, and no structure shall be hereinafter erected, constructed, moved, or reconstructed, structurally altered or maintained for any purpose under these regulations which is designed, arranged or intended to be used or occupied for any reason or purpose, except for townhomes and related accessory uses and structures that support the Townhome Residential Development.

#### 26-3 Districts Permitted.

- A. Townhome Residential Developments are permitted in the following districts:
  - 1. RM-14 Multiple Family Low Density District
  - 2. RM-24 Multiple Family Medium Low Density District
  - 3. PUD Planned Unit Development Residential District
  - 4. RM-60 Multiple Family Medium Density District

#### 26-4 Filing Requirements.

- A. Petitioners for a Townhome Residential Development shall file an application with the Planning Department in accordance with the following provisions:
  - 1. All Townhome Residential Developments shall meet the requirements of Section 24. Design Review Regulations. The Site Plan shall become a part of the official record.
  - 2. When a Townhome Residential Development is not a permitted use in the zoning district, the petitioner may file for an amendment to the Ordinance or a change of zoning pursuant to the process as set forth in Section 16. General (Changes and Amendments). A request for an amendment to the Ordinance for a change of zoning to allow townhome development shall be accompanied by a site plan in accordance with the requirements of Section 24. Design Review Regulations and such site plan shall become part of the official record of the change of zoning request. Notwithstanding any other provisions of this Zoning Ordinance, applications for Change of Zoning to Planned Unit Development (PUD) shall contain an area not less than 21,000 square feet and frontage on a public street of not less than 150 feet.

## 26-5 Development Regulations

- A. These regulations shall apply to all Townhome Residential Developments where permitted in this Zoning Ordinance.
- B. DEVELOPMENT COMPATIBILITY. As part of the Site Plan Review Process required in Section 24-4 of this Ordinance, each Townhome Residential Development must demonstrate a compatibility with neighboring uses. The Townhome Residential Development shall also be designed to preserve and/or enhance the character and natural habitat of adjoining properties and neighborhood.
- C. DENSITY. Density shall not exceed the maximum density permitted in the district in which the Townhome Residential Development is located. No more than four (4) townhome units shall be constructed in any one building.
- D. MINIMUM BUILDING SITE. 21,000 square feet.
- E. MINIMUM FLOOR AREA. No individual townhome dwelling unit shall have less than one thousand (1,000) square feet of floor area and the average floor area of the townhome residential development shall be no less than thirteen hundred (1,300) square feet.
- F. PARKING. A minimum of two (2) off-street parking spaces shall be provided for each individual townhome dwelling unit. When parking is not located in the minimum front yard setback, the parking requirement shall be one and three quarters (1-3/4) spaces for each townhome dwelling unit. In addition to the above required spaces, a minimum of one (1) additional off-street space for every three (3) townhome units shall be provided; however, said space shall not be located in the minimum front yard setback, and such spaces shall be designated as visitor space. All required parking shall be located on site.
- G. HEIGHT. The maximum building height shall not exceed thirty (30) feet above grade. With the exception of carports, accessory structures shall be enclosed on all sides, one of which may be a building wall. The maximum height of all accessory structures shall not exceed one story in height.
- H. LOT COVERAGE. The maximum lot coverage for the development shall not exceed forty (40%) percent of the site.
- I. YARDS. Structures may be arranged irrespective of platted lot lines. For the purposes of this Section, the perimeter boundary lines of the site shall be referred to as the site line.
  - 1. No structure shall be permitted within twenty (20) feet of a public street. No structure shall be permitted within twenty (20) feet of a front or rear site line or within seven and one-half (7½) feet of an interior side site line.
  - 2. The minimum setback between groups of attached or detached townhome units shall be no less than fifteen (15) feet measured between the nearest points of adjacent buildings.

3. For the purposes of this Section, a private drive shall be a roadway that is privately owned which provides the primary means of vehicular access to the driveway(s) and/or parking areas serving each townhome structure. Private drives which provide for traffic in one (1) direction shall have a minimum width of ten (10) feet. Private drives which provide for traffic in two (2) directions shall have a minimum width of twenty (20) feet. There shall be a four (4) foot wide landscaped setback area between a private drive and any site line and a three (3) foot wide landscaped setback area between any private drive and any structure or obstruction. In addition, each townhome unit shall be located at least twenty (20) feet from a private drive.
- J. LANDSCAPING. All required yard areas shall have a minimum of one (1) shade or flowering tree located on each and every four hundred (400) square feet of said area. Said trees shall be 8-10 feet in overall height when planted. When perimeter fences or walls are located adjacent to sidewalks, there shall be a minimum three (3) foot setback from the perimeter wall to the sidewalk. This space shall be planted with shrubs no less than thirty (30) inches in height when planted. All pervious surfaces shall be landscaped with shrubs, hedge material, flowers, grass or other acceptable landscaping treatments. All plant materials shall be maintained by the property owner so as to assure the landscaping treatment indicated in the approved plans.
- K. SERVICES AND UTILITIES. Each townhome dwelling unit shall be serviced by separate water, telephone, gas and electric services. Electric, telephone, or any other form of cable, wire, etc, shall be placed underground.
- L. DESIGN. No townhome dwelling unit shall be located over another unit.
- M. COMPLIANCE WITH REGULATIONS REQUIRED. When not specifically addressed in these regulations, all other regulations contained within this Zoning Ordinance shall apply.



## SECTION 27

### HP-HISTORIC PRESERVATION DISTRICT REGULATIONS

#### 27-1 Purpose

It is hereby declared by the City Commission of the City of Miami Beach that the preservation and conservation of properties of historical, architectural and archeological merit in the City is a public policy of the City of Miami Beach and is in the interest of the City's future prosperity.

The general purpose of these regulations is to protect and encourage the revitalization of sites and districts within the City having special historic, architectural or archeological value to the public. This general purpose is reflected in the following specific goals:

- A. The identification of historically, architecturally, and archeologically significant sites and districts (hereinafter: "significant sites and districts");
- B. The protection of such significant sites and districts to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the City's heritage;
- C. The encouragement and promotion of restoration, preservation, rehabilitation and reuse of significant sites and districts by providing technical assistance, investment incentives, and facilitating the development review process;
- D. The promotion and excellence in urban design by assuring the compatibility of restored, rehabilitated or replaced structures within designated historic preservation districts.

#### 27-2 Definitions

- A. "Alteration" means any material change in the external features of any historic site or improvement within an historic district, or to the interior of any such site or improvement if the interior features have been designated pursuant to this Ordinance.
- B. "Archeological Site" means a single specific location which has yielded or is likely to yield information on local history or prehistory. Archeological sites may be found within archeological zones, historic sites, or historic districts.
- C. "Certificate of Appropriateness" means a certificate issued by the Historic Preservation Board indicating that a new construction, alteration or demolition of an historic site or an improvement within an historic district is in accordance with this chapter.
- D. "Certificate to Dig" means a certificate issued by the Historic Preservation Board allowing for the excavation or fill on a site designated as archeologically significant.

- E. "Demolition" means the complete or substantial removal or destruction of any historic site or any structure or improvement located within an historic district.
- F. "Evaluation Guidelines" means the standards applicable to alteration, renovation, new construction for an Historic site or improvement within an Historic district, which standards will be used as criteria by the Board and its staff in making decisions on applications for Certificates of Appropriateness.
- G. "Exterior" means the front facade of any building and those external surfaces of any improvement visible from public ways.
- H. "Historic District" means two or more sites, buildings, structures, landscape features or other improvements that are concentrated in the same area and have been designated as a district pursuant to this Section.
- I. "Historic Site" means an individual building, structure or other improvement not exceeding one platted lot which has been designated an Historic site pursuant to this Section. Interior features or space may be designated an historic site only where the building or structure containing the interior feature or space has been designated an historic site.
- J. "Improvement" means any building, structure, fence, gate, wall, walkway, parking facility, light fixture, bench, fountain, sign, work of art, earthworks or other man-made object constituting a physical betterment of real property.
- K. "Landscape Feature" means all vegetation, geological features, ground elevation, bodies of water, or other natural or man-made environmental feature.
- L. "Undue Economic Hardship" shall mean an exceptional financial burden upon an owner that constitutes a taking of the owner's property without just compensation. The evidence and testimony needed to establish an "Undue Economic Hardship" shall be specified in regulations to be established in accordance with Section 27-4(B) below.

### 27-3 Scope and Exemptions

#### A. Scope

Unless expressly exempted by Sub-Section 27-3(B) herein, no permits for new construction, demolition, alteration, repair, signage or any other physical modification of an individual archeological or historic site or of a property within a district designated as historically, architecturally, or archeologically significant may be issued by the City without the prior issuance of a Certificate of Appropriateness or Certificate to Dig in accordance with the procedures specified in this Section.

#### B. Exemptions

The following permits are exempt from the regulations of this Section:

1. All permits for plumbing, heating, air conditioning, elevators, fire alarms

and extinguishing equipment, and all other mechanical and electrical equipment not involving exterior facade changes or construction visible from public right-of-way.

2. Any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall, or Public Works Director including any permit necessary for the immediate public health or safety.
3. Any permit issued for an existing structure in a designated historic district which has been specifically excluded from the District pursuant to Sub-Section 27-5(B) (3).

#### 27-4 Historic Preservation Board

There is hereby created a Miami Beach Historic Preservation Board for the purposes of carrying out the provisions of this Section. The Board shall have the authority to recommend the designation of areas, places, buildings, structures, landscape features, archeological sites and other improvements or physical features, as individual sites, districts, or archeological zones that are significant to Miami Beach's history, architecture, archeology, or culture or possess an integrity of location, design, setting, material or workmanship, in accordance with the goals of this Section.

##### A. Powers and Duties

The Board shall:

1. Recommend to the Planning Board and City Commission the designation of historically, architecturally or archeologically significant sites and districts;
2. Prepare and recommend for adoption specific guidelines for each designated site or district, to be used to evaluate the appropriateness and compatibility or proposed alteration or development within designated sites or district;
3. Issue or deny Certificates of Appropriateness and Certificates to Dig in accordance with procedures specified in this Section.
4. Promote the preservation of historic properties by granting special incentives to property-owners in accordance with law including, but not limited to, transfer of development rights, floor area bonuses, special use exceptions, and by administering financial assistance, loans and grants.
5. Vary, waive, or supersede other sections of the Zoning Ordinance when appropriate as a means of encouraging renovation and/or compatible new construction. When appropriate to accomplish the purposes and goals of this section, the Board shall have the power to waive and supercede the requirements and restrictions of other sections of the Zoning and Building Codes.
6. Facilitate the redevelopment of historic sites and districts by directing the

Department of Planning to provide advisory and technical assistance to property owners, applicants for Certificates of Appropriateness, and other City departments.

7. The Board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this chapter. Such rules and regulations shall conform to the provisions of this Section and shall not conflict with the Constitution and general laws of the State of Florida, and shall govern and control procedures, hearings and actions of the Board. No such rules and regulations shall become effective until a public hearing has been held upon the proposed rules and regulations, and any amendments or modifications thereto, and the same have been approved by the City Commission and filed with the Clerk of the Commission. Upon approval by the Commission, such rules and regulations shall have the force and effect of law. The Board shall prescribe forms for use by applicants in compliance with the provisions of this Section. The Board may authorize any one of its members to administer oaths and certify to official acts.

B. Membership

The Historic Preservation Board shall be composed of thirteen (13) members. There shall be one architect and one landscape architect, both registered in the State of Florida; one builder, developer or general contractor with considerable construction experience on Miami Beach; one historic preservationist or historian qualified by education and practical experience in the rehabilitation of historic structures; five members as follows: a registered real estate broker; a hotel owner; an apartment building owner; an owner of a commercial property in the City, and a person holding an executive position in a Miami Beach lending institution; and four (4) additional members-at-large.

All members of the Board shall be residents of, or have business interests in, the City of Miami Beach; provided, however, that the City Commission may waive these requirements in the event a person not meeting these requirements is available to serve on the Board and is exceptionally qualified by training and experience, in historic preservation matters. All appointments shall be made on the basis of civic pride, integrity, experience and interest in the field of historic preservation.

C. Appointment

Historic Preservation Board members shall be appointed by the City Manager with the consent of the City Commission. An eligibility list solicited from the organizations listed below shall be considered by the City Manager in selecting Board members:

- American Institute of Architects, local chapter
- American Society of Landscape Architects, local chapter
- Miami Design Preservation League

- Miami Beach Developer's Council
- Miami Beach Chamber of Commerce
- Miami Beach Jaycees
- Miami Beach Visitors and Convention Bureau
- Miami Beach Development Corporation
- Miami Beach Resort Hotel Association
- Miami Beach Apartment Association
- Any person of any other organization representing the interests of the professions or industries listed in the membership categories in Section 27-4(B).

The term of service on the Historic Preservation Board shall be two (2) years. In order to provide continuity, the members of the first Board appointed under this Section shall be appointed as follows: the architect, the landscape architect, the builder, developer or general contractor, and the historic preservationist or historian shall be appointed for a two-year term and the remaining nine (9) members shall each be appointed for one-year terms. Thereafter, every member appointed shall serve a term of two years.

E. Removal

Removal shall be by the City Manager and approved by a majority vote of the City Commission. No member may be involuntarily removed from office except upon a finding of good cause by the City Commission.

F. Quorum

A quorum shall be seven (7) members of the Board.

G. Meetings

The Historic Preservation Board shall meet at least once a month or more often at the call of the Chairperson, in order to carry out the provisions of this Section. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.

H. Organization

1. The Chairperson and Vice Chairperson shall be elected from the members of the Board by a majority vote.
2. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.

I. Voting

A member of the Board may not vote on the designation of an individual site or any Certificate of Appropriateness if it involves or affects the members' own property or property owned by members of his or her family. All other state, county and municipal laws governing the ethical conduct of public officials shall apply to members of the Board.

27-5 Designation of HP Districts

A. Criteria for Designation

1. The designation of any individual site or district as historically, architecturally or archeologically significant requires that the following qualification criteria be met:
  - a. Listing on the National Register of Historic Places. This requirement may be waived at the owner or owners' request.
  - b. Before any property may be designated historically, architecturally or archeologically significant, the owner or owners of such property, or a majority of the owners of properties within the district in the case of an Historic Preservation District, shall consent, in writing, to such designation.
2. The following additional criteria must also be considered:
  - a. The quality of significance in American history, architecture, archeology, and culture is present in districts, site, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship and association, and
    1. That are associated with events that have made a significant contribution to the broad patterns of our history; or
    2. That are associated with the lives of persons significant in our past; or
    3. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
    4. That have yielded, or are likely to yield information important in prehistory or history.

B. Designation Procedure

1. Proposals

Proposals for designation of individual sites or districts may be made to the Historic Preservation Board by one of its members, the Board staff, the City Manager, a member of the Miami Beach Planning Board or City Commission, by any property owner with respect to his own property.

2. Preliminary Evaluation

The Board shall conduct a preliminary evaluation of the designation proposal in order to determine general conformance with the criteria set forth in Section 27-5 and the relationship of the proposal to the Board's objectives. After considering the staff's recommendation, the Board may direct the preparation of a designation report.

3. Designation Report

The designation report shall describe the historic, architectural or archeological significance of the property proposed for site or district designation, recommend evaluation guidelines to be used by the Board to evaluate the appropriateness and compatibility of proposed developments affecting a designated site or district, and, if applicable, provide a list of non-conforming structures which shall be excluded from the proposed district. The designation report shall be delivered to the Board at a regularly-scheduled meeting.

4. Public Hearing - Notification

A public hearing on a proposed designation shall be conducted by the Historic Preservation Board within thirty (30) days from the date a designation report has been filed. All property owners of record within the proposed designation area shall be notified by mail of the public hearing at least ten (10) days in advance of the hearing.

5. Recommendation

If the Board finds the proposed designation meets the intent and criteria set forth in this Section, it shall transmit such recommendation to the Planning Board and City Commission, along with the designation report, and any additions or modifications deemed appropriate. If the Historic Preservation Board finds that the proposed designation does not meet the intent and criteria in this Section, no further Board action shall be required.

C. HP District Designation

1. Following a favorable recommendation by the Historic Preservation Board, the proposed designation shall be transmitted to the Miami Beach Planning Board to be processed as a change of zoning in accordance with the procedures specified in Section 16-1 of the Zoning Ordinance.
2. The ordinance adopting a proposed designation shall contain or reference the specific evaluation guidelines for the site or district.

3. All historically, architecturally, or archeologically significant sites and districts shall be delineated on the City's zoning map.
4. The provisions of this Section shall be in addition to the provisions and regulations of the existing zoning districts; this Section shall supersede any conflicting provisions of the Zoning Ordinance.

#### 27-6 Certificate of Appropriateness/Certificate to Dig

A Certificate of Appropriateness issued under the authority of the Historic Preservation Board shall be required prior to the issuance of any permit for new construction, demolition, alteration, repair, signage or other physical modification or development affecting any property designated under the provisions of this Section unless the permit applied for is exempt pursuant to Section 27-3(B). A Certificate to Dig shall be required prior to the initiation of any development involving the excavation or fill on a site or in a district designated as archeologically significant pursuant to the provisions of this Section. The procedure to obtain a Certificate to Dig shall be the same as indicated below for a Certificate of Appropriateness.

##### A. Application

1. An application for a Certificate of Appropriateness may be filed with the Board at the same time or in advance of the submission of an application for a building permit.
2. The application shall be on a form provided by the Historic Preservation Board and shall include the following information and such other information as the Board may determine is needed to allow for a complete evaluation of the proposed demolition, construction or other physical improvement, alteration or modification.
  - a. A written description of the proposed action;
  - b. A site plan as described in Section 14-3(A) of this Ordinance;
  - c. An elevation showing proposed changes to all architectural features.

##### B. Review Procedure

1. All applications involving demolition, new building construction, additions to existing buildings, major renovation work or substantial alteration of a designated structure or site shall be placed on the agenda of the Historic Preservation Board for their review and consideration within thirty (30) days after the date of receipt of a completed application.
  - a. At least ten (10) days prior to consideration of an application by the Board, notice of such consideration shall be mailed to the applicant, and all property owners of record within 375 feet of the subject property, or in the case of a property with an Historic Preservation district, to all other property owners within the District.



- b. The Board shall approve, deny, approve with conditions or suspend action on an application for a Certificate of Appropriateness. In any case, the Board must act on an application within sixty (60) days from the date of the receipt of a completed submission, provided, however, that if specific revisions to an application submission are requested by the Board, the Board may have an additional thirty (30) days in which to render a decision. Upon the approval of the applicant and the Board, the review period may be extended beyond the maximum ninety (90) days provided for herein.
  - c. Failure to render a decision within the time limits specified herein, provided all required data have been submitted by the applicant as required under this Section, shall constitute approval of the application.
  - d. Notwithstanding any other provision or clause within this Section, no new structure may be constructed within a designated Historic Preservation District, nor any permit issued for such purposes, until the Board certifies that the new structure will be architecturally compatible with the structures within the surrounding district. The Board shall issue its final decision with respect to compatibility within sixty (60) days or the application will be deemed automatically approved. The procedures specified in Section 27-8 below shall apply to the Board's decision with respect to compatibility.
2. All other applications for Certificates of Appropriateness involving exterior structural repairs, and minor physical improvements, or alterations (as may be more specifically defined by Board regulation) shall be reviewed by the staff of the Board. The staff shall approve, approve with conditions, or deny a Certificate of Appropriateness or a Certificate to Dig within thirty (30) days from the date of receipt of a completed submission; the applicant may agree to an extension of this review time.
- a. In the case of a denial of an application by the staff, the applicant may request consideration of the completed application by the Historic Preservation Board which shall proceed to review the application in accordance with the procedures set forth in Section 27-6(B). The Board may concur, modify, or reverse the staff's decision.
  - b. Failure to render a decision within the time limits specified herein, provided all required data have been submitted by the applicant as required by the provisions of this Section, shall constitute approval of the application.
3. The approval of Certificate of Appropriateness or a Certificate to Dig shall not excuse the applicant of responsibility to comply with all other zoning and building laws and regulations of the City, County and State, including the receipt of applicable zoning variances, site plan approvals and building permits.

C. Decisions on Certificates of Appropriateness/Certificates to Dig

1. A decision on an application for a Certificate of Appropriateness shall be based upon evaluation of the compatibility of the physical alteration or improvement with and adherence to the adopted evaluation guidelines for the applicable designated site or district.
2. Where, by reason by particular site conditions and restraints or because of unusual circumstances applicable to a particular applicant, strict enforcement of the provisions of this Section would result in an undue economic hardship to the applicant, the Board shall have the power to vary or modify the provisions in this Section, including adherence to the adopted Evaluation Guidelines. The Board shall adopt administrative rules to specify the standard for demonstrating undue economic hardship.
3. An approved Certificate of Appropriateness, together with any conditions or limitations imposed by the Board, shall be in written form and attached to the site plan and/or the schematics submitted as part of the applications. Copies of the Certificate shall be kept on file with the Board and shall be transmitted to the Code Enforcement Director. The applicant shall receive a copy of the Certificate of Appropriateness.
4. The Board may for a period of up to six (6) months deny, or impose conditions for approval on, an application for a Certificate of Appropriateness for demolition, replacement, alterations or improvements to a designated structure. The length of the denial period shall be determined by the Board based upon the relative significance of the structure, the applicable evaluation guidelines of the designated site or district, and the probable time required to investigate or arrange for possible alternatives to demolition.
5. A decision on an application for a Certificate to Dig may include specific guidelines and procedures to be followed in excavation of the site.

27-7 Special Provisions

- A. The Historic Preservation Board shall have the power to waive with or without conditions the parking, setback, height, use, signage, density and floor area ratio requirements of the underlying zoning district of those properties designated as historically, architecturally or archeologically significant. The Board shall have the specific authority, notwithstanding any other provisions of the City Code, to grant owners: (1) a minimum of a 25% increase in maximum floor area ratio; (2) the right to operate lawful commercial establishments on the ground floors of such properties. The Board shall only grant such rights to property owners who have agreed to designation of their properties and in conjunction with an application for a Certificate of Appropriateness establishing that physical improvements will result in significant historic renovation or preservation. However, no such decision of the Board shall become final until ratified by the City Commission.
- B. The Historic Preservation Board shall have the authority to grant Certificates

for Transfer of Development Rights (TDR) to property owners of individual sites or owners of properties within districts designated as historically, architecturally, or archeologically significant. The exercise of this authority shall in accordance with the criteria for Transfer of Development Rights as shall be enacted by the City Commission.

27-8 Appeal

Any person affected by a decision of the Board may appeal the Board decision to the City Commission which shall issue a final determination.

## SECTION 28

### ADULT CONGREGATE LIVING FACILITIES

#### 28-1 Purpose:

- A. The purpose of this Section is to provide mandatory requirements and review criteria to be used in reviewing conditional use applications for Adult Congregate Living Facilities.

#### 28-2 Mandatory Requirements

- A. Adult Congregate Living Facilities shall be subject to the following mandatory requirements:
  - 1. For fire safety reasons, these facilities shall be located in structures of no more than four (4) stories in height.
  - 2. Facilities shall not be located on bayfront or oceanfront properties. Oceanfront includes property on the west side of Ocean Drive and Ocean Terrace.
  - 3. Facilities shall not be located along the following tourist or commercially oriented streets: Ocean Drive, Collins Avenue, Ocean Terrace, Indian Creek Drive, 41st Street, Lincoln Road and Washington Avenue.
  - 4. ACLF facilities in the City of Miami Beach will not exceed 2,000 residents subject to review based upon any substantial population characteristic changes revealed by the next U.S. Census, but in any event said review shall take place every ten (10) years.
  - 5. Facilities shall not be located in any designated redevelopment area.

#### 28-3 Review Criteria

- A. Adult Congregate Living Facilities shall be in substantial compliance with the following review criteria as determined by the Planning Board and City Commission:
  - 1. Smaller scale (6-16 residents) are encouraged in order to provide a non-institutional environment.
  - 2. The City should encourage equal distribution of facilities serving various income groups.
  - 3. Facilities located in newly constructed buildings should be encouraged.
  - 4. The location of facilities should be compatible with the City's Comprehensive Plan and all other adopted special area plans.
  - 5. Facilities shall be aestically compatible with the surrounding neighborhood and adjacent properties.

6. Facilities should not be encouraged to be located on waterfront properties.
7. Facilities should be encouraged to provide social, recreational, dining, and landscaping amenities.
8. In order to encourage geographic distribution, facilities should not be located within 1,500 feet from another facility.
9. Facilities should be compatible with the elderly population characteristics of its surrounding neighborhood.

## SECTION 29

### LIQUOR CONTROL REGULATIONS

#### 29-1 GENERAL PROVISIONS

##### A. Purpose

To achieve the purposes of this Ordinance and of Chapter 18, Intoxicating Liquors, of the Miami Beach City Code, and provide for the general welfare and safety of the public, it is necessary that regulations be established relating to the location, size, and hours of operation of uses that permit the sale and/or consumption of alcoholic beverages.

##### B. Licenses

No vendor shall sell or distribute any alcoholic beverages without securing an occupational license from the City and a license from the State Beverage Department. Prior to receiving a City of Miami Beach occupational license, the locations must be approved as to zoning pursuant to the provisions of this Ordinance.

##### C. Hours of Sale

The sale of liquor and all other alcoholic beverages shall be according to the following schedule:

1. Retail stores for package sales only, either as permitted main or accessory use. Vendors having a license from the State Beverage Department for the sale of liquor and other alcoholic beverages for consumption off the premises, shall only offer for sale alcoholic beverages within the hours of 8:00 a.m. to 10:00 p.m. on any day of the week.
2. Retail stores, either as permitted main or accessory uses, who primarily offer for sale products other than alcoholic beverages may make sales of beer and wine in sealed containers for consumption off the premises between the hours of 8:00 a.m. through 2:00 a.m. on any day of the week.
3. Restaurants, bars, night clubs, cabarets either as permitted main or accessory uses shall only offer for sale the on-premise consumption of alcoholic beverage within the hours of 8:00 a.m. and 5:00 a.m. on any day of the week. Every vendor shall close and keep closed the place of business and not allow any person, other than those employed by the vendor, to remain therein during the hours that sales are not permitted.
4. Private Clubs, either as a permitted main or accessory use, shall only offer for sale the consumption of alcoholic beverages within the hours of 8:00 a.m. and 8:00 a.m., Monday through Sunday, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club electing to remain open after 2:00 a.m. shall purchase an extra hours license and any private club electing to remain

open after 5:00 a.m. must provide for security in its premises by hiring private security guards or off-duty policemen between the hours of 5:00 a.m. and 8:00 a.m. each day. Further, such private clubs shall not admit members to its premises between the hours of 7:00 a.m. and 8:00 a.m. each day. Private clubs which secure a license from the Division of Alcoholic Beverages and Tobacco by complying with the requirements of Florida Statutes 561.20 for racquetball, tennis or golf course facilities, may admit its members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless it is the holder of an extra hours license and complies with the above requirements.

D. Locational and Use Restrictions

1. Public Worship and Educational Facilities - No alcoholic beverage shall be sold within 300 feet from any property used for public worship purposes, public school or private school property operated for the instruction of minors in the common branches of learning, including religious instruction, except for the following:
  - a. For purposes of this Section, restaurants, carbarets, night clubs, and outdoor cafes, if a permitted use in the applicable district, shall only be considered under the regulations set forth for variances.
  - b. Uses in the Civic and Convention Center (CCC) District and Hospital (RH) District
2. The minimum distance separation between retail stores as permitted main uses and which primarily sell alcoholic beverages for consumption off the premises shall be 300 feet.
3. Sales in filling stations and motion picture theatre - no alcoholic beverages shall be sold in any filling station, motion picture theatre or any room opening directly or indirectly or in connection with any motion picture theatre.
4. Curb service sales - no alcoholic beverages shall be sold or served to persons in a vehicle of any kind or from an exterior counter or any type of walk up window. All sales are to be from the interior of the structure.
5. All sales of alcoholic beverages for consumption off the premises shall be in a sealed container.

E. Determination of Minimum Distance Separation

1. With the exception of cases involving public worship and education facilities, the required minimum distance separation shall only apply when one or more permitted main uses are involved. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in

which the use associated with alcoholic beverage occurs to the nearest point of the property used for public worship purpose, public or private school. In cases where a minimum distance is required between two uses associated with the alcoholic beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principle means of entrance of each use.

2. When a distance separation is required, a scaled survey drawn by a registered land surveyor shall be submitted attesting to the separation of uses in question. This requirement may be waived upon the written certification by the Code Enforcement Director that the minimum distance separation has been met.

#### 29-2 Permitted Districts and Standards

- A. Permitted Districts. Vendors shall be permitted to sell or distribute alcoholic beverages, either for consumption on or off the premises in the following zoning districts:
  1. C-1 Neighborhood Business District
  2. C-2 General Office District
  3. C-3 Central Business District
  4. C-4 Business District
  5. C-5 General Business District
  6. C-6 Intensive Commercial district
  7. RM-100 Multiple Family Medium High Density District
  8. RM-125 Multiple Family High Density District
  9. MR Marine Recreation District
  10. MU Municipal Use District
  11. HM Hotel Motel District
  12. CCC Convention Center District
  13. RH Hospital District
  14. South Pointe Performance Standards Districts
- B. Permitted Main and Accessory Uses - Vendors shall be permitted to sell alcoholic beverages within the zoning districts listed in Section 29-2A, if said district permits as a permitted main use or accessory use one of the following: restaurant, bar, nightclub, outdoor cafe, cabaret, private club, or golf clubhouse pursuant to the following standards:



1. Permitted Main Use:

- a. Restaurants, night clubs, bars, cabarets, and private clubs shall be permitted to sell alcoholic beverages for consumption on the premises based upon the following; when beer and wine is served a minimum of thirty (30) seats shall be provided; and when, beer, wine and liquor is served, a minimum of sixty (60) seats shall be provided.
- b. Outdoor cafes, when visible from or fronting on a public street, shall have a minimum of twenty (20) seats and be permitted to sell only beer and wine for consumption on the premises. The establishment of outdoor cafes under this section shall be pursuant to Section 7-1, Conditional Uses.
- c. Outdoor cafes, when not visible from or on a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.
- d. Golf Clubhouse - When located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.

2. Accessory Use: Hotel, Hotel-apartments, or apartments, or any mixed use having a minimum of one hundred (100) dwelling units or a minimum of one hundred (100) sleeping units shall be permitted to have accessory uses which sell alcoholic beverages pursuant to the following minimum standards:

- a. Restaurants, night clubs, bars, cabarets, or private clubs shall have a minimum of forty (40) seats and be permitted to sell alcoholic beverages. Sales for consumption of the premises is permitted.
- b. Outdoor cafes when visible from a public street shall have a minimum of twenty (20) seats and be permitted to sell beer and wine for consumption only on the premises. The establishment of the outdoor cafe shall be pursuant to Section 7-1, Conditional Uses.
- c. Outdoor cafes when not visible from a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.
- d. Golf Clubhouse - When located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.

3. Nothing herein shall be construed to restrict sales of alcoholic beverages in the Theatre of the Performing Arts or in the Civic and Convention Center District.

## SECTION 30

### DUNE OVERLAY REGULATIONS

30-1 LOCATION. These regulations shall apply to all uses and structures located east of the established Bulkhead Line, west of the Erosion Control Line and by the City boundary line to the north and south.

30-2 PURPOSE. These regulations are designed to accommodate and promote recreational, open space and related uses between the established Bulkhead Line and the Erosion Control Line. Detailed review of all use and structures are required because this area functions as a transitional zone between the intensely developed uplands and the dune and beach. It accommodates uses and structures which are compatible and supportive of the Beachfront Park System and the natural beach environment.

30-3 COMPLIANCE WITH REGULATIONS

- A. As specified in Section 24, Design Review Regulations applications for a building permit shall be reviewed and approved by the Design Review Board.
- B. All applications for an Occupational License, including new, renewal or change of license, shall be reviewed and approved by the Oceanfront Management Review Board (Section 30-6).
- C. All structures shall comply with all other local, state, and federal regulations governing such uses including but not limited to Chapter 161, Florida Statutes and Chapter 16B - 33, Florida Administrative Code. Notwithstanding these requirements, the applicant may receive a City of Miami Beach Building Permit or Occupational License prior to receiving approvals pursuant to the above referenced statutes.

30-4 USES AND STRUCTURES PERMITTED. Uses and structures permitted under this Section shall be designed to accommodate and channel pedestrian movement in such a manner as to protect and enhance vegetation and the beach. No land or structure shall be used, in whole or in part, except for one or more of the following permitted uses:

- A. Shade structures and chickees shall be open on all sides and, with the exception of supporting columns, have an unobstructed, clear space between the edge of the roof covering and finished floor of not more than eight (8) feet.
- B. Decks and patios constructed of wood materials with or without "built in" tables, chairs, lighting, and benches. All structures shall be located a minimum of ten (10) feet west of the Erosion Control Line.
- C. Drainage Structures as per the requirements of the Public Works Department and applicable regulations of the County, State, and Federal agencies.

- D. Promenade linkage shall be constructed of wood materials and shall conform to the design specifications established in the Beachfront Park and Promenade. Sites having less than three hundred (300) linear feet of oceanfront frontage shall be limited to one (1) dune crossing and/or promenade linkage. Sites having more than three hundred (300) linear feet of oceanfront frontage shall be permitted one (1) crossing or linkage per each additional one hundred (100) linear feet of frontage or part thereof. In no instance, however, shall the total aggregate number of crossings and linkages exceed four (4) sites.
- E. Portable beach furniture such as chaise lounges, chairs, and umbrellas. In no instance shall said furniture be stored east of the bulkhead line.
- F. Walkways and ramps constructed of wood materials and are not more than six (6) feet in width.
- G. Landscaping conforming to the specifications of the Beachfront Park and Promenade.
- H. Sidewalk cafes shall only be permitted when directly associated with an adjoining upland hotel or apartment-hotel having a minimum of one hundred (100) sleeping units. No other commercial use shall be permitted.

30-5

#### DEVELOPMENT REGULATIONS

- A. Minimum Open Space Requirements: At least eighty (80) percent of the site shall remain open to the sky and landscaped. All areas covered by the uses permitted above, other than portable beach furniture, shall be considered in the lot coverage calculation.
- B. Maximum Floor Area: No single structure shall have a floor area exceeding three hundred and fifty (350) square feet.
- C. Spacing Of Chickees, Shade Structures And Outdoor Cafes: There shall be a minimum of twenty five (25) feet from a chickee, shade structure, or sidewalk cafe to another such structure. Distance shall be measured from the closest points of each structure. One structure shall be permitted for every three hundred (300) feet of oceanfrontage; however, nothing herein shall prohibit the clustering of structures meeting the minimum twenty five (25) foot spacing restriction nor prohibit the location of at least one (1) structure per building site.
- D. Minimum Lot Area: All applications for a building permit shall provide a landscape and development plan for the entire site. For purposes of this Section, the site shall constitute all of the area within the lot lines.
- E. Minimum Yards:
  - 1. Zero (0) feet adjacent to any bulkhead line.
  - 2. Fifteen (15) feet adjacent to any side property line, municipal park, street end, or right-of-way.

3. Ten (10) feet from the erosion control line when any structure has an elevation of three (3) feet or less than the elevation of the top of the dune; plus two and one half (2 1/2) feet; otherwise 15 feet.

- F. Finished Floor Elevation: Shall have a maximum height of two and one half (2 1/2) feet above the dune. Notwithstanding the above limit, the Planning Department shall determine the maximum permitted elevation for structures based upon existing site conditions, the proposed construction, the dune and relationship between all structures.
- G. MAXIMUM BUILDING HEIGHT: One (1) story or twelve (12) feet; whichever is greater. Notwithstanding the above limit, the Planning Department shall determine the maximum permitted elevation for structures based upon existing site conditions, the proposed construction, the dune and relationship between all structures.
- H. MAXIMUM DENSITY: Zero (0)

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OCEANFRONT MANAGEMENT REVIEW BOARD. Said Board is hereby created and empowered to review all applications whether new, renewal or change of licensee, for an Occupational License and building permit with regard to item listed in Section 6-19, L. The Board shall be governed by the following procedures.

- A. Composition - The Board shall be composed of five (5) regular members. The City's Planning Director and Public Works Director shall serve as ex-officio members and shall provide written recommendations on all applications considered by the Board. The City Attorney shall determine if the application is properly before the Board.

Four (4) members shall be appointed by the City Manager. Each of the members shall have a principle residence on a lot which abuts the Dune Overlay Zone or have their primary source of income from employment in any hotel having 100 or more sleeping units which directly abuts the Dune Overlay Zone. Two (2) of the four (4) members shall have their principle residence in a structure abutting the Dune Overlay. The remaining two (2) of the four (4) members shall have their primary source of income from employment in any hotel having 100 or more sleeping rooms directly abutting the Dune Overlay Zone.

The remaining fifth member shall be approved by a majority vote of the above four (4) members; said member shall be selected from a list prepared by the City Manager. The fifth member must have a principle residence in the City of Miami Beach.

- B. Term of Office - The term of service on the Board shall be two (2) years.
- C. Removal - Removal of members shall be by the City Manager and only for cause. Failure to attend three (3) consecutive meetings shall be considered cause for removal.

- D. Quorum and Voting - A quorum shall be four (4) members. A majority vote of the Board shall determine the Board's findings.
- E. Meetings - The Board shall meet within a reasonable time upon receipt of an application at the call of the Chairperson or the Planning Director. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.
- F. Organization - The Chairperson and Vice-Chairperson shall be elected from the membership of the Board by a majority vote. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.
- G. Conflict of Interest - A member of the Board may not vote on an application if it involves the members own property or property owned by members of his or her family or current business associates either individually or of a company. Any Board member is prohibited from conducting business with any applicant for as long as the Board member remains on the Board and one (1) year thereafter. Failure to comply with this requirement will result in the automatic removal of all approvals received by the applicant. All other state, county, and municipal laws governing the ethical conduct of public officials shall apply to members of the Board.
1. During the review and consideration of any application, approval of said application shall not be unreasonably withheld.
  2. In order to deny an application, the Board shall provide cause for said denial.
- H. Clarification Hearing - Should a question arise as to compliance with the conditions as outlined by the Board, a clarification hearing before the Board may be called by any City department, the applicant, or any aggrieved party.
- I. Fees - In order to defray the costs of administering the application process, the Board shall assess a \$50.00 fee. If a deferment or clarification hearing is requested by the applicant, one-half of the application fee shall be assessed. If a deferment or clarification of conditions are requested by the Board, there will be no additional fee. If the applicant removes his file from the agenda after it has been accepted by the Planning Department, the City shall retain 50% of the application fee.
- J. Appeal - The applicant or any City Department having jurisdiction may appeal a decision regarding any or all revisions and/or modifications to the Planning Board. The appeal shall be in writing and submitted to the Planning Director who shall place the request on the Planning Board Agenda. In order for the Planning Board to reverse a decision or condition of the Oceanfront Management Review Board, an appealing party shall

receive a minimum of seven (7) votes in their favor. An appeal from the Planning Board shall be submitted to the court of appropriate jurisdiction.

- K. Management Plan. Said Plan shall be submitted to the Management Review Board as part of the application for use approval. The plan at a minimum shall include the background of the operator, proposed use and management procedures that will govern the operation of the use, garbage collection, hours of operation and maintenance plans to insure the site and structures shall be professionally maintained throughout the life of the use of the structure, whether active or inactive. The Board may require additional requirements all of which shall be required as part of the issuance of an Occupational License.

**SECTION 31**  
**PARKING OVERLAY REGULATIONS**

**31-1 GENERAL PROVISIONS**

**A. Purpose**

1. To provide parking facilities in proximity to commercial, multiple family and municipal uses in such a manner as to be compatible with surrounding uses and the underlying zoning district.

**B. Uses Permitted**

1. At-grade parking lots, commercial or non-commercial.
2. Parking garages, commercial or non-commercial; however, in no instance shall these facilities be located in a single family district.
3. Accessory structures customarily associated with uses permitted in this section.

**31-2 FILING REQUIREMENTS**

**A. Petitioners for a Parking Overlay District shall file an application with the Planning Department in accordance with the following procedures:**

1. In order to designate a district, the applicant shall follow the procedures set forth in Section 16 Changes and Amendments.
2. Notwithstanding Section 16-2, A, the minimum lot frontage shall not be less than 100 feet.

**B. Petitioners for a Parking Overlay Zone shall file an application with the Planning Department in accordance with the following procedures:**

1. Applications for at-grade parking lots shall meet the requirements as set forth in Section 7-1 Conditional Uses and Section 14-3 Site Plan.
2. Applications for parking garages shall meet the requirements set forth above and in Section 24 Design Review Regulations.
3. All plans submitted in support of a building permit application shall substantially conform with plans submitted pursuant to above procedures.

**C. Listing of Parking Overlay Zone**

1. Lots 12-13, Block 15, Orchard Subdivision #'s 2-3; 428-440 W. 40th Street.

### 31-3 DEVELOPMENT REGULATIONS

- A. Compability. As part of the Site Plan or Design Plan Review Process, each project shall demonstrate a compability with neighboring uses. The project shall be designed to enhance the character of the neighborhood and adjoining properties.
- B. Parking Standards. Shall meet the requirements of Section 9 of this Ordinance.
- C. Required Yard. The Planning Department shall determine the minimum required yards based on the requirements of adjoining districts. The required yard shall be within 25% of the minimum yard requirement as established in the adjoining district.
- D. Landscaping. All projects shall meet the landscaping requirements as listed in this Ordinance. Based upon the Standards contained in the City's Landscape Manual. The Department is authorized to require additional landscaping in consideration of the site, design of the project, and the underlying and/or adjacent districts and uses.
- E. Compliance with Regulations Required. All regulations contained within this Ordinance shall be applicable unless specifically addressed in this Section.



**SECTION 32**  
**LANDSCAPE STANDARDS**

**32-1 PURPOSE**

- A. These regulations are designed to result in the placement of landscape materials in such manner as to improve overall certain highly visible tourist, commercial and residential areas of the City, to protect and preserve landscape features, and to enhance the value of property.

**32-2 SCOPE OF REVIEW**

- A. All elements of landscaping shall be selected for their functional value, aesthetic appeal and consistency with the City-wide Master Landscape Plan Manual as maintained by the Planning Department. Landscape plans shall be in compliance with the following criteria:
1. provision of shade and coolness;
  2. enhancement of architectural features;
  3. achievement of beauty and pride in the community;
  4. separation of noncompatible uses or obtrusive elements;
  5. amelioration of the impact of noise and light;
  6. integration of any structures with adjacent body of water; and
  7. preservation and protection of existing plant materials and energy conservation.

**32-3 APPLICABILITY AND EXEMPTIONS**

- A. Applicability. All building permits for new construction or additions to existing buildings when located in areas designated for design review pursuant to Section 24-3A, shall be subject to Landscape Plan Review. These standards shall apply to landscape review conducted under the Conditional Use Process or any approval by the Planning Board or Board of Adjustment, or City Commission. Such review shall include but not be limited to parking decks, all required yards, decks associated with recreation facilities, or any open space areas that are visible to the public.
- B. Permits for demolition or wrecking shall require a landscape survey to insure that valuable existing trees are not damaged or destroyed; however, this requirement may be waived by the Planning Director. In the event a survey is waived, the applicant shall provide a detailed landscape narrative.
- C. Exemptions. Exemptions to these regulations include all the following provided no new construction and/or additions to existing buildings are required:

1. All permits for plumbing, heating, air conditioning, elevators, fire alarms, and extinguishing equipment, and other mechanical and electrical equipment.
2. Any permit necessary for the compliance with a lawful order of the Building Official, Fire Marshall, or Public Works Director including:
  - a. Any permit necessary for the immediate public health or safety.
  - b. All permits for interior alterations and repairs.

#### 32-4 ELEMENTS OF THE LANDSCAPE PLAN

- A. Landscape elements shall include but not be limited to:
1. palms and trees;
  2. shrubs, ground cover and lawn areas;
  3. walls and wood fencing;
  4. any non-living durable material commonly used in landscaping but not limited to rocks, pebbles or sand;
  5. sculptures and water features;
  6. outdoor furniture such as benches and outdoor lighting; and
  7. paving materials such as concrete pavers, wood decking, and unit pavers.

#### 32-5 LANDSCAPE PLAN SUBMISSION

- A. Prior to the issuance of a building permit, the Planning Department shall approve a preliminary landscape plan. During the course of construction, the Planning Department shall approve a final landscape plan that is in substantial conformance with the preliminary plan. The final plan shall at a minimum include the following:
1. location of all existing vegetation by name and size, trees to remain, to be relocated either on or off site, or to be removed;
  2. location of all proposed landscape elements including botanical names, common names, quantities, height, spread, spacing and grades;
  3. all paving materials;
  4. all site furnishings, such as benches, and planters;
  5. mulching, fertilizing, staking, planting bed preparation; and
  6. note the existence of irrigation system, if required.

Prior to the issuance of a Certificate of Completion, Occupational License, or Certificate of Occupancy, the Planning Department shall review and approve the installed landscaping.

### 32-6 MINIMUM LANDSCAPE STANDARDS

When the site is located in an area designated for Landscape review, the following shall apply:

A. All districts except C-6

1. Surface/ground treatment. One (1) canopy tree or grouping of three (3) palms shall be provided for every twenty five (25) linear feet of frontage in a required yard abutting a public right-of-way. Where a driveway crosses a landscaped easement and a curb cut is provided, the driveway shall be paved with a hard surface material such as concrete, asphalt, or decorative unit pavers and shall have a clearly defined edge between paving and landscaped easement.

Planting of trees in the right-of-way shall be consistent with the City-wide Master Landscape Plan. Any plantings located in the right-of-way including but not limited to trees, shrubs, ground cover, and sod shall be maintained by the abutting property owner and approved by the Planning Department.

2. Hedges or other living barriers

- a. Required front yards.

Hedges, ground cover, vines, and sod may be placed in the required yards. Hedges or other living barriers not associated with a fence or wall shall have a maximum height of five (5) feet. Hedges or other living barriers provided in concert with a fence or wall shall not exceed a height of five (5) feet or the height of the permitted fence or wall, whichever is greater.

- b. Required Interior or Side or Rear Yards

Hedges shall not exceed seven (7) feet in height. Hedges installed along the interior side or rear boundary between a residential district and a commercial district may obtain a maximum height of ten (10) feet.

- c. Side or Rear Yards Abutting a Right-of-Way

Hedges or other living barriers not associated with a fence or wall shall have a maximum height of five (5) feet. Hedges or other living barriers provided in concert with a fence or wall may reach a maximum height of five (5) feet or the height of the permitted wall or fence, whichever is greater.

B. At Grade Parking Lots

For the purpose of this section, the term "at grade" parking lot shall encompass automobile and commercial parking lots as described in Section 3-2 of the Ordinance. Notwithstanding the requirements in this section in no instance shall the required landscaped area be less than 20% of the total area.

1. Required landscaping adjacent to the public right-of-way shall be landscaped as follows:

Landscaping to include one tree or grouping of three (3) palms for each forty (40) linear feet or any fraction thereof. Such trees shall be located between the abutting right-of-way and parking lot area and shall be planted in a planting area of at least twenty-five (25) square feet with a minimum dimension of five (5) feet. In addition, a hedge, wall or other landscape barrier of at least three and one half (3½) feet in height shall be placed only along the right-of-way. If such barrier is of nonliving material, one shrub or vine shall be planted abutting the barrier for each ten (10) linear feet. Such shrubs or vines shall only be planted between the property line and barrier. The remainder of the required landscaped areas shall be landscaped with grass, ground cover, or other landscape treatment excluding paving.

Planting of trees in the right-of-way shall be consistent with the City-wide Master Landscape Plan. Any plantings located in the right-of-way including, but not limited to, trees, shrubs, ground cover, and sod shall be maintained by the abutting property owner.

Necessary accessways from the street through all such landscaping shall be permitted to service the parking lot and such accessways may be subtracted from the linear dimension used to determine the number of trees required.

2. Perimeter parking adjacent to side and rear property lines:

The perimeter of parking areas abutting residential or commercial properties shall provide, at a minimum, a five (5) feet landscaped strip. The perimeter of the parking area shall also be screened with a wall or hedge or other durable landscape barrier. The height of the screening device shall not be greater than seven (7) feet nor less than three and one half ( 3 1/2) feet. The height shall be determined by the Planning Department based on the proximity of the parking area to residential or commercial properties. All landscape areas along the perimeter of the parking areas abutting residential or commercial properties shall provide one (1) tree or cluster of three (3) palms for every fifty (50) linear feet of property relating to an abutting property.

3. Parking Area - Interior Landscaping:

Parking areas shall provide a minimum of five (5) percent of net interior area as landscaping. One (1) tree or grouping of three (3) palms with a clear trunk of at least five (5) feet shall be provided for each one hundred (100) square feet or fraction thereof of required landscaped area. Such landscaped areas shall be located and designed in such a manner as to divide and break up the expanse of paving. In instances where the strict application of this subsection will seriously limit the function of the parking area, the required landscaping may be located near the perimeter of the paved area. Such required interior landscaping shall be in addition to the perimeter landscaping requirements. Landscaped area shall require protection from vehicular encroachment. Car stops shall be placed at least three (3) feet from the edge of the paved area. The minimum paved area designated as the required parking space shall be as stated in Section 9 of this Ordinance. In no instance shall the landscaped area be included within the required parking space area.

C. Other Vehicular Use Areas

Landscape requirements of vehicular use areas, such as service stations, are subject to regulations as stated in Section 32-6(B). Notwithstanding the requirements in this section, in no instance shall the required landscaped area be less than twenty (20) percent of the total area.

D. Parking Garages

Parking garage requirements for landscaping use are subject to regulations as stated in Section 32-6(A) of this Ordinance.

E. Landscape Requirements for Deck Areas, Plazas and Roof Areas

Where all or a portion of a deck area, plaza or roof area is used for parking, that portion used for parking shall be landscaped pursuant to off street parking regulations set forth in Section 32-6(B) and as required below:

1. Deck areas, plazas, and roof areas used for parking within the subterranean level and open to the sky shall have trees planted in planting wells. Planting wells shall be a minimum of twenty five (25) feet in area with a minimum dimension of five (5) feet. Required planting wells shall penetrate the deck, plaza, or roof area to existing grade.
2. Any deck areas, plazas and roof areas excluding balconies and open to the sky 50 feet or less shall have a minimum of one (1) shade tree or three (3) palms provided for each seven hundred (700) square feet of such area.

F. Visual Barriers for Swimming Pools

Accessory swimming pools when located in a required front or side yard facing a public street shall be screened from public view by a hedge, wall or fence not less than five (5) feet in height. The hedge shall be planted and maintained so as

to form a continuous dense row of greenery as per the requirements of this Section.

The maximum height of the visual barrier shall be pursuant to Section 8-1, B-5.

- G. Dumpsters shall not be located within any required yard. They shall be within an enclosed area.

- H. Landscape Manual

The selection of landscape materials shall be in substantial compliance with the City's Landscape Manual. The Planning Department shall maintain the manual and provide a copy to all applicants requesting approval of a landscape plan pursuant to this Ordinance. All appeals regarding the interpretation of the Landscape Manual shall be to the Design Review Board. All other types of appeals shall be to the Board of Adjustment.

## SECTION 33

### **HOTEL OVERLAY REGULATIONS**

#### **33-1 PURPOSE.**

These regulations are designed to encourage the construction of new hotels and renovation of existing facilities.

#### **33-2 APPLICABILITY**

- A. These regulations constitute overlay zoning which is superimposed upon and supplements the underlying zoning district. When not specifically addressed in this Section, all other regulations contained within this Ordinance shall apply.
- B. These regulations shall only be applicable to sites east of Collins Avenue between 15th Street and 75th Street and where the underlying zoning district permits hotels. This area is designated as a Hotel Overlay District.
- C. These regulations are only applicable when a developer requests a site be designated as a Hotel Overlay Zone. Petitioners for a Hotel Overlay Zone shall file an application with the Planning Department. All plans submitted in support of the application shall be approved by the Design Review Board pursuant to Section 24. No building permit shall be issued unless the Board has approved the Development.
- D. Upon the Design Review Board's approval, the site shall be listed below as a Hotel Overlay Zone:

#### **33-3 DEVELOPMENT REGULATIONS**

- A. Uses permitted. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Hotel
  - 2. Apartment/Hotel
  - 3. Accessory Uses - a) Entrances and exits for accessory uses in residential districts shall be controlled by Section 7-2. The accessory use restrictions in Section 7-3, B shall not apply; and, b) accessory use shall be limited to those that are customarily associated with the operation of a permitted use; however, accessory uses located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- B. DWELLING UNIT AND SLEEPING UNIT RATIO. The number of dwelling units shall not exceed twenty five (25) percent of the total number of sleeping units provided on the site.
- C. DENSITY AND LOT COVERAGE. None.

D. MINIMUM FLOOR AREA PER UNIT

1. Sleeping Unit

- a. Eighty five (85) percent of the total number of sleeping units shall have a minimum gross floor area of at least three hundred thirty five (335) square feet.
- b. Fifteen (15) percent of the total number of sleeping units shall have a minimum gross floor area between three hundred (300) and three hundred thirty five (335) square feet.
- c. In no instance shall any sleeping unit have a minimum floor area less than three hundred (300) square feet.

2. Dwelling Unit

- a. The minimum gross floor area of any dwelling unit shall not be less than seven hundred fifty (750) square feet.

E. REQUIRED PARKING

1. Sleeping Unit - One (1) space per two (2) units. For purposes of this section, any room having bathroom facilities and one (1) or more doors to a corridor shall constitute a sleeping unit. The term bathroom facilities shall mean a commode, lavatory, and bath, with or without a shower.
2. Dwelling Unit - One and a half (1 1/2) spaces per one unit.
3. Accessory Uses - Except for meeting rooms, conference rooms, ballrooms, banquet rooms, nite clubs or similar uses, the parking requirement shall be one half (1/2) of the requirement as listed in Section 9 of this Ordinance. The requirement for meeting rooms, banquet rooms, conference rooms, nite clubs or similar uses shall be determined by the maximum occupancy based on a standard of one (1) person per fifteen (15) square feet of available floor area for seating. The parking requirement shall then be calculated as listed in Section 9-2, A-17.

F. MAXIMUM BUILDING HEIGHT - None.

G. MAXIMUM FLOOR AREA RATIO

1. Residential Sites

4.0 for sites having less than three hundred fifty (350) linear feet of street frontage or one (1) acre. For each additional one hundred (100) feet of frontage in excess of three hundred fifty (350) linear feet or fraction thereof, the maximum permitted FAR may be increased by 0.75 based upon the FAR performance standard bonuses as listed in Section 23-6 A and B; however, in no instance shall the maximum permitted FAR exceed 6.0. For purposes of this section, only one side of a corner lot shall be counted in determining the maximum permitted FAR.



2. Commercial Sites

6.0 for sites having less than three hundred fifty (350) linear feet of street frontage or one acre. For each additional one hundred (100) feet of frontage in excess of three hundred fifty (350) linear feet or fraction thereof, the maximum permitted FAR may be increased by 0.75 based upon the FAR performance standard bonuses as listed in Section 23-6 A and B; however, in no instance shall the maximum permitted FAR exceed 8.0. For purposes of this section, only one side of a corner lot shall be counted in determining the maximum permitted FAR.

H. MINIMUM REQUIRED YARDS

1. When a development is located in a residential district, the following required yards shall apply:

FRONT AND REAR

As required by the designated MF District pursuant to Section 8-3B.

SIDE

As required by Section 8.

2. When a development is located in a commercial district, the following required yards shall apply:

FRONT

REAR

Subterranean	0 ft.	50 ft. except as listed in Section 8-6.
Ground	0 ft.	50 ft. except as listed in Section 8-6.
Pedestal	For that portion of the pedestal above ground level, 2.5 ft. setback per floor	50 ft.
Tower	15 ft.	75 ft.

INTERIOR SIDE

SIDE ADJACENT TO STREET

Subterranean	0 ft.	0 ft.
Ground	10 ft.	10 ft.
Pedestal	For that portion of the pedestal above ground level, 2.5 ft. setback per floor	For that portion of the pedestal above ground level, 2.5 ft. setback per floor
Tower	Each interior side yard shall provide a side yard equal to 50% of the width of the lot, however, the maximum side yard setback shall not exceed 75 ft.	15 ft. setback

3. Supplemental yard regulations are applicable for any development constructed pursuant to Section 23.

- a. For developments which utilize the FAR bonus provision listed in Section 23-6, G each required side yard shall be increased by 40% for each 1.0 increase or fraction thereof in the floor area ratio.
- b. Accessory structures located in the required 50 foot rear yard setback shall be pursuant to Section 8-6A.
- c. Any building constructed under this section shall have a zero (0) subterranean side setback for that portion of the building located below grade. Any part of the building located at or above grade shall meet the required setback as listed above.
- d. Balconies shall not be permitted to extend into the Required Yard except when at least 50% of the balcony railing or wall is constructed in an open and unenclosed manner.
- e. Sites having a lot width of 125 ft. or less shall be permitted to have unenclosed garage ramps extend into the pedestal portion of the interior side yard setback to a point equal to the interior sideyard setback at ground level. However, in no instance shall any portion of the ramp be located within 100 ft. of the front property line. In no instances shall ramps be permitted in the ground portion of the pedestal or in the tower interior side yard setback.

I. COMPLIANCE WITH THE BEACHFRONT PARK AND PROMENADE PROGRAM - The developer shall construct the Beachfront Park and Promenade Program on property adjacent to the site, including improvements and landscaping in the area between the established bulkhead line and the erosion control control line, and to the street-ends pursuant to the City's specifications. Such improvements shall be included in the building permit plans and constructed, 1) prior to any use approval, temporary or otherwise including the issuance of a Certificate of Occupancy and/or Completion; or 2) at a subsequent request by the Planning Department. As determined by the Planning Department, the latter procedure shall only be applicable if the expansion of the existing promenade is not anticipated during the course of construction of the development and upon the posting of a Performance Bond, letter of credit or similar instrument which insures the construction of the Promenade Program. The Performance Bond, letter of credit, or the similar instrument shall be recorded in the Circuit Court prior to the issuance of a Building Permit.

# **EXHIBIT “E”**

**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

---

1700 Convention Center Drive  
Miami Beach, Florida 33139-1819

TRADE NAME:

DBA:

IN CARE OF:

ADDRESS:

LICENSE NUMBER:

Beginning:

Expires:

Parcel No:

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Additional Information

Storage Locations

TRADE ADDRESS:

Code	Business Type

#Locations	

SAMPLE

FROM: CITY OF MIAMI BEACH  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139-1819

PRESORTED FIRST CLASS U.S. POSTAGE PAID MIAMI BEACH, FL PERMIT No 1525
---

# **EXHIBIT “F”**

## **DECLARATION OF JUD KURLANCHEEK**

1. I have been asked to provide three expert opinions regarding the following:
  - a. Was a towing service permitted in the C-6 Intensive Commercial District under City of Miami Beach Ordinance No. 1891, as amended through January 18, 1985?
  - b. Is the towing service at 1349 Dade Boulevard a legal non-conforming use?
  - c. Does a business tax receipt (“BTR”) establish that a use of property complies with the Zoning Code?

2. My opinions are a towing service was not a permitted use in the C-6 Zoning District as the main use of the property and that the towing service at 1349 Dade Boulevard is not a legal non-conforming use. Furthermore, a BTR does not establish that a use of property complies with the Zoning Code.

## **QUALIFICATIONS**

3. I have been a professional planner for approximately 42 years (See Exhibit “A”). I am certified by the American Institute of Certified Planners (“AICP”). I received a Master’s in Urban & Regional Planning from the University of Pittsburgh in 1975 and a Bachelor of Arts from the University of Miami in 1971.

4. I was employed by the City Miami Beach in the Planning and Zoning Department from 1975 to 1990. From 1975 through 1983, I held a variety of planning positions, including but not limited to, Planner, Senior Planner, Principal Planner, and Assistant Director. From 1984 to 1990, I served as the Planning and Zoning Director. From 1990 through 1993, I served as the Historic Preservation Director and Urban Design Director.

5. I was also employed by the City of Hollywood. From 1993 through 1998, I served as the Director of Planning and Zoning and Assistant Economic Development Director for the City

of Hollywood. In that capacity, I was responsible for supervising the following divisions: (1) Planning and Zoning; (2) Code Enforcement; (3) Community Development; (4) Engineering; and (5) Building Divisions.

6. In 1998, I became employed by the Village of Key Biscayne as its Building, Zoning, and Planning Director. I held that position until my retirement in 2017.

7. In the above positions, I was responsible for authoring new zoning ordinances for each municipality and numerous amendments to the Zoning and Land Development Regulations. As Planning Director for the City of Miami Beach, I led a team of planners that authored numerous Planning, Zoning, and Development Plans (See Exhibit “B”) which received awards from a variety of agencies.

8. For the City of Miami Beach, I authored the zoning ordinance that replaced Zoning Ordinance No. 1891, which included the C-6 Intensive Commercial District. I was also responsible for making zoning interpretations of Ordinance No. 1891. During this employment, I authored over 1,000 recommendations to the City of Miami Beach’s City Commission, Planning Board, Board of Adjustment (variances), Historic Preservation Board, and Design Review Board.

**A TOWING SERVICE IS NOT A PERMITTED USE IN THE C-6 ZONING DISTRICT  
AS THE MAIN USE OF THE PROPERTY**

9. A towing service was not permitted in the C-6 Intensive Commercial District under City of Miami Beach Ordinance No. 1891 as amended through January 18, 1985.

10. The Zoning Ordinance describes the C-6 Zoning District as a “utilitarian district characterized by sales, storage, repair, processing, wholesaling and trucking activities and shall not include any residential uses.” The Zoning District includes three types of uses: (1) Permitted Uses; (2) Conditional Uses; and (3) Accessory Uses.

11. The Zoning Ordinance does not provide a definition of Permitted Uses; however, the definition of an Accessory Use refers to such use as “a subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.” The C-6 Zoning District includes a list of Main Permitted Uses, which are the only uses that were permitted as the main uses of land in the C-6 Zoning District. A Towing Service is not included on the list of Main Permitted Uses in the C-6 Zoning District.

12. The Zoning Ordinance defines a Conditional Use as “a use that would not be appropriate generally or without restriction throughout a particular zoning district, but would, if controlled as to number, area, location, or relation to the neighborhood, be appropriate.” The Zoning Ordinance includes a list of Conditional Uses in the C-6 Zoning District. A Towing Service is not included in the C-6 Zoning District list of Conditional Uses.

13. Section 6-13(B)(20)(i) of the Zoning Ordinance provides that uses not included in the list of Conditional Uses in the C-6 Zoning District, but "which are similar in character to one or more permitted uses, and which would not be inappropriate in the district" may be permitted as a Conditional Use. A Towing Service would be appropriate with the purpose and character of the district and may have been permitted as a Conditional Use, if a Conditional Use Permit had been sought for the use.

14. The Zoning Ordinance defines Accessory Uses as “a subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.” Section 6-13(B)(21) permits, “Accessory uses for Permitted Uses and Conditional Uses.” There is no list of Accessory Uses in the C-6 Zoning District. Accordingly, if not permitted as a Conditional Use pursuant to Section 6-13(B)(21)(i), a



Towing Service could only have been permitted as an Accessory Use to one of the listed Permitted or Conditional Uses in the C-6 Zoning District while the Zoning Ordinance was in force.

15. Section 6-13(B)(20)(d) lists Filling Stations as a Conditional Use in the C-6 Zoning District. A Filling Station is defined as, “a building, structure, or land used for the retail sale of motor vehicle fuels, oils and accessories, and servicing and repairing of minor parts and accessories, but not including major repair work, such as motor replacement, body and fender repair, or spray painting and excluding public garages.” Towing Services are typically associated with Filling Stations and are considered an Accessory Use.

16. Section 6-13(B)(9) lists a “garage for mechanical service” as a Permitted Use in the C-6 Zoning District. This use includes the repair of automobiles, including those that would need to be towed to the Filling Station for repair. As such, a towing service is an Accessory Use to a garage for mechanical service.

17. Thus, the only way a Towing Service could have been permitted in the C-6 Zoning District was limited to a Conditional Use or an Accessory Use to a Filling Station or a garage for mechanical service.

**A TOWING SERVICE AT 1349 DADE BOULEVARD IS NOT A LEGAL NON-CONFORMING USE**

18. The Towing Service at 1349 Dade Boulevard is not a legal non-conforming use.

19. City of Miami Beach records indicate that in 1975, the property located at 1349 Dade Boulevard was used as a garage for mechanical services. This use was a Permitted Use in the C-6 Zoning District. On June 4, 1980, the owner of the 1349 Dade Boulevard property, Vincent Festa, applied for and was granted a Conditional Use to establish a Filling Station at 1349 Dade Boulevard (Exhibit “C”). During the course of the Conditional Use Public Hearing, it was

disclosed that wrecked vehicles had been stored on the property as part of the garage for mechanical services. Thus, the garage for mechanical services was the Main Permitted Use and the storage of wrecked vehicles was an Accessory Use to the 1349 Dade Boulevard property. When the Filling Station was approved as a Conditional Use, vehicles were no longer being repaired at the property and Towing Services were to be operated as an Accessory Use to the Filling Station only. A few years after the Conditional Use for the Filling Station was approved, Mr. Festa applied for and was granted a DERM Permit to remove the underground fuel tanks (Exhibit “D”). When the fuel tanks were removed from the 1349 Dade Boulevard property, the Filling Station ceased to operate. The removal of the Filling Station tanks resulted in Towing Services becoming the main use of the property, as the Main Permitted Use and Conditional Use to which Towing Services could be an Accessory Use were no longer being conducted at the property.

20. Under the Zoning Ordinance that existed at the time, there were only three ways a Towing Service could be permitted at 1349 Dade Boulevard. These were: (1) as a Conditional Use permitted under Section 6-13(B)(20)(i); (2) as an Accessory Use to a Main Permitted Use such as a garage for mechanical services; or (3) as an Accessory Use to a Conditional Use such as a Filling Station. The Towing Service was not an approved Conditional Use at 1349 Dade Boulevard, and when the Main Permitted Use of the garage for mechanical services and the Filling Station as a Conditional Use ceased operating, the remaining use of the property at 1349 Dade Boulevard was a Towing Service. Since a Towing Service was not listed as a Main Permitted Use in C-6, and was not an approved Conditional Use at 1349 Dade Boulevard, it was not a conforming use prior to the adoption of the current Ordinance in 1989 and the designation of the property as CD-2, which

zoning designation, Mr. Mooney has made clear, does not permit a towing use. As such, the Towing Service at 1349 Dade Boulevard cannot be considered a legal non-conforming use.

21. In 1989, Zoning Ordinance No. 1891 was replaced with the current Ordinance. 1349 Dade Boulevard was then zoned CD-2. On June 7, 2016, Mr. Penn requested that Planning Director Mr. Mooney determine “whether a towing storage yard and facility is a Main Permitted or Conditional Use in the CD-2 Zoning District.” (See Exhibit “E”). Mr. Mooney replied on June 15, 2016 that, “Under Sections 142-302 and 142-303 of the Land Development Regulations of the City Code, towing storage yards and facilities are not listed as a permitted or conditional use within the CD-2 Zoning District.”

22. A Towing Service was permitted as an Accessory use to the prior garage for mechanical services and the Filling Station. However, when those uses ceased to exist, as they did prior to 1989, the Towing Service became the Main Permitted Use of the 1349 Dade Boulevard property. As a Towing Service was never listed as a Main Permitted Use nor did the operator obtain Conditional Use approval for it, it operated in violation of the Zoning Ordinance. Furthermore, and in the alternative, since it was never a conforming use there in the absence of a Main Permitted Use (vehicle repair) or a Conditional Use (Filling Station) to which it could be an Accessory Use, it cannot be considered a legal non-conforming use today.

**A BTR DOES NOT ESTABLISH THAT A USE OF PROPERTY COMPLIES  
WITH THE ZONING CODE**

23. A BTR does not establish that a use of property complies with the Zoning Code. Rather, a BTR is a tax and not a land use regulation.

24. BTRs are regulated by the City of Miami Beach’s Finance Department, which is separate and distinct from the City of Miami Beach’s Planning Department. Thus, when the

property owners of 1349 Dade Boulevard applied for an Occupational License (predecessor to the BTR), the administration of the application was overseen by the Finance Department and not the Planning Department. This occurred because the Occupation License was considered a tax on the applicant. Accordingly, there would typically be no review by the Planning and Zoning Staff to determine consistency with applicable zoning regulations. The Finance Department also administered the renewal process for Occupational Licenses thereby preventing any review by the Planning and Zoning Staff. The change from Occupation Licenses to BTRs demonstrates the intent that the BTR was a tax and not a land use regulation.

25. A BTR may be issued under the City of Miami Beach's City Code even where the use of land does not comply with zoning regulations because compliance with zoning regulations is not an enumerated requirement for approval of a BTR application. (*See* Sections 1062-371-372 of City of Miami Beach's Code). Furthermore, the issuance of a BTR does not indicate compliance with the Zoning Code as the BTR states on its face that, it "does not waive or supersede other city laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business." (*See* Exhibit "F").

26. As noted above, the City of Miami Beach issued a Conditional Use Permit in 1980 for a Filling Station at 1349 Dade Boulevard (with certain conditions that Beach Towing's representatives have testified are not being complied with). Thus, any BTR issued for towing at the 1349 Dade Boulevard property was as an accessory use to the Filling Station. However, Mr. Festa in 1984 applied for and was granted a DERM permit to remove the underground fuel tanks (Exhibit "D"). When the fuel tanks were removed from the 1349 Dade Boulevard property in 1984, the Filling Station ceased to operate. The removal of the Filling Station tanks resulted in Towing Services becoming the main use of the property. However, as the use of the property at

1349 Dade Boulevard evolved, there is no evidence that there was any additional review by the Planning Department for the renewal of the BTR for towing services at 1349 Dade Boulevard, even though the BTR was no longer the accessory use but the primary use of that property.

I declare that I have read the foregoing declaration and that the facts stated in it are true to the best of my knowledge and belief.

Executed this 5<sup>th</sup> day of December, 2018.

  
\_\_\_\_\_  
Jud Kurlancheek, AICP

## **EXHIBITS**

- Exhibit A     Jud Kurlancheek Resume
- Exhibit B     Planning, Zoning, and Development Plan Awards
- Exhibit C     City Commission June 4, 1980 Conditional Use Minutes regarding an application for a Filling Station at 1349 Dade Boulevard
- Exhibit D     DERM Permit to remove fuel tanks at 1349 Dade Boulevard
- Exhibit E     Attorney Graham Penn letter to Planning Director Thomas R. Mooney requesting a zoning interpretation pertaining to Towing storage yards in the CD-2 and Mr. Mooney's reply
- Exhibit F     Zoning Chronology: 1349 Dade Boulevard

# **EXHIBIT “G”**

# MIAMI BEACH

## PLANNING DEPARTMENT

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139  
Tel: (305) 673-7550, Fax: (305) 673-7559

June 15, 2016

Graham Penn  
Bercow Radell & Fernandez  
200 South Biscayne Blvd., Suite 850  
Miami, FL 33131

**Subject:** Request for Zoning Confirmation  
Towing Storage Yard and Facility in CD-2 Districts

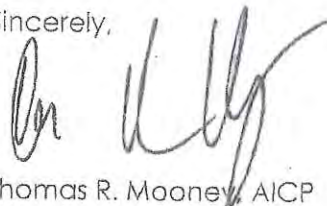
Dear Mr. Penn:

This letter is in response to the attached correspondence pertaining to towing storage yards and facilities in CD-2, Commercial, Medium Intensity, zoning districts.

Under Sections 142-302 and 142-303 of the Land Development Regulations of the City Code, towing storage yards and facilities are not listed as a permitted or conditional use within the CD-2 Zoning District.

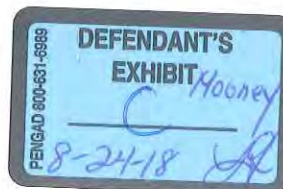
If you have any further questions, please do not hesitate to contact this department again.

Sincerely,



Thomas R. Mooney, AICP  
Planning Director

Attachment



ZONE0516-0011



# **EXHIBIT “H”**

IN THE CIRCUIT COURT OF THE  
11<sup>th</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

SUNSET LAND ASSOCIATES, LLC,

CASE NO.: 2016-004547 CA 01

Plaintiff,

v.

MARK FESTA, individually and as trustee,  
MAUREEN FESTA,  
VINCENT J. FESTA, individually and as trustee,  
THE FESTA TRUST, and  
BEACH TOWING SERVICES, INC.,  
BEACH TOWING SERVICES OF MIAMI, INC.,  
CONSOLIDATED STORAGE YARDS, INC.,  
GOOFE PARTNERS, INC.,  
MIAMI AVENUE PROPERTIES, INC.,  
1718 BAY ROAD CORPORATION,  
FESTA TRANSPORT AND STORAGE, INC.,  
and  
CORONA STORAGE, LLC,

Defendants

and

THE LOFTS AT SOUTH BEACH CONDOMINIUM  
ASSOCIATION, INC.,

Intervenor-Defendant,

and

MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.,

Counter-Plaintiffs,

v.

SUNSET LAND ASSOCIATES, LLC, a Florida limited  
liability company, SH OWNER, LLC, a Florida limited  
liability company, TOUCH OF CLASS PAINT & BODY

SHOP, INC., a Florida corporation and RUDOLF BUDJA  
GALLERY, LLC, a Florida limited liability company,

Counter-Defendants,

---

**DECLARATION OF NANCY STROUD**

1. I have been asked to render two expert opinions regarding: 1) whether or not a towing services use is a permitted use in the CD-2 zoning district of the City of Miami Beach zoning code and 2) whether or not a towing services use at this location (1349 Dade Boulevard) is a legal nonconforming use under the City of Miami Beach zoning code. My opinion is that it is not a permitted use in the CD-2 district, and it is not a legal nonconforming use.

2. I am a lawyer who practices in the field of land use and planning law. I am certified by the American Institute of Certified Planners, and will be inducted as a Fellow of the AICP in April at the American Planning Association annual conference. Election as a Fellow of the AICP is the highest honor bestowed by the AICP, the nation's professional planning association. I have been certified as a professional planner by the AICP since 2008; I received a Master of Regional Planning from the University of North Carolina in 1978. In 2011 I received the APA Florida Chapter Award for Distinguished Contribution to the Chapter. In 2011 I received, as part of a team of City of Miami planners and consultants, the APA's National Planning Excellence Award for Best Practice, for the creation of a city wide zoning code and comprehensive plan known as "Miami 21." I have served on the national APA's amicus curiae committee since 1999, which is a committee appointed by the President of the APA to participate as amicus curiae in all major zoning and land use cases heard by the U.S. Supreme Court, as well as in other leading state and federal cases of particular importance to the planning profession.

3. I graduated from the University of North Carolina in 1978 also with my J.D., and have been a Florida lawyer since 1979. During my career, I have been a partner for more than a decade in one of the leading national land use law firms (Burke Bosselman and Weaver and subsequent versions thereof) and of counsel to a local government law firm (Weiss Serota Helfman and subsequent versions thereof) where I chaired the local government land use law department serving as city attorney of up to thirteen south Florida municipalities, with many more as special counsel. I formed my law firm with two partners in 2005, and continue to practice land use law as counsel to numerous municipalities in the south Florida region. I have retained an AV rating from Martindale Hubbell for more than 25 years. My practice consists of writing zoning codes and ordinances, sitting as attorney in quasi-judicial hearings before local elected and appointed bodies, assisting staff in review of development applications for compliance with zoning and land use regulations, and counselling clients in litigation matters. I am a member of the United States Supreme Court bar and have co-written amicus briefs submitted to the Supreme Court. I am named counsel in several precedential federal and state land use cases. I lecture and write regularly on various land use law topics, including zoning codes. I have been co-author since 2003 of the land use treatise Planning and Control of Land Development: Cases and Materials, updated annually, authoring the chapter on the Zoning Process.

## Part I Towing Services is Not a Permitted Use in the CD-2 zoning district

4. The CD-2 zoning district, found at Article II, Division 5, is a “commercial, medium intensity district” which allows as main permitted uses “commercial uses; apartments; apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter); religious institutions with an occupancy of 199 persons or less and alcoholic beverages establishments pursuant to the regulations set forth in chapter 6.” Towing use is not a main permitted use. It is not listed as a main permitted use in this district. Neither is a towing use a “medium intensity” commercial use on the par with apartments or hotels. This is because a towing use involves the storage of derelict vehicles as well as other towing equipment, an activity which involves unsightly materials particularly if stored outdoors, and can involve noxious materials such as gasoline and oils.

5. Further, the list of conditional uses in this category informs the reader of which types of uses, when properly conditioned through a public hearing process, might be allowed in the zoning district. Although a conditional use will never be considered a “permitted use,” review of the conditional uses can inform the reader about what types of uses are considered to have greater negative impacts than the permitted uses. Towing is not in the conditional uses list, and the uses listed there are not comparable to a towing services use, but instead the conditional uses in the CD-2 zoning district are less intensive than a towing services use. In fact, the most comparable use to a towing use is Sec. 142-303 (a)(14), Storage and/or parking of commercial vehicles. However, that type of storage or parking involves vehicles that are not generally derelict or in need of repair but instead are associated with a licensed commerce, trade or business and thus is a less intensive use than towing services.

6. In 1989 the City of Miami Beach adopted a new zoning code, which among other things created a new I-1 light industrial district. That district included towing services among its District Purpose, and its main permitted uses included “[t]hose Uses that are consistent with the district purpose.” Thus, towing services was a main permitted use in the I-1 district as of 1989. In the current version of code, towing services continue to be a main permitted use in the City’s I-1 district. They are specifically listed as a main permitted use in Sec. 142-482 (6), and thus are considered an “urban light industrial” use. Their listing as a main permitted use in this district is a clear demonstration that they are not considered a commercial medium intensity use of the sort that is a main permitted use in the CD-2 zoning district.

7. The case of Miami Beach v. Sunset Islands 3 & 4 Property Owners Assoc., 216 So. 2d 509 (Fla. 3d DCA 1968) confirms that the towing services use, being listed specifically in one zoning district, is not allowed in the zoning district of a less intensive character. The case involved a property owners association that sought a mandamus from the court to halt the use of property in a “BB” district for the storage of yachts by an adjacent yacht manufacturing business. The Third District Court of Appeal upheld the circuit court’s issuance of the mandamus. It explained that boat storage was specifically permitted in the more intensive (“more liberal”) zoning district of BD, and was not specifically listed as a permitted use in the BB district. 216 So. 2d at 511. The court also explained that the “catch-all” phrase in the BB district - “or any other similar enterprises or businesses, which are not more obnoxious or detrimental to the

welfare of the particular community than the enterprises or businesses herein enumerated” - could not be read to include the yacht storage because of the specific mention of boat storage in the more intensive district, BD:

“In fact, it would appear that where the legislative authority of the City had placed a particular use in a certain district, [\*\*6] it should not be permitted under the "catch-all" provision of any higher or more restrictive use district. To do otherwise nullifies the legislative decision of the City Council in determining where a designated business use would be permitted.”

216 So. 2d at 512. The same logic and interpretation is applicable in this case in regard to towing services.

8. The City zoning regulations regarding motor vehicle storage also confirm that towing services are not permitted in the CD-2 district. Towing services necessarily include motor vehicle storage. Sec. 142-1102. - Motor vehicle storage states “Except as also provided in section 142-1103, storage of motor vehicles shall be permitted only in the I-1 light industrial district. . . .” The exceptions of section 142-1103 do not apply to towing services. Section 142-1103 states in part:

(a) Location regulations.

(1) In the I-1 light industrial district and in all commercial districts, commercial vehicles may be stored and/or parked on the same site at which the associated commerce, trade or business is located.

(2) Commercial vehicles stored and/or parked on a site other than the site at which the associated commerce, trade, or business is located shall only be permitted in the I-1 light industrial district, and pursuant to a conditional use permit in the CD-1, CD-2 and CD-3 districts....

9. The vehicles stored at a towing services site are not vehicles that serve the towing services business, but are instead the subjects of the business. For example, a towing truck used by the towing services company as a part of its towing business would be a commercial vehicle which can be stored or parked at the site, but even then only with a conditional use permit. The cars that are towed to the site are not commercial vehicles – they are instead used by the third party owners of the vehicles that are towed. Those owners can be residents, tourists, and a variety of non-commercial owners, and they are not the owners of the towing services use.

10. Mr. Thomas Mooney, the City Planning Director and a professional planner as indicated by his certification by the AICP (American Institute of Certified Planners), provided his professional opinion in June 15, 2016, that towing storage yards and facilities are not listed as a permitted or conditional use in the CD-2 zoning district. This corroborates my professional planning opinion.

11. The Certificate of Use, Annual Fire Fee, and Business Tax Receipts for Towing Services does not act as an approval of the use in the CD-2 zoning district. The document clearly states on its face that “A certificate of Use/Business Tax Receipt issued under this article

does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business."

12. Likewise, the City of Miami Beach Police Department and Parking Department Towing Permit (from March 1, 2015 to February 28, 2018) does not act as an approval of the towing use being made of 1349 Dade Boulevard. As the administrative rules and regulations incorporated into the Permit note, "Ignorance of the law on the part of the applicant/Permittee will in no way relieve it of any responsibility and/or liability under the Permit."

## Part II The Towing Services Use is Not a Legal Nonconforming Use in the CD-2 zoning district

13. In order to be considered a legal nonconforming use, a use must have been legally in existence when the law changes to make the use nonconforming to the new regulations.

14. Defendants claim that towing services was a legal use in the C-6 zoning district, as that zoning district was in effect from October 1, 1971 – September 30, 1985. Specifically, they claim that the towing services use existed in 1983. Reviewing the zoning code version referenced by the Defendants (Exhibit 15, which states that it was effective as amended through 1985), my opinion is that the towing services use is not a listed permitted use in C-6, and was instead eligible to be a conditional use. However, because the City never issued a conditional use permit for towing services under the zoning code, the use was never legally established as a conditional use.

15. The C-6 district does not list towing services as a permitted use. Neither does it fall under the permitted use at 6-13.B.1 (any non-residential use permitted in C-5 District but not the conditional uses listed in C-5). C-5 lists auto and truck storage (6-12.B.20) but a towing service is more intensive a use than simply storage of autos or trucks. It includes derelict vehicles that require use of heavy equipment such as forklifts and tow trucks, repair operations, and may include 24 hour service operation requiring use of the lot into the night hours and an on premise office operating 24 hours a day. C-6 allows as a listed permitted use "garage for mechanical service" but the definition of this use (3-2.50) does not include towing or car storage, which characterizes a towing services use, and a mechanical garage is not open 24 hours a day. In contrast, the conditional uses listed in C-6 include the more intensive uses like towing services – such as a filling station (20.b) and storage parking lots for new vehicles (20.h; see definition at 3-2. 95). The list of conditional uses allows as conditional uses those "which are similar in character to one or more permitted uses...." To the extent towing services are allowed under this version of the code, they would have to take place in a C-6 district and then only with a conditional use permit issued by the City Commission.

16. If towing services are a conditional use, they must be approved under the processes in the zoning code in effect in 1983, in Section 7. This process requires approval by the City Commission after a public hearing by the Planning and Zoning Board (7-1.B). The applicant must record the conditional use approval in the Circuit Court records (7-1.B.3.b.). Defendant has presented no evidence of a conditional use permit, nor has it claimed that it received a conditional use permit.

17. Because the towing services use was not legally permitted, either as a permitted use or a conditional use, in the C-6 district, when the new zoning code was enacted in 1989 (Ex. 16 of the DMPSJ) the use continued to be an illegal use. The property under the 1989 zoning code was placed in the new CD-2 district, and the use is not legal in the CD-2 district as discussed above. It is nonconforming to the CD-2 district, and because it was never a legal use, it cannot be a "legal nonconforming use" under the 1989 zoning ordinance.

18. The 1989 code also provides at Section 13-6 that the "illegal use of land or buildings shall not be sufficient to establish the existence of a Nonconforming Use." Thus, although Defendant may have illegally been using its property for towing services, the code specifically provides that this illegal use is not sufficient to qualify it as a (legal) nonconforming use.

19. Under the 1989 zoning code, it should be noted that anyone who wishes its use to be recognized as a legal nonconforming use could receive such a determination by the Director of Planning and Zoning, with an appeal to the Board of Adjustment. See Section 13-7. There is no evidence that the Defendant sought this determination.

20. The issuance of an occupational license by the City of Miami Beach does not demonstrate that the towing services use was allowed by the zoning code as a permitted use, conditional use, or legal nonconforming use. These documents state on their faces that issuance "does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business...." (Ex. 10, 20, DMPSJ; also 2015 license).

Under penalty of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true.

Dated: April 16, 2018

Nancy Stroud  
Nancy Stroud

# **EXHIBIT “I”**



IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No. 2016-004547 CA 01

---

SUNSET LAND ASSOCIATES, LLC,

Plaintiff,

vs.

MARK FESTA, individually and as  
trustee, MAUREEN FESTA, VINCENT J.  
FESTA, individually and as trustee,  
THE FESTA TRUST, and BEACH TOWING  
SERVICES, INC., BEACH TOWING SERVICES  
OF MIAMI, INC., CONSOLIDATED STORAGE  
YARDS, INC., GOOFE PARTNERS, INC.,  
MIAMI AVENUE PROPERTIES, INC., 1718  
BAY ROAD CORPORATION, FESTA TRANSPORT  
AND STORAGE, INC., and CORONA  
STORAGE, LLC,

Defendant(s).

---

and THE LOFTS AT SOUTH BEACH CONDOMINIUM  
ASSOCIATION, INC.

Intervenor-Defendant,

and

MARK FESTA, MAUREEN FESTA, and BEACH  
TOWING SERVICES, INC.

Counter-Plaintiffs,

v.

SUNSET LAND ASSOCIATES, LLC, a  
Florida limited liability company,  
SH OWNER, LLC, a Florida limited  
liability company, TOUCH OF CLASS  
PAINT & BODY SHOP, INC., a Florida  
corporation and RUDOLF BUDJA GALLERY,

<p>Page 2</p> <p>1 LLC, a Florida limited liability company,</p> <p>2</p> <p>3</p> <p>4 DEPOSITION OF SUSANA ALONSO, AICP Pages 1 through 213</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Thursday, September 6, 2018 11:05 a.m. to 4:30 p.m. 3350 Mary Street Miami, Florida 33133</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Stenographically Reported By: Victor Selvaggi, Jr., FPR Florida Professional Reporter</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 I N D E X</p> <p>2 Witness</p> <p>3 SUSANA ALONSO, AICP</p> <p>4 DIRECT EXAMINATION BY MR. BUCKNER 5</p> <p>5 CROSS EXAMINATION BY MR. REISS 179</p> <p>6 REDIRECT EXAMINATION BY MR. BUCKNER 195</p> <p>7 RECROSS EXAMINATION BY MR. REISS 212</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 No. Description Page</p> <p>11 P-1 Amended Notice of Deposition 8</p> <p>12 P-2 Copy of Deposition of Mark Festa 10</p> <p>13 P-3 Susana Alonso, AICP Retainer 11</p> <p>14 P-4 Susana Alonso CV 12</p> <p>15 P-5 Report by Susana Alonso, AICP 13</p> <p>16 P-6 Amended Report by Susana Alonso, AICP 16</p> <p>17 P-7 Report of Lucia A. Dougherty, J.D. 68</p> <p>18 P-8 Aerial View of Property 70</p> <p>19 P-9 Wrecker/Towing Services, 1349 Dade Blvd. 86</p> <p>20 P10 Ordinance No. 2012-3786 87</p> <p>21 P11 Ordinance No. 2013-3802 87</p> <p>22 P12 Ordinance No. 2014-3905 87</p> <p>23 P13 Traffic Study, Traf Tech, 3/18 113</p> <p>24 P14 Traffic Study, Traf Tech, 8/18 114</p> <p>25 P15 Traffic Flow Map 133</p> <p>26 P16 Traffic Flow Map 133</p> <p>27 P17 Sunset Harbour, Opinion on Traffic 175</p> <p>28 Conditions</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>
<p>Page 3</p> <p>1 APPEARANCES:</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 LAW OFFICES OF BUCKNER &amp; MILES</p> <p>4 3350 Mary Street</p> <p>5 Miami, Florida 33133</p> <p>6 (305) 964-8003</p> <p>7 david@bucknermiles.com</p> <p>8 BY: David M. Buckner, Esq.</p> <p>9</p> <p>10 ON BEHALF OF THE DEFENDANTS MARK FESTA, MAUREEN</p> <p>11 FESTA, BEACH TOWING SERVICES, INC., BEACH TOWING</p> <p>12 SERVICES OF MIAMI, INC., CONSOLIDATED STORAGE YARDS,</p> <p>13 INC., GOOFE PARTNERS, INC., MIAMI AVENUE PROPERTIES,</p> <p>14 INC., 1718 BAY ROAD CORPORATION, FESTA TRANSPORT and</p> <p>15 STORAGE, INC., and CORONA STORAGE, LLC</p> <p>16</p> <p>17 LEVINE &amp; PARTNERS</p> <p>18 3350 Mary Street</p> <p>19 Miami, Florida 33133</p> <p>20 (305) 372-1350</p> <p>21 ASR@LEVINEFIRM.COM</p> <p>22 BY: Allan S. Reiss, Esq.</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 Ralph Andrade, Esq.</p>	<p>Page 5</p> <p>1 Deposition taken before Victor Selvaggi, Jr.,</p> <p>2 Florida Professional Reporter, and Notary Public in and</p> <p>3 for the State of Florida at Large in the above cause.</p> <p>4 *****</p> <p>5 THE REPORTER: Please raise your right hand.</p> <p>6 Do you solemnly swear or affirm the testimony</p> <p>7 you are about to give will be the truth, and</p> <p>8 nothing but the truth?</p> <p>9 THE WITNESS: Yes.</p> <p>10 THEREUPON:</p> <p>11 SUSANA ALONSO, AICP,</p> <p>12 having been first duly sworn or affirmed, was examined</p> <p>13 and testified as follows:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. BUCKNER:</p> <p>16 Q. Good morning, Ms. Alonso.</p> <p>17 A. Good morning, sir.</p> <p>18 Q. I'm David Buckner. Pleasure to meet you.</p> <p>19 A. Pleasure to meet you, too.</p> <p>20 Q. Let me go through some ground rules and we</p> <p>21 will try to move through this expeditiously today. I</p> <p>22 have a habit of talking too fast, which really drives</p> <p>23 Vic crazy, but I'll try not to.</p> <p>24 Have you had your deposition taken before?</p> <p>25 A. No, sir.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q. This is the first time?</p> <p>2 A. Yeah. I'm a newbie.</p> <p>3 Q. Very exciting. So let me give you some ground</p> <p>4 rules, and if there is anything you don't understand,</p> <p>5 you tell me. I know you probably have gone through</p> <p>6 this already with Mr. Reiss.</p> <p>7 First of all, everything you and I say,</p> <p>8 everything anybody says will be taken down by the Court</p> <p>9 Reporter. For him to do that, we have to try not to</p> <p>10 talk over each other because he can only take down one</p> <p>11 voice at a time.</p> <p>12 A. Yes, sir.</p> <p>13 Q. So it's not how we normally talk. It takes a</p> <p>14 little work, but I'll work with you on that if you will</p> <p>15 work with me.</p> <p>16 I'm going to ask you questions. All you are</p> <p>17 asked to do is answer them to the best of your ability.</p> <p>18 Mr. Reiss may have objections at various points in</p> <p>19 time. Those are for the record. We will deal with</p> <p>20 those later. Unless he instructs you not to answer,</p> <p>21 which I can't imagine happening today, you just go</p> <p>22 ahead and answer, but again, try not to talk over him</p> <p>23 or me as we are saying whatever we are saying so that</p> <p>24 Vic can get it all down.</p> <p>25 If I ask you a anything that you don't</p>	<p style="text-align: right;">Page 8</p> <p>1 1.</p> <p>2 (The document referred to</p> <p>3 was thereupon marked as</p> <p>4 Plaintiff's Exhibit Number</p> <p>5 1 for Identification,</p> <p>6 a copy of which is attached</p> <p>7 hereto.)</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. Do you recognize Exhibit 1?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And what is it?</p> <p>12 A. It's a request to depose me.</p> <p>13 Q. Right. It's the notice why you are here</p> <p>14 today, right?</p> <p>15 A. Yes.</p> <p>16 Q. Attached to it is Exhibit A, which is a list</p> <p>17 of documents that I requested.</p> <p>18 Have you gone through that list before to see</p> <p>19 which of these documents you have?</p> <p>20 A. I have everything on page seven.</p> <p>21 Q. When you say you have, you mean you brought</p> <p>22 with you today?</p> <p>23 A. A-ha.</p> <p>24 Q. Is that a yes?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 understand, you tell me and I'll restate it. If you</p> <p>2 answer my questions, we are going to assume that you</p> <p>3 understood what I was asking and you were answering to</p> <p>4 the best of your ability. Okay?</p> <p>5 A. Yes, sir.</p> <p>6 Q. If you need to take a break at any point, we</p> <p>7 will take a break. We are going to try to get this</p> <p>8 done today so we can get everybody out of here, but</p> <p>9 it's not meant to be a torture test, so if you need a</p> <p>10 break, go to the bathroom whatever, just say so.</p> <p>11 Is there any reason why you can't give</p> <p>12 truthful and complete testimony today?</p> <p>13 A. No, sir.</p> <p>14 Q. You don't have to call my sir.</p> <p>15 A. I'm a southern girl.</p> <p>16 Q. Okay. Then you can call me sir. Any</p> <p>17 questions about the procedures today?</p> <p>18 A. No, sir.</p> <p>19 Q. All right. Where are you from?</p> <p>20 A. Louisiana.</p> <p>21 Q. I'm from Kentucky.</p> <p>22 MR. ANDRADE: Sorry to hear that.</p> <p>23 MR. BUCKNER: Oh, you had to do that.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. I'm handing you what's been marked as Exhibit</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Let me tell you something else. We have to</p> <p>2 say yes or no so he can take it down. The usual thing</p> <p>3 is we do like a-ha. I know what you meant, but he</p> <p>4 can't take that down.</p> <p>5 A. I get it.</p> <p>6 Q. Okay. So you have everything from page seven</p> <p>7 with you today.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. How about page eight?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And page nine?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And so with regard to the entirety of</p> <p>14 Schedule A, you brought whatever documents you have</p> <p>15 with you here today.</p> <p>16 A. Yes, sir.</p> <p>17 Q. I received a flash drive yesterday. Is</p> <p>18 everything you have here with us on the flash drive or</p> <p>19 is there stuff here that's not on the flash drive?</p> <p>20 A. Yes, everything is on the flash drive.</p> <p>21 Q. Okay. So it's the same thing.</p> <p>22 A. Yes.</p> <p>23 Q. That will save us making copies of that later.</p> <p>24 MR. REISS: I don't want to interrupt. I</p> <p>25 think there are a few items, some e-mails.</p>

<p style="text-align: right;">Page 10</p> <p>1 THE WITNESS: E-mails are not in there and 2 this giant. 3 MR. REISS: You have an IT manual or 4 something? 5 THE WITNESS: Correct. I brought the IT 6 manual with me, but you can't keep that. 7 MR. REISS: Anything else on the flash drive? 8 THE WITNESS: No, but the e-mails are in here. 9 BY MR. BUCKNER: 10 Q. That's fine. In terms of -- 11 MR. REISS: I didn't mean to interrupt your 12 deposition. 13 MR. BUCKNER: It saves time. 14 BY MR. BUCKNER: 15 Q. So in terms of what you have that you brought 16 today that is not on the flash drive, is it only the 17 stuff in the black folder there? 18 A. Yes. 19 Q. Can we mark the full contents of folder and we 20 will have copy of that made. 21 (The document referred to 22 was thereupon marked as 23 Plaintiff's Exhibit Number 24 2 for Identification, 25 a copy of which is attached</p>	<p style="text-align: right;">Page 12</p> <p>1 hereto.) 2 BY MR. BUCKNER: 3 Q. Do you recognize Exhibit 3? 4 A. Yes, sir. 5 Q. What is it? 6 A. It's my retainer. 7 Q. It's your retainer in this case? 8 A. Yes, sir. 9 Q. I notice it's not signed. Is there a signed 10 version somewhere? 11 A. Yes, sir. I don't think I have a signed 12 version here. 13 Q. Okay. Look at Exhibit 3 and make sure it's 14 the same as the signed version? 15 A. It is. I read it. 16 Q. Okay. That's the retainer agreement under 17 which you are testifying in this case? 18 A. Yes, sir. 19 Q. All right. Exhibit 4. 20 (The document referred to 21 was thereupon marked as 22 Plaintiff's Exhibit Number 23 4 for Identification, 24 a copy of which is attached 25 hereto.) (P four marked for identification.)</p>
<p style="text-align: right;">Page 11</p> <p>1 hereto.) 2 BY MR. BUCKNER: 3 Q. All right. So Exhibit 2 is the only materials 4 you brought today that is not on the flash drive, 5 correct? 6 A. Yes, sir. 7 MR. REISS: There is the IT manual. 8 THE WITNESS: But are you going to put that -- 9 MR. REISS: You brought it and that was the 10 question. 11 BY MR. BUCKNER: 12 Q. What is the IT manual for my edification? 13 A. Trip Generation Manual 9th Edition. All three 14 volumes of it. 15 Q. Okay. That's fine. So you have those with 16 you. 17 A. I have them with me. 18 Q. We are not going to mark those. You don't 19 have to take them out unless you need them. 20 Exhibit 3. 21 (The document referred to 22 was thereupon marked as 23 Plaintiff's Exhibit Number 24 3 for Identification, 25 a copy of which is attached</p>	<p style="text-align: right;">Page 13</p> <p>1 BY MR. BUCKNER: 2 Q. Do you recognize Exhibit 4? 3 A. Yes, sir. 4 Q. What is that? 5 A. It's my curriculum vitae. 6 Q. And is that correct? 7 A. Yes, sir. 8 Q. And finally Exhibit 5. 9 (The document referred to 10 was thereupon marked as 11 Plaintiff's Exhibit Number 12 5 for Identification, 13 a copy of which is attached 14 hereto.) 15 BY MR. BUCKNER: 16 Q. What is Exhibit 5? 17 A. A report. 18 Q. Is it your report in this case? 19 A. It is my report. 20 Q. And how did you come to prepare that report? 21 A. I utilized my professional experience and 22 education and reviewed some materials that were some 23 publicly available and others that were made available 24 to me. 25 Q. And who asked you to prepare that report?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Mr. Andrade and Mr. Reiss.</p> <p>2 Q. Okay. Let's go through this. I want to go</p> <p>3 through some things in your resume first and then we</p> <p>4 are going to talk about your report a bit.</p> <p>5 So I take it because you never have been</p> <p>6 deposed before, you never testified as an expert</p> <p>7 before, correct?</p> <p>8 A. Never, sir.</p> <p>9 Q. So that means you never have been certified as</p> <p>10 an expert in any subject?</p> <p>11 A. No.</p> <p>12 Q. What is it that you believe you're an expert</p> <p>13 in?</p> <p>14 A. I'm an expert in planning and zoning and urban</p> <p>15 planing.</p> <p>16 Q. Anything else?</p> <p>17 A. That's about it. That's enough.</p> <p>18 Q. I hate to ask. Lawyers will do this. When</p> <p>19 you say that's about it, it suggests to me maybe there</p> <p>20 is something else. Is there anything else you're an</p> <p>21 expert in other than those areas? No?</p> <p>22 A. No. Nothing relevant to this trial. How's</p> <p>23 that?</p> <p>24 Q. I'll take your word for it. We will leave</p> <p>25 that alone. I want to go through your resume a little</p>	<p style="text-align: right;">Page 16</p> <p>1 explanation of the same points.</p> <p>2 Q. Explaining the nature of?</p> <p>3 A. The nature of the neighborhood.</p> <p>4 Q. Okay. Tell me where that is.</p> <p>5 A. I need mine.</p> <p>6 Q. Do you want me to make another copy so you can</p> <p>7 refer to it?</p> <p>8 Let's take a quick break and I'll make copy.</p> <p>9 Off the record.</p> <p>10 (Discussion off the record.)</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Back on the record. Exhibit 6 then. What is</p> <p>13 that?</p> <p>14 A. This is the amended report.</p> <p>15 (The document referred to</p> <p>16 was thereupon marked as</p> <p>17 Plaintiff's Exhibit Number</p> <p>18 6 for Identification,</p> <p>19 a copy of which is attached</p> <p>20 hereto.)</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. Let's take a minute then since I was not aware</p> <p>23 there was a revised report. Let's take a minute and</p> <p>24 walk me through it. I'm looking at Exhibit 5 and</p> <p>25 Exhibit 6 side by side. Six is the new report? Tell</p>
<p style="text-align: right;">Page 15</p> <p>1 bit. I'm going to actually start at the back with your</p> <p>2 education.</p> <p>3 A. This is the old version of the report.</p> <p>4 Q. This is the old version.</p> <p>5 A. Yes.</p> <p>6 Q. There is a new version?</p> <p>7 MR. REISS: It was produce last night. There</p> <p>8 is an updated report.</p> <p>9 MR. BUCKNER: Produced last night?</p> <p>10 MR. REISS: On the flash drive.</p> <p>11 MR. BUCKNER: Okay. I didn't realize that it</p> <p>12 was updated. Which one is the updated one?</p> <p>13 MR. REISS: Do you have it printed out?</p> <p>14 THE WITNESS: Yes, I do.</p> <p>15 MR. BUCKNER: I can go print it.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. What changed about the old version and the new</p> <p>18 version of the report?</p> <p>19 A. I amended the square footage according to the</p> <p>20 traffic, the amended traffic study, and I amended some</p> <p>21 of the numbers that were produced in the traffic study.</p> <p>22 Q. Okay. Other than the changes to the traffic</p> <p>23 study, did you make any other changes?</p> <p>24 A. I added a paragraph explaining the nature of</p> <p>25 the neighborhood a little more, just further</p>	<p style="text-align: right;">Page 17</p> <p>1 me what changed from 5 to 6? You can gone page by</p> <p>2 page.</p> <p>3 A. All right.</p> <p>4 Q. First of all, I can see on page three there</p> <p>5 are some additional documents, right?</p> <p>6 A. Yes. On page three I added the amended</p> <p>7 traffic study by Traf Engineering.</p> <p>8 Q. Okay.</p> <p>9 A. It was amended on August 22nd.</p> <p>10 Q. Okay.</p> <p>11 A. And the report of -- Ms. Dougherty's</p> <p>12 declaration report on July 12th.</p> <p>13 Q. Okay. Exhibit --</p> <p>14 A. Y and Z.</p> <p>15 Q. Those are new.</p> <p>16 A. Yes.</p> <p>17 Q. What else?</p> <p>18 A. Page four.</p> <p>19 Q. Go ahead.</p> <p>20 A. Nothing I can see. Page six, the bottom</p> <p>21 paragraph is added. It's a further explanation.</p> <p>22 Q. Where it said or the paragraph that starts</p> <p>23 with as per Section 130-33 B?</p> <p>24 A. Sorry, I'm on page five.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 18</p> <p>1 A. It starts with in fact.</p> <p>2 Q. Okay. That paragraph is new.</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 A. Now on page six.</p> <p>6 Q. Okay. We are looking at the new report when</p> <p>7 you are giving the pages?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay.</p> <p>10 A. There is a part of paragraph four that has</p> <p>11 been added.</p> <p>12 Q. Paragraph four. Tell me what paragraph four</p> <p>13 starts with.</p> <p>14 A. It starts with previously mentioned.</p> <p>15 Q. Okay. What else?</p> <p>16 A. The last paragraph on that page as per Section</p> <p>17 130-33. That one has been rearranged.</p> <p>18 Q. Okay.</p> <p>19 A. And then on page seven is the part that is a</p> <p>20 little more different. I rewrote the square footage.</p> <p>21 Q. When you say the square footage, is that at</p> <p>22 the top where you say 120,000 square feet?</p> <p>23 A. Yes. I had written in the previous over</p> <p>24 49,000 and I decided to be a little more specific.</p> <p>25 Q. Okay. I want to make sure I understand what</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes.</p> <p>2 Q. Is it stuck to yours, an e-mail?</p> <p>3 A. No.</p> <p>4 MR. BUCKNER: Is that stuck to yours, Allan?</p> <p>5 MR. REISS: No.</p> <p>6 MR. BUCKNER: It's my e-mail on another</p> <p>7 matter.</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. Okay.</p> <p>10 A. Last page is the map.</p> <p>11 Q. Okay. So your last page is the map. We will</p> <p>12 talk about that. So let's talk about some stuff.</p> <p>13 I'm going to look at your CV. I'm working</p> <p>14 from the back. What is can Chi Epsilon?</p> <p>15 A. That is an honors society for civil engineers.</p> <p>16 Q. And are you a civil engineer?</p> <p>17 A. No, sir, I never graduated.</p> <p>18 Q. Do you have an engineering degree of any kind?</p> <p>19 A. No, sir.</p> <p>20 Q. It says here you did undergraduate and</p> <p>21 graduate work at the University of Miami in civil and</p> <p>22 architectural engineering.</p> <p>23 A. Yes.</p> <p>24 Q. And you were there for how many years?</p> <p>25 A. Three years.</p>
<p style="text-align: right;">Page 19</p> <p>1 the change is.</p> <p>2 Are you saying there that on the Assemblage</p> <p>3 that's at issue in this case, part of which is owned by</p> <p>4 Sunset Land, you are saying they can build up to</p> <p>5 120,000 square foot of commercial space without</p> <p>6 parking.</p> <p>7 A. Without parking, yes.</p> <p>8 Q. Okay. What else?</p> <p>9 A. The next section is rearranged based on the</p> <p>10 traffic study so that are -- the next section is</p> <p>11 significantly different.</p> <p>12 Q. Okay.</p> <p>13 A. Reflecting the amended traffic study. I</p> <p>14 incorporated the new numbers in there.</p> <p>15 Q. Okay.</p> <p>16 A. And it's the same on page eight.</p> <p>17 Q. Okay. What else?</p> <p>18 A. Then on page nine, the next section is</p> <p>19 unchanged.</p> <p>20 Q. When you say the next section, you mean the</p> <p>21 development proposal by Sunset Land Associates?</p> <p>22 A. Yes, that's the same.</p> <p>23 Q. Okay. Then I see you added --</p> <p>24 A. And I added the map.</p> <p>25 Q. Okay. The map?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And if you don't mind my asking, why did you</p> <p>2 not complete your work there?</p> <p>3 A. I decided that architecture was one of my</p> <p>4 things.</p> <p>5 Q. Okay. So then you decided to switch your</p> <p>6 focus architecture?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Is that why you transferred -- strike that.</p> <p>9 It doesn't look like you transferred. Some years later</p> <p>10 you went to Louisiana Tech.</p> <p>11 A. Yes, sir.</p> <p>12 Q. And you studied architecture.</p> <p>13 A. Yes, sir.</p> <p>14 Q. Did you complete a degree in architecture?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What degree?</p> <p>17 A. A Bachelor's in Architecture, a six year</p> <p>18 degree.</p> <p>19 Q. Do you have any other professional degrees?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you have any academic degrees at all?</p> <p>22 A. No, sir.</p> <p>23 Q. Do you have any professional certification?</p> <p>24 A. Yes, sir.</p> <p>25 Q. What do you have?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. I'm a certified professional planner, 2 certified by the Institute of Professional Planners. 3 Q. Anything else? 4 A. No, sir. 5 Q. Then it says here you did graduate course work 6 in urban planning at Florida Atlantic University. 7 A. Yes, sir. 8 Q. And you didn't complete that degree? 9 A. I didn't complete it. 10 Q. Have you ever done your own traffic 11 engineering study? 12 A. No, sir. 13 Q. Have you ever -- strike that. Let's go 14 through the rest this. 15 You started out as a planning intern for the 16 City of Miami Beach, right? 17 A. Yes, sir. 18 Q. And you started work in May of 2002? 19 A. Yes, sir. 20 Q. Who was the planning director at the time? 21 A. Mr. George Goldman. 22 Q. It says here there is a reference to MIMO, 23 M-I-M-O all in caps. 24 A. MIMO. 25 Q. What does that mean?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. Did you actually create any traffic 2 data or you just compiled it -- 3 A. No, sir, I just compiled it. 4 Q. And just remember we can try not to talk over 5 each other. 6 A. Sorry. 7 Q. I know you know what my question will be, but 8 he has a hard time getting us both. 9 So you just compiled data from other sources. 10 A. Yes, sir. 11 Q. After that, from November, 2004 to November, 12 2009, you were a planner for the City of Miami Beach, 13 correct? 14 A. Yes, sir. 15 Q. What did you do as a planner? 16 A. I was at the counter. I was a plan reviewer. 17 Q. When someone had a plan for a particular 18 building or project, they would come to the counter and 19 you were the one who looked at it. 20 A. Yes, sir. 21 Q. What was your role with regard to those plans? 22 A. I was a plan reviewer. I reviewed them and I 23 reviewed them for compliance with the land development 24 code. 25 Q. Anything else during that time?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Miami Modern. 2 Q. I learned something today. Is that a type of 3 building? 4 A. Yes. It's a type of architecture. 5 Q. What did you do as a planning intern? 6 A. I was in charge of the design guidelines that 7 were later approved by the History Preservation Board 8 in the City of Miami Beach. 9 Q. Tell me what you mean by design guidelines. 10 A. Basically the ways that we can reinvigorate 11 '50s and '60s building into something that is modern 12 and palatable. 13 Q. So that's like architectural. 14 A. With code, yeah. Turning it into code. 15 Q. Okay. After that you were a planning tech 16 also for the City of Miami Beach, correct? 17 A. Yes. 18 Q. What did you do? 19 A. Maps. Lots and lots of maps. 20 Q. So tell me what that means. 21 A. I was in charge of the GIS, Geographic 22 Information System in the planning department, so I 23 kept data, including traffic data. I compiled data 24 from all kinds of sources and made it available for the 25 planning department to use for analysis.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. No, sir. 2 Q. Then it says from November, 2009 to June, 3 2012, you were a senior planner. What does that 4 entail? 5 A. A step up. More responsibility. 6 Q. But still reviewing plans? 7 A. Part -- partly, yes. At that time I was in 8 charge of all the other planners that review plans. 9 Q. And, again, this is still for the City of 10 Miami Beach. 11 A. Still for the City of Miami Beach. 12 Q. What did your job entail then? 13 A. I was also in charge of the parking stuff in 14 general. 15 Q. What does that mean? 16 A. Valet parking operations, all that other 17 parking nonsense. Anything that had to do with 18 parking, parking requirements. If there was a parking 19 requirement ordinance going through, I would be 20 consulted. 21 Q. Did you actually write any of the ordinances? 22 A. No, not at that time. 23 Q. And so was your job as senior planner, you 24 were basically reviewing other peoples' work. 25 A. Yes, sir.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. You weren't creating anything of your own.</p> <p>2 A. No, no, sir.</p> <p>3 Q. The same as when you were a planner?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And then in June of 2012 you left the City of</p> <p>6 Miami Beach.</p> <p>7 A. Yes.</p> <p>8 Q. Why did you decide to leave?</p> <p>9 A. Personal maternity leave reasons. I had a</p> <p>10 baby.</p> <p>11 Q. Congratulations. And you opened your own</p> <p>12 planning, construction and building permit consulting</p> <p>13 firm.</p> <p>14 A. Yes.</p> <p>15 Q. What was the name of that firm?</p> <p>16 A. My name.</p> <p>17 Q. And what did your work for that business</p> <p>18 entail?</p> <p>19 A. Basically helping people through board</p> <p>20 applications in the city.</p> <p>21 Q. Was that all in the City of Miami Beach?</p> <p>22 A. Mostly. I did some work in Miami and some</p> <p>23 work in Biscayne, but mostly Miami Beach.</p> <p>24 Q. How many projects did you work on during that</p> <p>25 four year period?</p>	<p style="text-align: right;">Page 28</p> <p>1 and conditional use amendments.</p> <p>2 Q. You said it was two schools, a church, a small</p> <p>3 hotel and a single family home. Did I miss anything?</p> <p>4 A. No, sir.</p> <p>5 Q. Where was the single family home?</p> <p>6 A. In the City of Miami, Morningside District.</p> <p>7 Q. And what change did they want to make?</p> <p>8 A. They wanted to be a historic designated home</p> <p>9 for tax purposes.</p> <p>10 Q. And were you successful in getting them the</p> <p>11 historic designation?</p> <p>12 A. Yes.</p> <p>13 Q. You said the two schools, and let's take them</p> <p>14 one at a time. The Casa Dei Bambini. They wanted a</p> <p>15 conditional use permit?</p> <p>16 A. They had to amend their conditional use</p> <p>17 permit.</p> <p>18 Q. Why did they have to do that?</p> <p>19 A. They had more students than they had in their</p> <p>20 conditional use. They needed to increase their size.</p> <p>21 Q. Were you able to successful to do that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. How about the Montessori School, what did they</p> <p>24 need?</p> <p>25 A. They needed the same thing. They needed to</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Maybe five.</p> <p>2 Q. Do you remember which any of them were?</p> <p>3 A. Sure.</p> <p>4 Q. Okay. Can you tell me?</p> <p>5 A. I worked for two schools, conditional uses for</p> <p>6 two schools. One church, one single family home that</p> <p>7 wanted historic designation, a small hotel that wanted</p> <p>8 a upper story and rooftop addition is the right word.</p> <p>9 Q. That's the hotel.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So you said you worked for two schools.</p> <p>12 What were the schools?</p> <p>13 A. Casa dei Bambini and I forget the name of the</p> <p>14 other one. Montessori School in the North Beach area.</p> <p>15 Q. And is the Case Dei Bambini on Miami Beach</p> <p>16 also?</p> <p>17 A. Yes.</p> <p>18 Q. And you said you worked for a church. Which</p> <p>19 church?</p> <p>20 A. The one that's adjacent to the Casa Dei</p> <p>21 Bambini. The United Methodist I think was the name.</p> <p>22 It was a related case.</p> <p>23 Q. And they were all seeking to do construction</p> <p>24 on their properties?</p> <p>25 A. No, sir, they were seeking conditional uses</p>	<p style="text-align: right;">Page 29</p> <p>1 add students and that one died before it got to</p> <p>2 hearing. They pulled the application.</p> <p>3 Q. Why did they pull the application, do you</p> <p>4 know?</p> <p>5 A. They didn't want to deal with the traffic</p> <p>6 study.</p> <p>7 Q. Did the Case Dei Bambini, for their</p> <p>8 conditional use, did they need a traffic study?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Who prepared that?</p> <p>11 A. Richard Garcia.</p> <p>12 Q. Okay.</p> <p>13 A. PE.</p> <p>14 Q. So he's a professional engineer.</p> <p>15 A. Yes.</p> <p>16 Q. You don't prepare traffic studies because you</p> <p>17 are not qualified, correct?</p> <p>18 A. No, I don't.</p> <p>19 Q. And that's because you are not qualified,</p> <p>20 right?</p> <p>21 A. I'm not a professional engineer, no.</p> <p>22 Q. And so there was a traffic study for the Case</p> <p>23 dei Bambini, but the Montessori School didn't want to</p> <p>24 do one.</p> <p>25 A. Yeah. It was expensive.</p>



<p style="text-align: right;">Page 30</p> <p>1 Q. So they dropped their application for an 2 amendment to the conditional use? 3 A. Yes, sir. 4 Q. How about the United Methodist Church, what 5 did they need? 6 A. They needed to work their conditional use with 7 the school on their property. 8 Q. So they needed to amend their conditional use? 9 A. Yes. 10 Q. To do what? 11 A. To allow the school to operate their parking 12 lot. 13 Q. And what happened with that application? 14 A. It died also. They decided not to go forward. 15 Q. Because it's related to Montessori? 16 A. Yes, because it was related to the Montessori. 17 Q. Then you said there was a small hotel you 18 worked for. Do you remember the name of it? 19 A. Casa Coloretta. 20 Q. Spell the last name. 21 A. Coloretta is C-o-l-o-r-e-t-t-a. 22 Q. Okay. What did you do for them? 23 A. They wanted an upper story addition and they 24 needed historic preservation board approval. 25 Q. Did they get it?</p>	<p style="text-align: right;">Page 32</p> <p>1 storage locations, they were opening and closing 2 locations everywhere. Licensing, so they came in with 3 applications every once in a while. 4 Q. And you were involved in some of those? 5 A. Yes, sir. 6 Q. And I know there is one in particular that we 7 will go through that's referenced in your report, but 8 other than the one you specifically reference in your 9 report, do you know if were you involved in any other 10 applications -- 11 A. Yes. 12 Q. -- by Beach Towing? 13 A. Yes, on a regular basis. 14 Q. Okay. Can you remember -- 15 A. I can't remember all of them. 16 Q. Can you remember any of them? 17 A. Not particularly. 18 Q. Okay. 19 A. It was mostly very routine stuff, opening a 20 parking lot here and using storage in another place, 21 that kind of stuff. 22 Q. Okay. 23 A. I just can't right now. 24 Q. Not moving their towing operation. 25 A. No, never.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. And a couple of variances. They got it. 2 Q. What work specifically did you do for them? 3 A. I did some planning, preparation of the 4 application, I prepared, I consulted their architect 5 for the design, I consulted with all the engineers. It 6 was a delicate project because it was an old building. 7 I consulted with the engineers to make sure it was 8 appropriate, the landscape architect. 9 Q. Okay. Did you prepare any of the submissions 10 that were ultimately made to the City? 11 A. Yes, sir, all of them. 12 Q. Where is that hotel located? 13 A. South of the 5th on 3 -- I can't remember the 14 address right now, but three something Washington. 15 Q. So it's on Miami Beach. 16 A. Yes, sir. 17 Q. So other than those projects we had just gone 18 through, that's the only projects you worked on between 19 June, 2012 and November, 2016? 20 A. Yes. 21 Q. Prior to leaving the City of Miami Beach, did 22 you have any interaction with Beach Towing? 23 A. Yes, sir. 24 Q. And what interaction did you have with them? 25 A. They were a very busy operation. They had</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Just storage at different places. 2 A. Yes. Sometime it was more towards the valet 3 operations that were in other places. 4 Q. Okay. 5 A. I didn't really deal with the towing in 6 general. 7 Q. Okay. And who from Beach Towing did you deal 8 with? 9 A. Mr. Andrade. 10 Q. How long have you known Mr. Andrade? 11 A. Probably since 2008. 12 Q. And is he the person that generally came into 13 the City -- 14 A. Yes. 15 Q. -- to deal with towing issues? 16 A. Yes. 17 Q. You have to let me get the whole question out 18 because you don't know what I'm going to ask you yet. 19 Is Mr. Andrade the person that generally came 20 to the City from Beach Towing to deal with planning and 21 zoning issues? 22 A. Yes. 23 Q. Anybody else that you recall? 24 A. 1 no. 25 Q. So November, 2016 you become senior town</p>

<p style="text-align: right;">Page 34</p> <p>1 planner in the town of Miami Lakes. Is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And did you close down your own business?</p> <p>4 A. At the time I was a consultant. I was working</p> <p>5 with through my consulting business.</p> <p>6 Q. And are you still a consultant for the City of</p> <p>7 Miami Lakes?</p> <p>8 A. No, sir, I'm now an employee. It transitioned</p> <p>9 into a full time position.</p> <p>10 Q. Okay. When did you go from a consultant to an</p> <p>11 employee?</p> <p>12 A. A couple months ago.</p> <p>13 Q. This is now September, 2018. The beginning of</p> <p>14 the summer?</p> <p>15 A. Yeah.</p> <p>16 Q. So from November, 2016 to basically the</p> <p>17 beginning of the summer of 2018, you were a consultant</p> <p>18 to Miami Lakes.</p> <p>19 A. Yes, sir.</p> <p>20 Q. And after that you became a full time</p> <p>21 employee.</p> <p>22 A. Yes.</p> <p>23 Q. Why did you decide to do that?</p> <p>24 A. They needed an administrative official. Their</p> <p>25 previous administrative official had left.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. No, sir.</p> <p>2 Q. Is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Looking just at page three, is this a complete</p> <p>5 list of the materials you considered in preparing your</p> <p>6 report?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Nothing else?</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. I'm going to start -- I'll go in the</p> <p>11 order your report goes because that seems like the</p> <p>12 easiest thing to do. We will go through your opinions</p> <p>13 and I'll ask you about them.</p> <p>14 First of all, let's start on page two with</p> <p>15 your qualifications, if we could. You say here that</p> <p>16 you had your private practice office in a flex building</p> <p>17 on Sunset Harbour Drive.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Which building was that?</p> <p>20 A. It's called -- it's the one right next to the</p> <p>21 garage.</p> <p>22 Q. Next to the municipal garage?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. I'm not familiar with the name, but</p> <p>25 it's the one there.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What does a senior town planner do?</p> <p>2 A. In my previous engagement as a consultant, I</p> <p>3 was aiding in preparation of ordinances, reviewing</p> <p>4 applications to boards, presenting to the boards,</p> <p>5 presenting to the counsel.</p> <p>6 Q. And so that's what you are still doing?</p> <p>7 A. That's still what I'm doing. Now I'm on my</p> <p>8 own, so I'm not aiding, now I'm doing.</p> <p>9 Q. I see. Are you the only planner for the City</p> <p>10 of Miami Lakes?</p> <p>11 A. Right now, yes.</p> <p>12 Q. So you handle all their planning issues?</p> <p>13 A. Yes.</p> <p>14 Q. Who do you answer to?</p> <p>15 A. The town manager.</p> <p>16 Q. Any other consultants or anyone else working</p> <p>17 in planning other than you?</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. So I'm going to go through your report.</p> <p>20 Let me ask you some general questions about it.</p> <p>21 Are all your opinions in this case set forth</p> <p>22 in the report, Exhibit 6?</p> <p>23 A. Yes, sir.</p> <p>24 Q. You have no other opinions other than these,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. It's not we work. It's the other one. Euro.</p> <p>2 Q. Euro. Do you know how old that building is?</p> <p>3 A. It's from 2012.</p> <p>4 Q. And it's an office building?</p> <p>5 A. It's a mixed use. It has ground floor,</p> <p>6 commercial office on top.</p> <p>7 Q. What's on the ground floor, commercial?</p> <p>8 A. Restaurant. Pubbelly. There is a gym, Green</p> <p>9 Monkey.</p> <p>10 Q. Okay. And that building, do you still have</p> <p>11 your office there?</p> <p>12 A. No, sir.</p> <p>13 Q. That was just when you had your own practice.</p> <p>14 A. Yes.</p> <p>15 Q. And you spent obviously a number of years on</p> <p>16 Miami Beach, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Where that building is, that office building</p> <p>19 where the bureau is that you had your business, that</p> <p>20 used to be where Tremont Towing was located, correct?</p> <p>21 A. And a warehouse.</p> <p>22 Q. It was a warehouse and Tremont Towing.</p> <p>23 A. Yes, sir.</p> <p>24 Q. Now it's an office building on top with</p> <p>25 restaurants on the ground floor and a parking garage.</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. And that parking garage, and we will talk</p> <p>3 about that later. That's the municipal garage?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know how many spaces there are in that</p> <p>6 garage?</p> <p>7 A. 439.</p> <p>8 Q. Do you know how many spaces there are in the</p> <p>9 proposal that Sunset Land submitted to the City to</p> <p>10 develop on the property at issue here?</p> <p>11 A. 100 -- I'm not sure. I know it's 100 and</p> <p>12 something.</p> <p>13 Q. Okay. So probably a quarter of what's in the</p> <p>14 municipal garage.</p> <p>15 A. Okay. Yes, sir.</p> <p>16 Q. When you worked for the City of Miami Beach,</p> <p>17 was it the case that all traffic studies were reviewed</p> <p>18 by licensed professional engineers?</p> <p>19 A. I don't understand that question.</p> <p>20 Q. Well, when someone would submit a traffic plan</p> <p>21 to the City of Miami Beach as part of an application</p> <p>22 for anything, was an engineer required to look at it</p> <p>23 for the City?</p> <p>24 A. Yes, sir. Peer review.</p> <p>25 Q. Okay. So it had to be an engineer.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. How much?</p> <p>2 A. It's in the -- it's in your file. I don't</p> <p>3 know the exact number.</p> <p>4 Q. There was an Excel spread sheet in there</p> <p>5 showing --</p> <p>6 A. Yes.</p> <p>7 Q. -- some billing. That's your bills to date?</p> <p>8 A. Yes.</p> <p>9 Q. Just talking about the City of Miami Beach</p> <p>10 now. With regard to the code, the land, how do you</p> <p>11 refer to the land use code on the Beach?</p> <p>12 A. The land development code.</p> <p>13 Q. Okay. So if I call it the code today, you and</p> <p>14 I will both understand that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. If at some point I use the word code and you</p> <p>17 think I'm referring to something else, just ask me.</p> <p>18 I'll use code for land development code, okay?</p> <p>19 A. Yes, sir. I will, too.</p> <p>20 Q. Okay. So under the code, if something is not</p> <p>21 a permitted use, that means you are required to get a</p> <p>22 conditional use or it has to be an accessory, right?</p> <p>23 A. No, sir.</p> <p>24 Q. All right. So tell me what a permitted use</p> <p>25 is.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall who were some of the engineers</p> <p>3 you worked for?</p> <p>4 A. Yes. Xavier. I can't remember his last name,</p> <p>5 but yes.</p> <p>6 Q. When you were working for the City of Miami</p> <p>7 Beach, when an application came in that had a traffic</p> <p>8 component to it and had a traffic report from an</p> <p>9 engineer, an engineer from the City had to review it.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And I think we talked about this before, you</p> <p>12 never actually prepared a traffic study yourself.</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. Let's talk about -- I'm going to work</p> <p>15 from my original draft, at least to the extent you</p> <p>16 didn't change it because that's where all my notes are.</p> <p>17 A. That's fine.</p> <p>18 Q. So I want to talk about, like I said, stuff in</p> <p>19 order. The first thing you address here is 1349 Dade</p> <p>20 Boulevard. Actually, before we get to that, can you</p> <p>21 tell me how much you have been paid to date for your</p> <p>22 work in this case?</p> <p>23 A. \$2,600.</p> <p>24 Q. And are you owed any money?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Permitted use is something that is allowed in</p> <p>2 the district.</p> <p>3 Q. Okay. And those are listed out in the code?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And they are listed under each district type</p> <p>6 in the code.</p> <p>7 A. Yes, sir.</p> <p>8 Q. And there are also conditional uses, correct?</p> <p>9 A. Yes.</p> <p>10 Q. What's a conditional use?</p> <p>11 A. A conditional use is a use that would be</p> <p>12 allowed in the district if certain conditions are met.</p> <p>13 Q. And are those listed out in the code?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And there are also conditional uses that are</p> <p>16 similar to existing uses, permitted uses. Strike that.</p> <p>17 There are also conditional uses that are</p> <p>18 similar to permitted uses that can be allowed in a</p> <p>19 particular zone or district as long as you have a</p> <p>20 conditional use permit.</p> <p>21 A. Say that again.</p> <p>22 Q. I messed that up. Let me not do that. Let me</p> <p>23 ask you this.</p> <p>24 In the course of your work for this case, are</p> <p>25 you aware of whether Beach Towing has a conditional use</p>

<p style="text-align: right;">Page 42</p> <p>1 permit to tow at 1349 Dade Boulevard?</p> <p>2 A. No, sir.</p> <p>3 Q. Have you seen a conditional use permit of any</p> <p>4 kind for Beach Towing for 1349?</p> <p>5 A. No, sir.</p> <p>6 Q. So as far as you are aware, as you sit here</p> <p>7 now, Beach Towing doesn't have any conditional use</p> <p>8 permits for any uses of 1349 Dade Boulevard?</p> <p>9 A. No, sir.</p> <p>10 Q. Is that correct, they do not?</p> <p>11 A. Yes, that's correct. Actually, let me</p> <p>12 rephrase that. I'm not aware that they have it.</p> <p>13 Q. Okay. Tell me, did you make any effort to</p> <p>14 determine whether Beach Towing had any conditional use</p> <p>15 permits at all for 1349 Dade Boulevard?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And tell me what effort you made.</p> <p>18 A. I looked into old records going back.</p> <p>19 Q. Okay. Anything else?</p> <p>20 A. No. That's what you usually do.</p> <p>21 Q. And when you say old records, you are talking</p> <p>22 about records in the City of Miami Beach?</p> <p>23 A. Yes, sir.</p> <p>24 Q. In the course of your search for those</p> <p>25 records, you found no conditional use permits --</p>	<p style="text-align: right;">Page 44</p> <p>1 A. No, sir, only as reference.</p> <p>2 Q. What does that mean, only as reference?</p> <p>3 A. We routinely had to look into it to ascertain</p> <p>4 whether something was going forward right or not.</p> <p>5 Q. Okay. Were you required to actually apply the</p> <p>6 old code?</p> <p>7 A. No, sir.</p> <p>8 Q. And were you ever actually required to</p> <p>9 interpret the old code?</p> <p>10 A. I would never be interpreting it. That would</p> <p>11 be the administrative official's job, so I don't</p> <p>12 interpret. I never interpreted. I would always refer</p> <p>13 to the administrative official.</p> <p>14 Q. And who is the administrative official?</p> <p>15 A. At the time it was Mr. Gomez, Jorge Gomez.</p> <p>16 Q. The planning director.</p> <p>17 A. The planning director.</p> <p>18 Q. So in all your roles at the City of Miami</p> <p>19 Beach, it was never your job to interpret the code.</p> <p>20 A. No, it was my job to apply the code, not to</p> <p>21 interpret.</p> <p>22 Q. Okay. And tell me what the difference between</p> <p>23 those two things is.</p> <p>24 A. I made sure that things that came before me</p> <p>25 were in conformance with the code as the administrative</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I found no conditional use permit.</p> <p>2 Q. -- for Beach Towing?</p> <p>3 A. For Beach Towing.</p> <p>4 Q. -- at 1349 Dade Boulevard. Is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. You have to let me ask the question. Vic is</p> <p>7 actually going to kill us. Let me get it all the way</p> <p>8 out because we are doing it in pieces.</p> <p>9 Just so the record is clear, you found no</p> <p>10 conditional use permits for any use of 1349 Dade</p> <p>11 Boulevard at all.</p> <p>12 A. That's correct.</p> <p>13 Q. You work for the City starting in 2002.</p> <p>14 A. Yes sir.</p> <p>15 Q. By the way, when I refer to the City, I mean</p> <p>16 Miami Beach.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Again, if anything I ask you gets confusing,</p> <p>19 I'm not trying to trick you. It may just be I'm</p> <p>20 short-handing it and I leave you behind. Just ask me</p> <p>21 and I'll clarify.</p> <p>22 So you only had the opportunity to work with</p> <p>23 the code in place after 1989, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Did you ever work with the pre 1989 code?</p>	<p style="text-align: right;">Page 45</p> <p>1 official understood it.</p> <p>2 Q. The job of interpreting the code was the City</p> <p>3 planning director.</p> <p>4 A. Yes, sir.</p> <p>5 Q. Your job was to follow his interpretation.</p> <p>6 A. Yes, sir.</p> <p>7 Q. You weren't making your own interpretation.</p> <p>8 A. No, sir.</p> <p>9 Q. And that's true with both the new code and the</p> <p>10 old code.</p> <p>11 A. True.</p> <p>12 Q. Just again so I'm clear, the new code is post</p> <p>13 1989 and the old code is pre 1989.</p> <p>14 A. Yes, sir.</p> <p>15 Q. You understood that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. During the time you worked for the City of</p> <p>18 Miami Beach, were you ever involved in any conditional</p> <p>19 use permits at all?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How were those recorded? Strike that.</p> <p>22 During the time you worked for the City of</p> <p>23 Miami Beach, what records were created by the</p> <p>24 planning -- well, let me unpack that.</p> <p>25 You actually worked for the planning</p>

<p style="text-align: right;">Page 46</p> <p>1 department, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And was the planning department the one</p> <p>4 responsible for keeping records of conditional use</p> <p>5 permits?</p> <p>6 A. Yes, sir.</p> <p>7 Q. How were those records kept?</p> <p>8 A. Define records.</p> <p>9 Q. Well, if someone was granted a conditional</p> <p>10 permit, I don't want to go all the way through the</p> <p>11 process because I know it's incredibly involved, but</p> <p>12 let's say someone is granted a conditional use permit</p> <p>13 for the City of Miami Beach when you were working</p> <p>14 there, what documentation would evidence that that</p> <p>15 permit was granted?</p> <p>16 A. There would be a resolution.</p> <p>17 Q. From who?</p> <p>18 A. By the planning board.</p> <p>19 Q. And was there a place those documents were</p> <p>20 kept?</p> <p>21 A. Yes.</p> <p>22 Q. Where was that?</p> <p>23 A. Laserfiche.</p> <p>24 Q. They were kept on microfiche.</p> <p>25 A. Microfiche, yeah.</p>	<p style="text-align: right;">Page 48</p> <p>1 officer of the City with regard to the interpretation</p> <p>2 of the code.</p> <p>3 A. Yes.</p> <p>4 Q. And you still would, correct?</p> <p>5 A. I still would today.</p> <p>6 Q. And with regard to the old code, you defer to</p> <p>7 the administrative officers who were in place at the</p> <p>8 time the old code was in place, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Let's talk about Beach Towing, where it is now</p> <p>11 currently. It is in a CD-2 District, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Let me use the right phraseology. When I</p> <p>14 refer -- how do you refer to it? If I say something is</p> <p>15 in a CD-2 --</p> <p>16 A. District.</p> <p>17 Q. District is the right word. I got it right.</p> <p>18 So Beach Towing is in a CD-2 District, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And towing is not permitted in CD-2, correct?</p> <p>21 A. No, sir.</p> <p>22 Q. It is not.</p> <p>23 A. It is not a permitted use.</p> <p>24 Q. It's a permitted use in the I-1 District,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. Were they recorded with the Circuit</p> <p>2 Court?</p> <p>3 A. Yes.</p> <p>4 Q. All of them?</p> <p>5 A. At the time I was there, yes.</p> <p>6 Q. And was that, or do you know if that was the</p> <p>7 practice before you got to the City of Miami Beach?</p> <p>8 A. I don't know.</p> <p>9 Q. Why, if you know, why were they recorded with</p> <p>10 the Circuit Court?</p> <p>11 A. For further -- so that the next owner could</p> <p>12 see when they did a title search, so they would help</p> <p>13 out title searches.</p> <p>14 Q. Were you ever responsible for actually doing</p> <p>15 the filing for the Circuit Court?</p> <p>16 A. No.</p> <p>17 Q. Who did that?</p> <p>18 A. The applicant would do it. We would receive</p> <p>19 the recorded document, a certified copy from the court.</p> <p>20 Q. So you said a few minutes ago that when you</p> <p>21 worked for the City of Miami Beach, it was never your</p> <p>22 job to interpret the code. That was the administrative</p> <p>23 officer, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you would defer to the administrative</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you know if Beach Towing has ever made any</p> <p>3 effort to try and change the zoning to I-1?</p> <p>4 A. I'm not aware of it, no.</p> <p>5 Q. Do you know if Beach Towing made any effort to</p> <p>6 move to an I-1 District?</p> <p>7 A. I'm not aware of that either.</p> <p>8 Q. But you know that Tremont has moved to an I-1</p> <p>9 district, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So since the 1349 Dade Boulevard is a CD-2</p> <p>12 District. The only way Beach Towing can operate a</p> <p>13 towing operation there is if it's a legal nonconforming</p> <p>14 use, correct?</p> <p>15 A. An existing legal nonconforming use.</p> <p>16 Q. So I'm right.</p> <p>17 A. Yes.</p> <p>18 Q. Is it your conclusion that Beach Towing is an</p> <p>19 existing legal nonconforming use?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And tell me how you reached that conclusion.</p> <p>22 A. Rephrase the question, please.</p> <p>23 Q. Sure. Tell me how you reached the conclusion</p> <p>24 that Beach Towing is an existing legal nonconforming</p> <p>25 use of 1349 Dade Boulevard?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Currently or in the past?</p> <p>2 Q. Well, is it different?</p> <p>3 A. Yes.</p> <p>4 Q. Tell me about in the past.</p> <p>5 A. In the past, in 2010?</p> <p>6 Q. Well, let me ask you this way. Is Beach</p> <p>7 Towing an existing legal nonconforming use at different</p> <p>8 points in time?</p> <p>9 A. Yes, it has been.</p> <p>10 Q. Okay. Which points in time?</p> <p>11 A. It has been an existing nonconforming use</p> <p>12 since 1989.</p> <p>13 Q. Okay. But since 1989, a moment ago you</p> <p>14 referred to 2010. Are there breaks in time between</p> <p>15 1989 and the present that are relevant to your</p> <p>16 analysis?</p> <p>17 MR. REISS: Form.</p> <p>18 THE WITNESS: Not to my analysis. In the way</p> <p>19 I reached that conclusion, yes.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. Okay. Tell me what you mean.</p> <p>22 A. In the past, I deferred to the administrative</p> <p>23 official at the time.</p> <p>24 Q. So you're saying that administrative officials</p> <p>25 prior to today, in your estimation, have determined</p>	<p style="text-align: right;">Page 52</p> <p>1 interpretation attached, are you aware of any written</p> <p>2 findings by the administrative official for the City of</p> <p>3 Miami Beach finding that Beach Towing was a legal</p> <p>4 nonconforming use at 1349 Dade Boulevard?</p> <p>5 A. Not in that form.</p> <p>6 Q. Okay. So you are not aware of any writings.</p> <p>7 A. Not in that form. Not in the official form of</p> <p>8 a AMICUS brief.</p> <p>9 Q. Are you aware of anything in writing?</p> <p>10 A. Yes.</p> <p>11 Q. What?</p> <p>12 A. The testimony given in 19 -- by the then</p> <p>13 administrative official.</p> <p>14 Q. Which testimony are we talking about?</p> <p>15 A. I'm sorry. I need to check my report for that</p> <p>16 one.</p> <p>17 Q. Okay.</p> <p>18 A. Jud Kurlancheek, the administrative official</p> <p>19 at the time.</p> <p>20 Q. He made a determination that Beach Towing was</p> <p>21 a legal nonconforming use?</p> <p>22 A. No. He made a determination that towing was</p> <p>23 an allowable operation in that location.</p> <p>24 Q. Okay. And you're talking about the --</p> <p>25 A. And he specifically referred to Beach Towing,</p>
<p style="text-align: right;">Page 51</p> <p>1 that Beach Towing was a legal nonconforming use.</p> <p>2 A. Yes, sir.</p> <p>3 Q. You talk about that in your report, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And we will talk about that. Prior to --</p> <p>6 you've obviously seen the AMICUS brief filed?</p> <p>7 A. Yes.</p> <p>8 Q. Prior to that AMICUS brief being filed, are</p> <p>9 you aware of any written determination by the</p> <p>10 administrative official for the City of Miami Beach,</p> <p>11 that Beach Towing was a legal nonconforming use at 1349</p> <p>12 Dade Boulevard?</p> <p>13 A. Define written.</p> <p>14 Q. Well, my understanding is when the</p> <p>15 administrative official for the City of Miami Beach</p> <p>16 makes an official determination of a legal</p> <p>17 nonconforming use, they do it through writing of some</p> <p>18 kind, correct?</p> <p>19 A. Not necessarily.</p> <p>20 Q. Okay. How do they do it?</p> <p>21 A. They may be requested to do a writing. They</p> <p>22 may be requested by a junior employee to clarify for</p> <p>23 the purposes of approving or denying an application.</p> <p>24 Q. So what I'm asking you is, prior to the AMICUS</p> <p>25 brief filed by the City with Mr. Mooney's</p>	<p style="text-align: right;">Page 53</p> <p>1 yes.</p> <p>2 Q. He referred to Beach Towing.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you're talking about the Magnum</p> <p>5 Towing matter.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And so what you are talking about is</p> <p>8 the transcripts of the board hearing at which Mr.</p> <p>9 Kurlancheek testified, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And that's what you are saying is the basis of</p> <p>12 your determination that a determination had been made</p> <p>13 by a administrative official for the City that towing</p> <p>14 was allowed in C-5 and C-6?</p> <p>15 A. Yes, sir.</p> <p>16 Q. But did Mr. Kurlancheek specifically say that</p> <p>17 Beach Towing was a legal nonconforming use at 1349 Dade</p> <p>18 Boulevard?</p> <p>19 A. At that time it wouldn't have been a legal</p> <p>20 nonconforming use. It would have been an allowable</p> <p>21 use.</p> <p>22 Q. Okay. What I'm asking you is are you aware --</p> <p>23 you already told me -- let me make sure. Strike that.</p> <p>24 Are you aware prior to Mr. Mooney's recent</p> <p>25 filing with the AMICUS brief, prior to that, are you</p>

<p style="text-align: right;">Page 54</p> <p>1 aware of any written finding or written document by the</p> <p>2 administrative official for the City of Miami Beach</p> <p>3 that Beach Towing is a legal nonconforming use at 1349</p> <p>4 Dade Boulevard?</p> <p>5 A. No, sir.</p> <p>6 Q. And prior to -- and are you aware of any other</p> <p>7 record finding by an administrative official for the</p> <p>8 City of Miami Beach that Beach Towing specifically is a</p> <p>9 local nonconforming use at 1349 Dade Boulevard?</p> <p>10 A. How do you define a record?</p> <p>11 Q. Any kind of finding at all.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And tell me what.</p> <p>14 A. It was requested to determine once and it was</p> <p>15 determined verbally.</p> <p>16 Q. Okay. And tell me when that was.</p> <p>17 A. 2010.</p> <p>18 Q. Is this in your discussion with -- who's the</p> <p>19 planning director at the time?</p> <p>20 A. Mr. Lorber.</p> <p>21 Q. Okay. And Mr. Lorber was requested to</p> <p>22 determine whether Beach Towing was a legal</p> <p>23 nonconforming use at 1349 Dade Boulevard?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Who requested it?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. And he says well, first we will have to</p> <p>2 determine whether it's a legal nonconforming use.</p> <p>3 Q. And did he make that determination?</p> <p>4 A. We went about it together, yes.</p> <p>5 Q. And how did you decide it was a legal</p> <p>6 nonconforming use?</p> <p>7 A. We did some research.</p> <p>8 Q. And what did you find?</p> <p>9 A. We found it was.</p> <p>10 Q. Why?</p> <p>11 A. Because the use had been existing prior to</p> <p>12 1989. Legally existing prior to 1989.</p> <p>13 Q. And I understand the use existed prior to</p> <p>14 1989. How did you determine that it was legal prior to</p> <p>15 1989?</p> <p>16 A. We looked for BTR'S and occupational license</p> <p>17 records.</p> <p>18 Q. All right. And BTR's and occupational license</p> <p>19 records showed that Beach Towing was operating a towing</p> <p>20 operation prior to 1989, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What other evidence did you have?</p> <p>23 A. Prior approval of other planners going back to</p> <p>24 the '70s.</p> <p>25 Q. So when you say prior approvals, approvals of</p>
<p style="text-align: right;">Page 55</p> <p>1 A. I did.</p> <p>2 Q. And did he create a written document that</p> <p>3 reflected his findings?</p> <p>4 A. No, it was a verbal determination.</p> <p>5 Q. So he just told you.</p> <p>6 A. Yes.</p> <p>7 Q. And you were working for the City at the time.</p> <p>8 A. Yes.</p> <p>9 Q. Other than what he told you, is there any</p> <p>10 record of that?</p> <p>11 A. I approved the license based on his approval.</p> <p>12 Q. And which license did you approve?</p> <p>13 A. I approved -- well, I approved the</p> <p>14 occupational business tax receipt. I don't remember</p> <p>15 what it was for. We had to determine it was for adding</p> <p>16 an additional owner or an additional associate to the</p> <p>17 operation.</p> <p>18 Q. Okay. This was in 2010?</p> <p>19 A. A-ha.</p> <p>20 Q. Is that a yes?</p> <p>21 A. Yes, sir.</p> <p>22 Q. You had a conversation with Mr. Lorber. Tell</p> <p>23 me what you asked him.</p> <p>24 A. I asked him can I approve this.</p> <p>25 Q. And what did he say?</p>	<p style="text-align: right;">Page 57</p> <p>1 what?</p> <p>2 A. Approvals of BTR's, approvals of changes in --</p> <p>3 small changes here and there. Just accumulation of</p> <p>4 stuff that happens through the years.</p> <p>5 Q. Are any of those documents that you reviewed,</p> <p>6 are those referenced in your list of documents?</p> <p>7 A. No, sir. I don't have access to them right</p> <p>8 now.</p> <p>9 Q. Okay. So in terms of what documents would</p> <p>10 back up what you're telling, those are all documents</p> <p>11 you don't have.</p> <p>12 A. I don't have them, no.</p> <p>13 MR. REISS: Just for the record, I think she</p> <p>14 was listed as both a fact and expert witness, just</p> <p>15 for your clarification.</p> <p>16 MR. BUCKNER: Okay.</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. So the basis for your statement here today</p> <p>19 that Beach Towing was a legal nonconforming use prior</p> <p>20 to 1989 is based on what about Mr. Lorber told you,</p> <p>21 correct?</p> <p>22 MR. REISS: Form.</p> <p>23 THE WITNESS: No, sir.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. What's it based on?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. That was what it was based off in 2010. Today</p> <p>2 it's based on Mr. Kurlancheek's determination,</p> <p>3 contemporaneous determination that it was legal</p> <p>4 nonconforming at the time.</p> <p>5 Q. Okay. And that's based on the records you</p> <p>6 cite from the Magnum Towing matter.</p> <p>7 A. Yes, sir.</p> <p>8 Q. And so with regard to what Mr. Kurlancheek</p> <p>9 meant and what he was talking about, you would</p> <p>10 obviously defer to him on that, correct?</p> <p>11 A. Yes, because he's the official.</p> <p>12 Q. Okay. But let's talk about prior to 2010. I</p> <p>13 want to break this up. Leave aside Mr. Kurlancheek's</p> <p>14 determination. I want to finish with Mr. Lorber's</p> <p>15 determination.</p> <p>16 With regard to Mr. Lorber's determination that</p> <p>17 Beach Towing was a legal nonconforming use, that's</p> <p>18 based solely on what he told you, correct?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. What's it based on?</p> <p>21 A. Like I said, we went through the records, the</p> <p>22 old records and he asked me to do some research before</p> <p>23 he made a determination.</p> <p>24 Q. All right. And you found old BTR's and old</p> <p>25 licenses for the City?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And that's the transcript from the Magnum</p> <p>2 Towing matter, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Other than those two things, do you have any</p> <p>5 other basis for determining that Beach Towing was a</p> <p>6 legal nonconforming use at 1349 Dade Boulevard?</p> <p>7 MR. REISS: Form.</p> <p>8 THE WITNESS: There is also several contracts</p> <p>9 with the police. The uses are very well</p> <p>10 established prior to 1989.</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Okay.</p> <p>13 A. So the transition, you just have to prove</p> <p>14 existence before and existence after the transition.</p> <p>15 Q. Well, you have to prove lawful existence.</p> <p>16 A. Yes.</p> <p>17 Q. So if Beach Towing was operating a towing</p> <p>18 operation unlawfully at 1349 Dade Boulevard before</p> <p>19 1989, the mere fact of the transition to the new code</p> <p>20 wouldn't convert it to a legal nonconforming use,</p> <p>21 correct?</p> <p>22 A. Define lawfully.</p> <p>23 Q. Well, there is legal and there is more than</p> <p>24 one kind of nonconforming use, isn't there?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes, sir.</p> <p>2 Q. For the City of Miami Beach for Beach Towing.</p> <p>3 A. Yes.</p> <p>4 Q. You didn't find any conditional use permits,</p> <p>5 correct?</p> <p>6 A. No, sir.</p> <p>7 Q. And you didn't make the determination that</p> <p>8 Beach Towing was a legal nonconforming use. Mr. Lorber</p> <p>9 had to do that, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Because he's the administrative officer.</p> <p>12 A. Yes.</p> <p>13 Q. So he told you that.</p> <p>14 A. Yes.</p> <p>15 Q. That's how you know that because he had to</p> <p>16 tell you, correct?</p> <p>17 A. Yes.</p> <p>18 Q. You would agree with me that -- strike that.</p> <p>19 So I want to make sure I exhausted the</p> <p>20 universe of stuff you know about this area.</p> <p>21 So other than your conversations with Mr.</p> <p>22 Lorber and the documents you brought to him that you</p> <p>23 don't have, there is the stuff that you said from Mr.</p> <p>24 Kurlancheek, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. There is only a legal nonconforming use?</p> <p>2 A. If it's nonconforming, then you can't -- it's</p> <p>3 either legal nonconforming or not permitted.</p> <p>4 Q. Okay. So if something was not permitted prior</p> <p>5 to 1989 on a particular district, the mere fact that a</p> <p>6 new code is enacted doesn't make it legal</p> <p>7 nonconforming, correct?</p> <p>8 A. True.</p> <p>9 Q. It has to be both nonconforming and legal</p> <p>10 prior to the change in code.</p> <p>11 MR. REISS: Form.</p> <p>12 THE WITNESS: You have to rephrase that.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Sure. What does the word legal in legal</p> <p>15 nonconforming use mean?</p> <p>16 A. It means authorized by the City.</p> <p>17 Q. And it means it had to be authorized under the</p> <p>18 old code, correct?</p> <p>19 A. It had to be authorized in some form, yes.</p> <p>20 Q. Right. Because if it was authorized under the</p> <p>21 new code, that use, you wouldn't need to go through the</p> <p>22 legal nonconforming analysis, right?</p> <p>23 A. Okay.</p> <p>24 Q. Is that right?</p> <p>25 A. Sure.</p>



<p style="text-align: right;">Page 62</p> <p>1 Q. For example, if CD-2 allowed a towing use, 2 Beach Towing would be able to operate at 1349 Dade 3 Boulevard under the current code, correct? 4 A. Sure. 5 Q. But because CD doesn't allow towing, right? 6 A. It doesn't. 7 Q. The only way Beach Towing can operate lawfully 8 there is if they are a legal nonconforming use, 9 correct? 10 MR. REISS: Form. 11 THE WITNESS: Yes. 12 BY MR. BUCKNER: 13 Q. I want to make sure I'm done with this. 14 Other than Mr. Kurlancheek that you told me 15 about and Mr. Lorber and your discussions with him, are 16 there any other basis for your assertion that Beach 17 Towing is a legal nonconforming use at 1349 -- 18 A. Yes. 19 Q. Okay. And you said one of them was that they 20 had gotten permits, towing permits, correct? 21 A. No. 22 Q. Okay. Tell me what else. 23 A. The use was well established prior to 1989 and 24 it's on records, including police contracts, including 25 BTR's and there is records of that available in</p>	<p style="text-align: right;">Page 64</p> <p>1 you ever encounter a BTR that was issued in error? 2 A. I don't think so. 3 Q. Okay. So Beach Towing's status today at 1349 4 Dade Boulevard is a nonconforming use of land, correct? 5 MR. REISS: Form. 6 THE WITNESS: I don't understand that 7 question. 8 BY MR. BUCKNER: 9 Q. I said Beach Towing's use at 1349 Dade 10 Boulevard today is as a nonconforming use of land, 11 correct? 12 MR. REISS: Form. 13 THE WITNESS: Yeah. I object to the form, 14 too. 15 BY MR. BUCKNER: 16 Q. Okay. You can't object to the form. 17 A. Rephrase, please. 18 Q. You know what a nonconforming use of land is, 19 right? 20 A. Again, nonconforming use of land. 21 Q. Okay. Tell me what kinds of nonconforming 22 uses there are. 23 A. This is an existing use that is nonconforming 24 to the district. 25 Q. Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 microfiche and they are included on my list of stuff. 2 Q. Okay. Anything else? 3 A. No, that's sufficient. 4 Q. Have you looked at the pre-1989 code as part 5 of your work in this case? 6 A. Yes, sir. 7 Q. And do you find in looking at the pre-1989 8 code, is a towing listed anywhere in the code? 9 A. No, sir. 10 Q. And you are aware BTR's have language on them 11 that say -- strike that. Let's just use one. 12 MR. REISS: Off the record. 13 (Thereupon a recess was taken in 14 deposition, after which the 15 deposition continued as follows:) 16 BY MR. BUCKNER: 17 Q. Just so I'm clear, in the entirety of your 18 work for the City of Miami Beach, you never have been 19 the administrative officer charged with making the 20 determination of whether something is or is not 21 consistent with the code, correct? 22 A. No, sir. 23 Q. You have not been. 24 A. I have not been. 25 Q. In the time that you worked for the City, did</p>	<p style="text-align: right;">Page 65</p> <p>1 A. So it's not -- it's not a land use that is -- 2 I know it's complicated. It's difficult to understand. 3 Q. Well, what I'm asking you is -- 4 A. There is a line in there. 5 Q. Okay. I'm trying to figure out what that line 6 is. You can have a nonconforming use of a building, 7 right? 8 A. Yes. 9 Q. And you can have nonconforming use of land, 10 right? 11 A. Yes. 12 Q. And so is there anything else other than land 13 and buildings on which zoning is involved? 14 A. No. 15 Q. Okay. So it's either a nonconforming use of a 16 building or it's a nonconforming use of land, correct? 17 A. Okay. 18 Q. I'm asking you, Beach Towing has a large, we 19 will call it a lot, on which they keep cars that they 20 have towed, right? 21 A. Okay. 22 Q. You have been out there, right? 23 A. Yes. 24 Q. Have you been out there recently? 25 A. Yes.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. So that's the land they are using to</p> <p>2 store those cars, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And so the legal nonconforming use of that</p> <p>5 property is a legal nonconforming use of land, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So let's talk about some other stuff.</p> <p>8 I want to -- you don't have to look at your report.</p> <p>9 You can always look at whatever you want. It's not a</p> <p>10 closed book test. I want to ask you some stuff about</p> <p>11 your other parts of your report.</p> <p>12 First of all, you talk about, on page five,</p> <p>13 you say the only other industrial district is located</p> <p>14 on Watson Island, a small island off MacArthur</p> <p>15 Causeway, right?</p> <p>16 A. Yes.</p> <p>17 Q. Isn't Watson Island part of the City of Miami?</p> <p>18 A. No, sir.</p> <p>19 Q. Watson Island is part of the City Miami Beach?</p> <p>20 A. No, sir. That's where the City's municipal</p> <p>21 lot is. It's the portion close to Miami Beach. It's</p> <p>22 called Terminal Island really, but it's a portion of</p> <p>23 Watson Island that is part of Miami Beach.</p> <p>24 Q. Is it zoned industrial?</p> <p>25 A. Yes. It's changing now. There is obligations</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Currently, yes. They are morphing it into, I</p> <p>2 think CD's or a mixture of commercial and residential.</p> <p>3 They are working on it.</p> <p>4 Q. Who's make that change?</p> <p>5 A. The City of Miami Beach and some applicants.</p> <p>6 Q. Have you had any involvement in that?</p> <p>7 A. No, sir. I've seen some --</p> <p>8 Q. You just heard about it, right?</p> <p>9 A. Right, through the grapevine.</p> <p>10 Q. So I want to bounce around a little bit. Let</p> <p>11 me see if we can move this along.</p> <p>12 One of the things you reviewed in this case</p> <p>13 was Ms. Dougherty's report, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And you also reviewed her declaration?</p> <p>16 A. Yes.</p> <p>17 Q. You saw where she discussed uses in the Sunset</p> <p>18 Harbour area that had changed, correct?</p> <p>19 A. I need to go read it again.</p> <p>20 Q. Sure.</p> <p>21 A. Do you want to walk me through it?</p> <p>22 Q. On page seven -- let's do this. I'm going to</p> <p>23 mark her report. Exhibit 7 Ms. Dougherty's report.</p> <p>24 (The document referred to</p> <p>25 was thereupon marked as</p>
<p style="text-align: right;">Page 67</p> <p>1 to morph it into nonindustrial.</p> <p>2 Q. Is the whole of Watson Island zoned</p> <p>3 industrial?</p> <p>4 A. No, they are changing it. Like I said, it's</p> <p>5 under change right now.</p> <p>6 Q. Okay. Let's break it into pieces.</p> <p>7 Prior to the current change, when -- strike</p> <p>8 that. When did the effort to change Watson Island</p> <p>9 start, do you know?</p> <p>10 A. Terminal Island. I think two years ago.</p> <p>11 Q. Okay. You refer to Watson. Is it Watson</p> <p>12 Island or Terminal Island?</p> <p>13 A. Terminal Island is a piece of Watson and</p> <p>14 that's the part that belongs to Miami Beach.</p> <p>15 Q. All right. So Watson Island --</p> <p>16 A. Miami.</p> <p>17 Q. -- belongs to Miami.</p> <p>18 A. Most of it, yeah.</p> <p>19 Q. Terminal Island belongs to Miami Beach.</p> <p>20 A. Yes.</p> <p>21 Q. And Terminal Island is where you're talking</p> <p>22 about that is the only other industrial district in</p> <p>23 Miami Beach.</p> <p>24 A. Yes, sir.</p> <p>25 Q. And it's zoned I-1 currently?</p>	<p style="text-align: right;">Page 69</p> <p>1 Plaintiff's Exhibit Number</p> <p>2 7 for Identification,</p> <p>3 a copy of which is attached</p> <p>4 hereto.)</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. Okay.</p> <p>7 A. Did you say page seven?</p> <p>8 Q. Right. On pages seven and eight of the</p> <p>9 report. You see there is a summary of changes from</p> <p>10 2003 to 2014 in the first block, and then there is from</p> <p>11 2014 to 2017 in the second block. Do you see those?</p> <p>12 A. Say that again.</p> <p>13 Q. That's okay.</p> <p>14 A. I was reading.</p> <p>15 Q. That's all right. Let's be specific.</p> <p>16 Have you looked at this part of Ms.</p> <p>17 Dougherty's report?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And let's talk first about notable changes</p> <p>20 from 2003 to 2014, which is the bullets at the top of</p> <p>21 page seven. Do you see those?</p> <p>22 A. Yes.</p> <p>23 Q. With regard to any of those, have you</p> <p>24 determined that she is incorrect about any of those</p> <p>25 changes?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Not incorrect. How's that?</p> <p>2 Q. That's fine. So looking at the second block</p> <p>3 of bullet the summary of notable changes from 2014 to</p> <p>4 2017, in reviewing those, have you found that any of</p> <p>5 her determinations there are incorrect?</p> <p>6 A. No, they are not incorrect.</p> <p>7 Q. Okay. And tell me again, what exhibit did I</p> <p>8 mark that?</p> <p>9 A. 7.</p> <p>10 Q. Now, you attached to your latest version of</p> <p>11 your report, a map entitled distribution of existing</p> <p>12 industrial uses in Sunset Harbour neighborhood XT.</p> <p>13 A. Yes.</p> <p>14 Q. Did you create that?</p> <p>15 A. Yes.</p> <p>16 Q. I want to ask you about this. I'm going to go</p> <p>17 ahead and mark it separately because I actually pulled</p> <p>18 it off your thumb drive last night. I'm going to put</p> <p>19 the sticker here.</p> <p>20 (The document referred to</p> <p>21 was thereupon marked as</p> <p>22 Plaintiff's Exhibit Number</p> <p>23 8 for Identification,</p> <p>24 a copy of which is attached</p> <p>25 hereto.)</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Do you know if that's a legal nonconforming</p> <p>2 use?</p> <p>3 A. It must be.</p> <p>4 Q. Well, when you say it must be, do you know?</p> <p>5 A. I don't know. I know it's existing.</p> <p>6 Q. You know it exists today in 2018.</p> <p>7 A. And it has existed there for a few years.</p> <p>8 Q. Do you know if it existed there prior to 1989?</p> <p>9 A. I don't.</p> <p>10 Q. And so to be a legal nonconforming use, it</p> <p>11 would have to have existed there prior to 1989,</p> <p>12 correct?</p> <p>13 A. Probably, yes.</p> <p>14 Q. But if it didn't, it's not a legal</p> <p>15 nonconforming use, correct?</p> <p>16 A. Probably not, yes.</p> <p>17 Q. During the time you worked for the City of</p> <p>18 Miami Beach, did you ever take any enforcement action</p> <p>19 against the scooter shop?</p> <p>20 A. No, sir.</p> <p>21 Q. As you sit here today, you said you don't know</p> <p>22 whether it existed prior to 1989?</p> <p>23 A. I don't know. It never came up.</p> <p>24 Q. Let me ask you about that. When you say it</p> <p>25 never came up, what does it take for a illegal use to</p>
<p style="text-align: right;">Page 71</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. All right. So I want to ask you about a few</p> <p>3 things on here and I may need you to mark stuff so we</p> <p>4 know later on what we are talking about. I have a pen</p> <p>5 if you need one. Tell me what you were trying to do</p> <p>6 with this map.</p> <p>7 A. Show existing industrial uses in the Sunset</p> <p>8 Harbour neighborhood.</p> <p>9 Q. Okay. And the existing industrial uses are</p> <p>10 the ones you circled in, what is that, light purple?</p> <p>11 A. Yes.</p> <p>12 Q. I want to ask you about a few of these.</p> <p>13 First of all, there is a use on the corner of</p> <p>14 Purdy and 18th furthest to the west, right north of the</p> <p>15 assembled properties, do you see that?</p> <p>16 A. Purdy and 18th, yes.</p> <p>17 Q. Okay. And that building there is used for</p> <p>18 kayak rentals, correct?</p> <p>19 A. Yes, and a motorcycle shop.</p> <p>20 Q. When you say a motorcycle shop, scooter</p> <p>21 rentals, right?</p> <p>22 A. They have repairs on site. Repairs are not</p> <p>23 allowed in the City.</p> <p>24 Q. That's a CD-2 zoned lot, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 come up --</p> <p>2 MR. REISS: Form.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. -- at the City of Miami Beach when you worked</p> <p>5 there?</p> <p>6 A. They would have to come in for an application,</p> <p>7 for a new application or they would have to have a code</p> <p>8 enforcement action against them.</p> <p>9 Q. And who starts code enforcement actions?</p> <p>10 A. Code. The code department.</p> <p>11 Q. Sp they would have to discover the illegal use</p> <p>12 and bring it to your attention. When I say your, I</p> <p>13 mean the planning department.</p> <p>14 A. Yes.</p> <p>15 Q. I assume that happened from time to time when</p> <p>16 you worked at the City.</p> <p>17 A. Quite often.</p> <p>18 Q. But not with regard to the scooter rental</p> <p>19 shop.</p> <p>20 A. Not particularly that I remember. Not that I</p> <p>21 remember with regards to the scooter rentals.</p> <p>22 Q. Okay. If we go -- let's head due east from</p> <p>23 there and the block, on the same block as the Tremont</p> <p>24 and Beach Towing. You've got a use on the corner of</p> <p>25 18th and West Avenue.</p>

<p style="text-align: right;">Page 74</p> <p>1 A. A-ha.</p> <p>2 Q. Do you see that there?</p> <p>3 A. Yes.</p> <p>4 Q. That's the Sushi Garage, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And what is the Sushi Garage.</p> <p>7 A. It's a restaurant.</p> <p>8 Q. And you circle it as industrial.</p> <p>9 A. It's a building that has mixed industrial and</p> <p>10 commercial uses.</p> <p>11 Q. Okay. Well, obviously the Sushi is not</p> <p>12 industrial.</p> <p>13 A. It's not taking up the entire building.</p> <p>14 Q. What else is in there?</p> <p>15 A. There is a garage in there.</p> <p>16 Q. What kind of garage?</p> <p>17 A. I don't know what they are doing today, but it</p> <p>18 was approved as another motorcycle repair shop.</p> <p>19 Q. Okay. Do you know or have you checked to see</p> <p>20 if they are doing motorcycle repairs there today?</p> <p>21 A. No, I haven't, but they are existing there.</p> <p>22 It's publicly available that they are existing there</p> <p>23 today.</p> <p>24 Q. When you say it's publicly available, what do</p> <p>25 you mean?</p>	<p style="text-align: right;">Page 76</p> <p>1 crossing through the middle of it.</p> <p>2 A. Yes, sir.</p> <p>3 Q. One of those is a yoga studio, correct?</p> <p>4 A. Yes, there are several units inside of that</p> <p>5 building.</p> <p>6 Q. Okay. One of them is a yoga studio, right?</p> <p>7 A. There is a yoga studio, yes.</p> <p>8 Q. That's not industrial use.</p> <p>9 A. No, sir.</p> <p>10 Q. One is Skin by Tatum, right?</p> <p>11 A. It's another mixed district. There is a</p> <p>12 couple of uses in there that would not be allowed on a</p> <p>13 regular commercial district, so it's mixed.</p> <p>14 Q. Okay. And is that in I-1 or CD-2?</p> <p>15 A. That's in I-1.</p> <p>16 Q. What is in there that would not be allowed in</p> <p>17 CD-2?</p> <p>18 A. There is a pet grooming shop that had</p> <p>19 overnight kennels that went in there. There was</p> <p>20 another repair shop that went in there at one time or</p> <p>21 another, so the space is still available. I don't know</p> <p>22 if they rented it out lately.</p> <p>23 Q. All right. Anything else?</p> <p>24 A. But that's the kind of stuff that has gone in</p> <p>25 there, in and out of there lately.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. They are still on Google marked as existing</p> <p>2 there.</p> <p>3 Q. Okay. Other than the motorcycle shop being</p> <p>4 marked on, you searched Google?</p> <p>5 A. Yes.</p> <p>6 Q. And found something on Google saying they were</p> <p>7 still there at that location?</p> <p>8 A. Yes.</p> <p>9 Q. Other than that, you have no other</p> <p>10 information?</p> <p>11 A. No, sir.</p> <p>12 Q. Is that yes, you don't?</p> <p>13 A. I don't. I don't work for the City of Miami</p> <p>14 Beach anymore, so I don't have internal information.</p> <p>15 Q. Okay. So in terms of whether there is still</p> <p>16 an existing industrial use still going on at that</p> <p>17 particular spot on the corner of 18th and West, you</p> <p>18 don't know.</p> <p>19 A. I don't know.</p> <p>20 Q. Going one block further east and a block</p> <p>21 north, I'm now looking at the block that's on the</p> <p>22 west -- I'm sorry, strike that.</p> <p>23 On the east side of West Avenue north of 18th.</p> <p>24 Do you see where I am? You have two, it looks like two</p> <p>25 buildings surrounded by light purple with lines</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. Well, let's talk about that. You are</p> <p>2 saying there was a pet grooming shop. Is it still</p> <p>3 there?</p> <p>4 A. I don't know if it's still there. The space</p> <p>5 is ready for it to have a new ownership or not.</p> <p>6 Q. Have you gone to the space to look?</p> <p>7 A. No.</p> <p>8 Q. So how do you know that?</p> <p>9 A. It's just -- I remember opening up a license</p> <p>10 for them in the past in that space, so I did</p> <p>11 inspections there back in.</p> <p>12 Q. Prior to 2012.</p> <p>13 A. Yes.</p> <p>14 Q. So you don't know, as you sit there today,</p> <p>15 whether it's being used as an industrial use or not?</p> <p>16 A. No, but it would be available for industrial</p> <p>17 uses and the spaces are appropriate for either</p> <p>18 industrial or commercial uses. They are not buildings</p> <p>19 that are built for commercial use. They are buildings</p> <p>20 made for either industrial or commercial uses.</p> <p>21 Q. Okay.</p> <p>22 A. That's what I mean by mixed use buildings.</p> <p>23 They are not buildings that are built for retail</p> <p>24 exclusively. The form of the building allows</p> <p>25 industrial uses.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. If it's in the I-1 district, you can have 2 industrial use.</p> <p>3 A. It would allow. So the current tenant -- 4 these are buildings that would allow, by their form and 5 by their location, industrial uses easily.</p> <p>6 Q. So what you meant here with regard to these 7 purple lines on this map is these are buildings that 8 could be used for industrial uses.</p> <p>9 A. The ones that have the stripes could be, yes.</p> <p>10 Q. But you're not saying that they are actually 11 being used for industrial uses.</p> <p>12 A. Completely I know they are not because I know 13 there are some commercial uses have sneaked in in the 14 past few years, but there are still buildings that are 15 built with qualifications for industrial building.</p> <p>16 Q. Okay. So these buildings with the stripes 17 through them, I guess that's the red stripes, mixed 18 commercial, industrial?</p> <p>19 A. Yes.</p> <p>20 Q. So what those mean on your map here is those 21 are buildings that have nonindustrial uses in them 22 today.</p> <p>23 A. Yes.</p> <p>24 Q. Even though at one point in time they may have 25 had industrial uses.</p>	<p style="text-align: right;">Page 80</p> <p>1 department, yes.</p> <p>2 Q. Right. Even with regard to these building 3 that you are talking about, mixed commercial, 4 industrial, you said before some of these used to be 5 industrial and now they are being used for commercial, 6 not industrial, right?</p> <p>7 A. Yes.</p> <p>8 Q. And, again, I'm not trying to argue with you. 9 As you sit here today, with regard to the buildings 10 that have the red stripes through them, are you aware 11 if any of them have any current industrial uses?</p> <p>12 A. No, not to my knowledge. Not that I can 13 testify to.</p> <p>14 Q. Okay. And obviously you know that at least 15 some of the property at issue in this case, what you 16 call down here in the lower left assembled prop.</p> <p>17 A. Properties, yeah.</p> <p>18 Q. Some of those assembled properties used to be 19 used by Giant Motors, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And that was an industrial use.</p> <p>22 A. Yes.</p> <p>23 Q. But it's not being used for industrial 24 anymore.</p> <p>25 A. No, it's been closed for more than six months,</p>
<p style="text-align: right;">Page 79</p> <p>1 A. A mixture of industrial and commercial uses.</p> <p>2 Q. Whether they are still industrial uses today, 3 as you sit here, you don't know.</p> <p>4 A. No, and that's not relevant.</p> <p>5 Q. Okay. But I want to make sure I exhaust your 6 knowledge. As you sit here, you don't know, with 7 regard word to those buildings, whether they had 8 industrial uses in them or not.</p> <p>9 MR. REISS: Form, argumentative, asked and 10 answered.</p> <p>11 THE WITNESS: The particular tenant that is 12 there today is not what I'm concerned as a land use 13 person because that would be -- I mean, that's 14 something that changes periodically. What is used 15 would be allowed in this building and you can't put 16 an industrial use inside of an office building 17 because the building would not be prepared for it. 18 These buildings are ready to be industrial if 19 needed.</p> <p>20 BY MR. BUCKNER:</p> <p>21 Q. Okay.</p> <p>22 A. So that's where --</p> <p>23 Q. But you do agree with me that uses of building 24 can change over time, correct?</p> <p>25 A. Sure. Show a change of use in the building</p>	<p style="text-align: right;">Page 81</p> <p>1 so they would not be allowed to be open.</p> <p>2 Q. Right. Because that's CD-2, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. You have further down on the corner of West 5 and Dade, there is a public storage building, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You have that as existing nonconforming 8 industrial.</p> <p>9 A. Yes.</p> <p>10 Q. Do you know if the public storage has a --</p> <p>11 A. It has been there for a long time. I don't 12 know what -- I didn't do a certification as to whether 13 it is an existing nonconforming legal use, from your 14 definition.</p> <p>15 Q. Okay. Well, I want to use your definition. 16 The legal nonconforming use --</p> <p>17 A. It exists. This map is meant to say that it 18 exists at the site and it's a CD-2, it would not be 19 allowed today.</p> <p>20 Q. I see. But as you sit here, you don't know 21 whether that public storage has -- strike that.</p> <p>22 As you sit here today, you don't know whether 23 that public storage was there prior to 1989.</p> <p>24 A. I don't remember what the date of building 25 was.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. So you don't know what the legal status is on 2 that property. 3 A. No, I don't. 4 Q. Here in the heart of -- you talk in your 5 report about the I-1 District that's now sort of core 6 of this Sunset Harbour area buttressed -- strike that. 7 You talk about the I-1 core in this Sunset 8 Harbour area buffered by the CD-2 zones, correct? 9 A. Yes. 10 Q. And in the heart of the I-1 District, one of 11 the things that's there is the Fresh Market, correct? 12 A. Yes, sir. 13 Q. That's on a lot that is zoned I-1. 14 A. Yes, sir. 15 Q. But Fresh Market is not an industrial use, 16 correct? 17 A. No, sir. 18 Q. It is not? 19 A. No. 20 Q. And there are other nonindustrial uses in the 21 Sunset Harbour area that used to be industrial uses, 22 correct? 23 A. Rephrase. 24 Q. I said there are other nonindustrial uses in 25 Sunset Harbour are on land that used to be used for</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Do you know how long the Atma Beauty shop has 2 been there? 3 A. No, I really don't know. 4 Q. And with regard to the municipal parking 5 garage you have there on Bay Road, and we will talk 6 more about that later, but that building, in addition 7 to parking, it has restaurants and retail on the ground 8 floor, correct? 9 A. Yes, sir. 10 Q. And restaurants and retail not industrial. 11 A. No, they are not. 12 Q. And that municipal parking garage is on land 13 that used to be, I think you said before that was 14 Tremont Towing, correct? 15 A. Yes, a long time ago. 16 Q. Tremont Towing was industrial, correct, an 17 industrial use? 18 A. Was it on that side or the other side? Yes. 19 I don't remember if it was on that side of the street 20 or on the other side. It was on that side of the 21 street, yes. 22 Q. Okay. So the municipal parking garage was 23 where Tremont used to be. 24 A. Yes. 25 Q. And Tremont is an industrial use. It's a</p>
<p style="text-align: right;">Page 83</p> <p>1 industrial purposes, correct? 2 A. Yes. 3 Q. Just because it's zoned I-1 doesn't mean it 4 has to be used industrial, correct? 5 A. No, sir. 6 Q. That's correct? 7 A. That's correct. 8 Q. Like, for example, let me ask you another one. 9 If you go up West Avenue just south of 20th, so the 10 first thing, the first structure south of 20th between 11 West and Bay, that's the Publix, right? 12 A. Yes, sir. 13 Q. That's not industrial. 14 A. That's not industrial. 15 Q. And then if you go down to the next of your 16 pink -- I'm sorry, purple lots on West Avenue, south of 17 the Publix, there is Atma Beauty store there, correct? 18 A. Yes, but upstairs is storage. 19 Q. Upstairs is storage. 20 A. But it's a mixed situation. 21 Q. It's another mixed situation. That's a 22 building that's being used for both industrial -- 23 A. And commercial. 24 Q. And is that in I-1? 25 A. Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 towing company, correct? 2 A. Well, it's use allowed in the industrial 3 district. 4 Q. Right now it's only allowed in the industrial 5 district. 6 A. Yes. 7 Q. So that change from Tremont's towing operation 8 to restaurant, retail and parking, is a change from an 9 industrial use to a mixed commercial use. 10 A. It's a change of use, yes. 11 Q. Did you have anything to the with the approval 12 of that property? 13 A. I reviewed the plans when they came in for 14 permitting, yes. I also inspected it. 15 Q. You say inspected it. Did you actually go out 16 and inspect? 17 A. I counted parking spaces. 18 Q. You counted the parking? 19 A. Yes. 20 Q. Because they were supposed to have a certain 21 number? 22 A. Yes. 23 Q. Do they have them? 24 A. Yes. 25 MR. REISS: When it's convenient, can we take</p>

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<p>1 a break?</p> <p>2 MR. BUCKNER: Sure. Now is a good time.</p> <p>3 (Thereupon a recess was taken in</p> <p>4 deposition, after which the</p> <p>5 deposition continued as follows:)</p> <p>6 BY MR. BUCKNER:</p> <p>7 Q. All right. Back on the record. You are still</p> <p>8 under oath.</p> <p>9 A. Yes, sir.</p> <p>10 Q. We were talking about some stuff. I want to</p> <p>11 go back to something for a second. Exhibit 9.</p> <p>12 (The document referred to</p> <p>13 was thereupon marked as</p> <p>14 Plaintiff's Exhibit Number</p> <p>15 9 for Identification,</p> <p>16 a copy of which is attached</p> <p>17 hereto.)</p> <p>18 BY MR. BUCKNER:</p> <p>19 Q. I found this in your documents, right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Can you tell me what this is?</p> <p>22 A. It seems to be a report of approvals in the</p> <p>23 permits plus system.</p> <p>24 Q. What's the permits plus system?</p> <p>25 A. It's a permitting system of the City of Miami</p>	<p>1 in your materials, correct?</p> <p>2 A. It seems like it, yeah.</p> <p>3 MR. REISS: You gave me 10 and 11.</p> <p>4 THE WITNESS: Let me check my list.</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. So you have 10, 11 and 12 in front of you?</p> <p>7 A. 10, 11 and 12.</p> <p>8 Q. And these three are documents that you</p> <p>9 reviewed as part of your work on this case?</p> <p>10 A. Yes.</p> <p>11 Q. And these relate specifically to Sunset</p> <p>12 Harbour, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Looking at just Exhibit 10, that's Ordinance</p> <p>15 2012-3786 and this is an ordinance by the City,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it says in the first whereas clause,</p> <p>19 whereas, Sunset Harbour neighborhood is delineated by</p> <p>20 the boundaries in this ordinance, is a neighborhood in</p> <p>21 transition from the light industrial uses that</p> <p>22 originally occupied the area to an area of mixed use.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you agree with that assessment?</p>
Page 87	Page 89
<p>1 Beach. The previous permitting system of the City of</p> <p>2 Miami Beach.</p> <p>3 Q. Do you know where this document came from?</p> <p>4 A. It looks like a printout, the kind of printout</p> <p>5 that they release when you request it.</p> <p>6 Q. Did you request this?</p> <p>7 A. No.</p> <p>8 Q. Do you know who did?</p> <p>9 A. No, I don't.</p> <p>10 Q. And it's your understanding this came from the</p> <p>11 City of Miami Beach.</p> <p>12 A. Yes. It has the same format as to what comes</p> <p>13 from the City of Miami Beach.</p> <p>14 Q. Why was this in your documents? Is this</p> <p>15 something you reviewed?</p> <p>16 A. Because provided to me to review.</p> <p>17 Q. Okay. Exhibit 10.</p> <p>18 (The documents referred to</p> <p>19 were thereupon marked as</p> <p>20 Plaintiff's Exhibit Numbers</p> <p>21 10, 11, 12 for Identification,</p> <p>22 a copy of which is attached</p> <p>23 hereto.)</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. I'm giving you 10, 11 and 12. These also were</p>	<p>1 A. Somewhat, yes.</p> <p>2 Q. Only somewhat.</p> <p>3 A. It depends on how you phrase it. It's a use</p> <p>4 change. It's not a change in code.</p> <p>5 Q. Right.</p> <p>6 A. The code is not changing.</p> <p>7 Q. But how the area is being used is changing.</p> <p>8 A. Sure.</p> <p>9 Q. And it's changing to light industrial to more</p> <p>10 of a mixed use.</p> <p>11 A. Sure.</p> <p>12 Q. And, in fact, if you look at Exhibit 11, the</p> <p>13 same whereas clause, the first one contains the same</p> <p>14 observation, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it actually -- but this one actually has</p> <p>17 to an area of mixed uses including residential.</p> <p>18 A. Okay, yes. In the second one.</p> <p>19 Q. That's 2013-3802.</p> <p>20 A. Right, because it's referring to residential</p> <p>21 parking.</p> <p>22 Q. Okay. And one of the changes that's happened</p> <p>23 to Sunset Harbour in the last few years is that there</p> <p>24 has been more residential construction, right?</p> <p>25 A. Yes.</p>

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<p>1 Q. For example, Palou below is new.</p> <p>2 A. Yes.</p> <p>3 Q. And that's residential.</p> <p>4 A. Yes.</p> <p>5 Q. And that's not industrial.</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. And then in Exhibit 12, there is a</p> <p>8 similar observation that the neighborhood is in</p> <p>9 transition, correct?</p> <p>10 A. In use, yes.</p> <p>11 Q. Transition in use.</p> <p>12 A. In use.</p> <p>13 Q. Right. From light industrial to mixed use.</p> <p>14 A. Yes.</p> <p>15 Q. Let me ask you about the first of these,</p> <p>16 2012-3786. That's Exhibit 10, okay?</p> <p>17 A. Yes.</p> <p>18 Q. We will talk about this in a little while, but</p> <p>19 we were talking in the beginning of your deposition</p> <p>20 about Sunset Land's ability to build, I think you said</p> <p>21 it was 120,000 square foot of commercial space without</p> <p>22 parking, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Is this ordinance here, 2012-3786 the</p> <p>25 ordinance that makes that possible?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Prior to that change to 130-33, the</p> <p>3 owners of the property, my clients and the other owners</p> <p>4 of the property at issue in this case, they would have</p> <p>5 to have included parking on the premises, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. They would have that parking somewhere on the</p> <p>8 property.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Forgive me, I'm going back and forth because</p> <p>11 I'm trying to deal with both versions of your report,</p> <p>12 so I want to make sure I'm not missing a change.</p> <p>13 So I was looking through the new parts of your</p> <p>14 report just to see if there is anything I want to ask</p> <p>15 you about. Give me a second.</p> <p>16 A. Sure.</p> <p>17 Q. So let me ask you. I'm on page seven of your</p> <p>18 report. I'm trying to track the changes, but on page</p> <p>19 seven you talk about the, right below where you talk</p> <p>20 about the fact that they could put 120,000 of</p> <p>21 commercial without parking there, you say since all</p> <p>22 parking would occur offsite at the parking garage</p> <p>23 located about 500 feet north of the site.</p> <p>24 A. Yes, sir.</p> <p>25 Q. Is the parking garage you're talking about the</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. And that specifically, and like I said,</p> <p>3 we will talk about it later, but specifically that</p> <p>4 Section 130-33, right?</p> <p>5 A. Yes.</p> <p>6 Q. And 130-33 in its current form was enacted in</p> <p>7 2012. Is that right?</p> <p>8 A. Was amended in 2012, yes.</p> <p>9 Q. Okay. And let me be more clear. The</p> <p>10 amendment that allows the owners of the property at</p> <p>11 issue in this case to build 200,000 square feet of</p> <p>12 commercial space without parking --</p> <p>13 A. Not 200,000, no.</p> <p>14 Q. I'm sorry, 120,000.</p> <p>15 A. Yes.</p> <p>16 Q. Let me ask that again. The amendment to the</p> <p>17 City code, to 130-33 that allows the owners of the</p> <p>18 property at issue in this case to build 120,000 square</p> <p>19 feet of commercial space without parking was enacted --</p> <p>20 A. Up to.</p> <p>21 Q. Up to, was enacted in 2012, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that's this ordinance?</p> <p>24 A. Yes.</p> <p>25 Q. Exhibit 10?</p>	<p>1 municipal garage --</p> <p>2 A. Yes, sir, 1900 Bay Drive.</p> <p>3 Q. Okay. And how do you know that all the</p> <p>4 parking is -- all the cars that come to this 120,000</p> <p>5 square feet of commercial space would go there to park?</p> <p>6 A. I don't.</p> <p>7 Q. I mean, it's equally possible they can park in</p> <p>8 the street, right?</p> <p>9 A. To the capacity of the street.</p> <p>10 Q. Sure. And in the process --</p> <p>11 A. Unlikely.</p> <p>12 Q. Well, when you say unlikely, are you saying</p> <p>13 it's unlikely they would try and park in the street or</p> <p>14 it's unlikely they would all be able to park in the</p> <p>15 street?</p> <p>16 A. Unlikely they would all be able to park on the</p> <p>17 street.</p> <p>18 Q. Right. Because there is a limited amount of</p> <p>19 on street parking.</p> <p>20 A. Sure.</p> <p>21 Q. And when you have 120,000 square of commercial</p> <p>22 space, that probably is going to get a fair amount of</p> <p>23 visitors.</p> <p>24 A. Yes.</p> <p>25 Q. So you're saying -- well, strike that.</p>



<p style="text-align: right;">Page 94</p> <p>1           So it is possible, however, that people coming</p> <p>2   to that 120,000 foot of commercial space could circle</p> <p>3   the neighborhood, the Sunset Harbour neighborhood,</p> <p>4   looking for parking, could they not?</p> <p>5           A. Some may.</p> <p>6           Q. And that would obviously engender additional</p> <p>7   traffic, right?</p> <p>8           A. Some traffic.</p> <p>9           Q. And depending on how long people circulated in</p> <p>10   the neighborhood looking for parking, that would be</p> <p>11   that much additional vehicular traffic, right?</p> <p>12          A. Okay.</p> <p>13          Q. Fair statement?</p> <p>14          A. Fair statement.</p> <p>15          Q. So you're not saying in here that all the</p> <p>16   additional -- strike that.</p> <p>17            You're not saying that all the additional</p> <p>18   vehicular traffic coming to this hypothetical 120,000</p> <p>19   square feet of space would necessarily go to the</p> <p>20   parking garage, are you?</p> <p>21          A. Rephrase the question.</p> <p>22          Q. Sure. I want to make sure I understand the</p> <p>23   point you're making in your report. I think what you</p> <p>24   said is some people may try -- strike that.</p> <p>25            I think what you said is with regard to that</p>	<p style="text-align: right;">Page 96</p> <p>1   vehicles facility.</p> <p>2            Q. I see. So have you done any analysis of how</p> <p>3   many additional trips would be engendered by the</p> <p>4   construction of 120,000 square feet of space on the</p> <p>5   property?</p> <p>6            A. No, sir, that would be for the traffic</p> <p>7   engineer.</p> <p>8            Q. And so in terms of whether that additional</p> <p>9   number of trips could be absorbed by on street parking</p> <p>10   or whether some people would have to park in the</p> <p>11   garage, you didn't do that analysis either.</p> <p>12          A. No, sir.</p> <p>13          Q. So you don't know as you sit here.</p> <p>14          A. That would be for the traffic engineer.</p> <p>15          Q. You say a couple places in your report, you</p> <p>16   use the word detrimental. You say, for example,</p> <p>17   increased vehicular traffic would be detrimental to the</p> <p>18   operation of Beach Towing.</p> <p>19            Is detrimental a term used by traffic</p> <p>20   engineers when they are assessing a traffic impact?</p> <p>21          A. I don't know. I'm not a traffic engineer.</p> <p>22          Q. Okay. So you are just using detrimental in</p> <p>23   what context?</p> <p>24          A. In the planning perspective.</p> <p>25          Q. And what does detrimental mean in the planning</p>
<p style="text-align: right;">Page 95</p> <p>1   120,000 square feet of commercial space, some people</p> <p>2   will try to find parking in the street.</p> <p>3            A. I'M not an expert on people behavior, so at</p> <p>4   the end of the day, the cars have to be stored</p> <p>5   somewhere. I don't know what people will do before</p> <p>6   finding their parking.</p> <p>7            Q. Okay. In terms of whether they park in the</p> <p>8   street or in that parking garage, as you sit here, you</p> <p>9   don't know.</p> <p>10          A. They would have to be stored in a location</p> <p>11   that allows storage of vehicles, which would be in the</p> <p>12   garage.</p> <p>13          Q. Right.</p> <p>14          A. Because the street would not have the capacity</p> <p>15   to hold that kind of car -- that amount.</p> <p>16          Q. When you say stored, we are actually talking</p> <p>17   about parking, right?</p> <p>18          A. Yes, storage of vehicles.</p> <p>19          Q. Are they technically being stored or being</p> <p>20   parked or are those the same thing?</p> <p>21          A. When you're not in your vehicle, then the</p> <p>22   vehicle is being stored.</p> <p>23          Q. So is that a parking garage or is that a</p> <p>24   storage garage?</p> <p>25          A. It's a parking garage which is a storage of</p>	<p style="text-align: right;">Page 97</p> <p>1   perspective?</p> <p>2            A. Detrimental in its general use is a negative</p> <p>3   impact.</p> <p>4            Q. Okay. So let me ask you this. Is any</p> <p>5   additional traffic detrimental?</p> <p>6            A. Not necessarily.</p> <p>7            Q. What amount of additional traffic becomes</p> <p>8   detrimental?</p> <p>9            A. It doesn't work like that.</p> <p>10          Q. How does it work?</p> <p>11          A. It's a circulation issue. It's how that</p> <p>12   traffic circulates and moves and how does traffic</p> <p>13   collide with other uses and other traffic.</p> <p>14          Q. All right.</p> <p>15          A. So it's not a matter of volume.</p> <p>16          Q. Fair enough. So does volume have nothing to</p> <p>17   do with it?</p> <p>18          A. No, it has a lot to do with it.</p> <p>19          Q. And this is all stuff that traffic engineers</p> <p>20   work out, right?</p> <p>21          A. Right.</p> <p>22          Q. One of the issues is volume of additional</p> <p>23   traffic potentially if you are talking about</p> <p>24   detrimental effects as you use the term, right?</p> <p>25          A. Yes.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. And the other issue is how that traffic</p> <p>2 circulates through an area.</p> <p>3 A. Yes.</p> <p>4 Q. Any other things that make up what you termed</p> <p>5 detrimental?</p> <p>6 A. Yes, the existing uses in the area.</p> <p>7 Q. Tell me what you mean.</p> <p>8 A. How the existing uses get impacted by --</p> <p>9 different uses have different needs of or different</p> <p>10 capacity to accept additional circulation around them.</p> <p>11 Q. Let's talk about Beach Towing for a minute.</p> <p>12 How does Beach Towing put vehicles onto its</p> <p>13 lot, towed vehicles?</p> <p>14 A. I believe they back them in.</p> <p>15 Q. So they come down -- do you know if they go</p> <p>16 north or south on Bay Road or both?</p> <p>17 A. I think they do both. I think they do both,</p> <p>18 but I don't know this off -- I've never driven a tow</p> <p>19 truck.</p> <p>20 Q. Have you asked anyone at Beach Towing how they</p> <p>21 get the cars in the lot?</p> <p>22 A. No.</p> <p>23 Q. Have you ever observed them do it?</p> <p>24 A. Yes.</p> <p>25 Q. And what did you observe?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Sure. Do you have an opinion on how Beach</p> <p>2 Towing's practice of backing up its tow trucks and cars</p> <p>3 on Bay Road to pull them into the lot there effects</p> <p>4 traffic circulation in the area?</p> <p>5 A. Effects traffic circulation? It probably</p> <p>6 impedes it.</p> <p>7 Q. Have you analyzed it?</p> <p>8 A. It stands to reason that it would impede it.</p> <p>9 Q. Okay. So you are just making that observation</p> <p>10 as just a lay person that it would impede traffic?</p> <p>11 A. As a planner, yes, I would say that backing</p> <p>12 into the driveway would impede traffic.</p> <p>13 Q. And you also say in here, I'm on page, still</p> <p>14 on page seven of your report. The last paragraph</p> <p>15 before the bold part if you want to look. You don't</p> <p>16 have to.</p> <p>17 A. Page seven?</p> <p>18 Q. If you want to follow me, it's up to you. You</p> <p>19 say here partway through the first sentence, as it</p> <p>20 would be detrimental to most uses which rely heavily on</p> <p>21 uninterrupted ingress and egress to their place of</p> <p>22 business.</p> <p>23 Are you talking about the Beach Towing use or</p> <p>24 all uses on Bay Road?</p> <p>25 A. I'm talking about general industrial uses.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. That they usually back them in.</p> <p>2 Q. So they are on Bay Road heading either north</p> <p>3 or south, they stop and back the vehicle in.</p> <p>4 A. Yes.</p> <p>5 Q. Is stopping and backing up on a public road a</p> <p>6 lawful traffic maneuver?</p> <p>7 A. I'm not an expert in that. I wouldn't know.</p> <p>8 Q. Is there any sign that says it's lawful to</p> <p>9 back up on a public road in that area?</p> <p>10 A. There is no sign, but signs don't necessarily</p> <p>11 make something legal or illegal.</p> <p>12 Q. Okay. You were a planner for the City of</p> <p>13 Miami Beach. Where on the City of Miami Beach is it</p> <p>14 lawful to back up your car on a public road?</p> <p>15 A. Again, I'm not an expert. I'm not an expert</p> <p>16 how traffic in the City of Miami Beach is handled or</p> <p>17 what is legal or not legal as far as vehicle movements.</p> <p>18 Q. So as you sit here today, you have no idea</p> <p>19 whether it's legal for Beach Towing to back up tow</p> <p>20 trucks and cars?</p> <p>21 A. And I have no opinion on it either.</p> <p>22 Q. Do you have any opinion on how Beach Towing's</p> <p>23 operation of backing up their tow trucks and towing</p> <p>24 cars on Bay Road effects the circulation in that area?</p> <p>25 A. Rephrase the question, please.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. So when you are saying traffic would be</p> <p>2 detrimental to the operation of Beach Towing as a</p> <p>3 vehicular storage and towing facility, including police</p> <p>4 towing, as it would be detrimental to most uses which</p> <p>5 rely heavily on uninterrupted ingress and egress to</p> <p>6 their place of business, you are talking about Beach</p> <p>7 Towing's uninterrupted ingress and egress.</p> <p>8 A. Yes, sir, and any then other similar use.</p> <p>9 Q. Obviously we are here on Beach Towing. You</p> <p>10 are not an expert on anything else, right?</p> <p>11 A. Right.</p> <p>12 Q. You are here testifying as an expert with</p> <p>13 regard to this case?</p> <p>14 A. I'm here as an expert witness for this case,</p> <p>15 yes.</p> <p>16 Q. Okay. So from the perspective of traffic</p> <p>17 planning, do you know what uninterrupted ingress and</p> <p>18 egress means?</p> <p>19 A. Yes.</p> <p>20 Q. What does it mean?</p> <p>21 A. It means that you are not getting interrupted</p> <p>22 when you are trying to come in and out.</p> <p>23 Q. Doesn't it, in fact, mean the ability to enter</p> <p>24 and leave a particular place without having to stop?</p> <p>25 A. Not necessarily, no. Define stop.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. Stop. Without having to come to a stop.</p> <p>2 A. Sometimes you have to come to a stop.</p> <p>3 Q. Okay. But I'm asking you as traffic engineers</p> <p>4 understand the term uninterrupted ingress and egress.</p> <p>5 A. You mean constant, on a regular basis, on a</p> <p>6 continuous basis?</p> <p>7 Q. Is that your testimony?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Your testimony is that how traffic</p> <p>10 engineers would understand that term?</p> <p>11 A. Uninterrupted, yes.</p> <p>12 Q. So you don't believe they understand it to</p> <p>13 mean not having to come to a stop?</p> <p>14 A. I don't know what a traffic engineer would</p> <p>15 understand or not.</p> <p>16 Q. Okay. You're using these phrases,</p> <p>17 uninterrupted ingress and egress --</p> <p>18 A. I'm using planning and zoning terminology.</p> <p>19 I'm not using traffic.</p> <p>20 Q. Okay.</p> <p>21 A. I'm not using traffic engineers terminology.</p> <p>22 Q. You do realize you are reviewing a traffic</p> <p>23 engineer's report.</p> <p>24 A. I am using a traffic engineer's report to base</p> <p>25 my planning analysis on.</p>	<p style="text-align: right;">Page 104</p> <p>1 because it relies heavily on uninterrupted ingress and</p> <p>2 egress. I'm asking you --</p> <p>3 A. Rephrase the question.</p> <p>4 Q. So what I'm asking you is, what leads you to</p> <p>5 the conclusion that Beach Towing relies heavily on</p> <p>6 uninterrupted ingress and egress to their place of</p> <p>7 business as you defined those terms?</p> <p>8 A. What leads me to the understanding that they</p> <p>9 rely heavily on uninterrupted. Am I phrasing that</p> <p>10 correctly?</p> <p>11 Q. Yeah. So you said in your report Beach Towing</p> <p>12 relies heavily on uninterrupted ingress and egress.</p> <p>13 I'm asking you where does that conclusion come from?</p> <p>14 A. Where is the conclusion that they rely on it?</p> <p>15 Q. Yes.</p> <p>16 A. Okay. It comes from -- if you are thinking</p> <p>17 about the use and how the use functions, you would</p> <p>18 understand, as a planner, that they need to come in and</p> <p>19 out on a regular basis.</p> <p>20 Q. Okay.</p> <p>21 A. Right?</p> <p>22 Q. But parking garage would also have people</p> <p>23 coming in and out on a regular basis, correct?</p> <p>24 A. Sure.</p> <p>25 Q. So do all parking garages have a need for</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Okay.</p> <p>2 A. So the word reviewing is the one that I have a</p> <p>3 problem with.</p> <p>4 Q. Okay. You're using the uninterrupted ingress</p> <p>5 and egress as you understand the term.</p> <p>6 A. Yes.</p> <p>7 Q. Don't all businesses rely on uninterrupted</p> <p>8 ingress and egress of their place of business?</p> <p>9 A. No, sir.</p> <p>10 Q. Let me ask you this. Starbucks down the</p> <p>11 street with a parking lot, do you think they're okay if</p> <p>12 their ingress and egress to the parking lot is</p> <p>13 interrupted?</p> <p>14 A. They could handle some interruptions, yes.</p> <p>15 Q. It's your testimony that Beach Towing could</p> <p>16 not handle any interruption?</p> <p>17 A. They probably have some trouble if they got</p> <p>18 interrupted, yes.</p> <p>19 Q. When you say probably, what's your conclusion</p> <p>20 based upon?</p> <p>21 A. Again, you're making a hypothetical right now,</p> <p>22 but yes.</p> <p>23 Q. You say here, and this isn't a hypothetical.</p> <p>24 You say in your report increased vehicular traffic</p> <p>25 would be detrimental to the operation of Beach Towing</p>	<p style="text-align: right;">Page 105</p> <p>1 uninterrupted ingress and egress?</p> <p>2 A. Yes.</p> <p>3 Q. So would that mean, for example, let's use the</p> <p>4 parking garage that we were talking about earlier, the</p> <p>5 municipal garage. Does that mean there shouldn't be</p> <p>6 any development around the municipal garage because</p> <p>7 they need --</p> <p>8 A. No, sir.</p> <p>9 Q. -- uninterrupted ingress and egress? So</p> <p>10 what's the difference between the municipal garage and</p> <p>11 Beach Towing?</p> <p>12 A. I've never contended that they can't have any</p> <p>13 development.</p> <p>14 Q. Well, what you contended is that increased</p> <p>15 vehicular traffic would be detrimental. I'm trying</p> <p>16 figure out what that means.</p> <p>17 A. Increased vehicular traffic in a two road</p> <p>18 access that has two entrances to two heavily used, it</p> <p>19 would obviously be detrimental to their business.</p> <p>20 Q. When you say obviously, how do you quantify</p> <p>21 that? Have you done any analysis?</p> <p>22 A. It's normal planning knowledge.</p> <p>23 Q. Okay.</p> <p>24 A. You don't have to analyze that.</p> <p>25 Q. So the answer to my question is you haven't</p>

<p style="text-align: right;">Page 106</p> <p>1 done any actual traffic analysis to see how it --</p> <p>2 A. I don't do traffic analysis it in that way. I</p> <p>3 do circulation analysis.</p> <p>4 Q. Okay. So you do circulation analysis.</p> <p>5 A. Yes.</p> <p>6 Q. Have you drawn up a document in this case that</p> <p>7 shows the circulation analysis?</p> <p>8 A. You can see it in there, yes.</p> <p>9 Q. So that's what you call the circulation</p> <p>10 analysis?</p> <p>11 A. Yes.</p> <p>12 Q. We will go to those in a few minutes.</p> <p>13 In terms of how much additional vehicular</p> <p>14 traffic would it take in the area of Beach Towing for</p> <p>15 it to be detrimental to Beach Towing?</p> <p>16 A. That's not a question I can answer. That</p> <p>17 would be a traffic study question.</p> <p>18 Q. So there is some amount of additional traffic</p> <p>19 that would not be detrimental and there is an</p> <p>20 additional amount that would be, correct?</p> <p>21 A. Yes.</p> <p>22 Q. But in terms of how much more traffic the area</p> <p>23 around Beach Towing could handle before being</p> <p>24 detrimental to Beach Towing, you don't know the number.</p> <p>25 A. I don't know the number, no.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. If you have 200 cars using that road</p> <p>2 and only two cars have an accident everyday, that's</p> <p>3 still only a one percent accident rate.</p> <p>4 A. These are all hypotheticals.</p> <p>5 Q. What I'm asking you is, what analysis did you</p> <p>6 do to determine whether the percentage risk of an</p> <p>7 accident around Beach Towing would go up with</p> <p>8 additional vehicles?</p> <p>9 A. That's not an analysis I've conducted. It's</p> <p>10 an analysis that's possible and I would like the City</p> <p>11 to ask of the traffic engineer because that is an</p> <p>12 analysis that a traffic engineer could conduct.</p> <p>13 Q. Okay. So the traffic engineer is qualified to</p> <p>14 determine what risk of increased accident there would</p> <p>15 be by increasing traffic.</p> <p>16 A. If they have access to police reports, yes.</p> <p>17 Q. Okay. But you have not done that analysis.</p> <p>18 A. I wouldn't. I wouldn't.</p> <p>19 Q. Because you are not qualified.</p> <p>20 A. Yeah, it wouldn't be in my realm of expertise.</p> <p>21 Q. So when you say here increased opportunity for</p> <p>22 accidents, you're speaking hypothetically.</p> <p>23 A. I'm speaking statistically.</p> <p>24 Q. When you state statistically, you have no</p> <p>25 statistics, though.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. You say here also, and I'm still on that same</p> <p>2 paragraph. The second sentence you say adding vehicles</p> <p>3 to Bay Road, access roads around Beach Towing would</p> <p>4 slow in and out operation and increase opportunity for</p> <p>5 accidents between Beach Towing vehicles and privately</p> <p>6 operated vehicles.</p> <p>7 When you say increased opportunity for</p> <p>8 accidents, what analysis did you do to make that</p> <p>9 determination?</p> <p>10 A. Cars collide with each other.</p> <p>11 Q. So the mere fact -- it's your analysis that</p> <p>12 the mere additional -- strike that.</p> <p>13 It's your analysis that the mere addition, of</p> <p>14 additional cars to a particular roadway increases the</p> <p>15 risk of accident?</p> <p>16 A. Yes, statistically. If there are no cars on</p> <p>17 the roadway, you would have zero. If you have more</p> <p>18 cars on the road, you will have more accidents.</p> <p>19 Q. Okay. Well, you are saying more accidents on</p> <p>20 a gross basis, not a percentage basis, right?</p> <p>21 A. Say what again?</p> <p>22 Q. For example, if 100 cars use a particular road</p> <p>23 in a day and there is one accident a day, that means</p> <p>24 you have a one percent accident rate, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I have no particular statistics in this</p> <p>2 particular case.</p> <p>3 Q. But you haven't done any statistical analysis.</p> <p>4 A. Not in this particular case.</p> <p>5 Q. Right. When I asked you, when you say</p> <p>6 increased opportunity for accidents, you're</p> <p>7 hypothesizing.</p> <p>8 A. Sure.</p> <p>9 Q. Since we are talking about traffic, you said</p> <p>10 in your first report you reviewed Traf Tech's 2018</p> <p>11 traffic study, correct?</p> <p>12 A. Yes. I didn't review it. I read it.</p> <p>13 Q. Okay. I don't want to use the wrong word.</p> <p>14 A. I'm not here to review traffic.</p> <p>15 Q. So you read the March, 2018 traffic study and</p> <p>16 what other traffic studies by Traf Tech have you read</p> <p>17 with regard to this case?</p> <p>18 A. The August.</p> <p>19 Q. August 22nd?</p> <p>20 A. August 22nd amendment.</p> <p>21 Q. Have you read any other traffic studies with</p> <p>22 regard to this case?</p> <p>23 A. I don't believe so, no.</p> <p>24 Q. And let me just talk generally. I'll give you</p> <p>25 a heads up. Obviously we are talking about the traffic</p>

<p style="text-align: right;">Page 110</p> <p>1 studies and that stuff now and I'll stay in there</p> <p>2 unless I wonder off, but I probably won't. If I</p> <p>3 confuse you, you let me know.</p> <p>4 You have in your, basically starting on page,</p> <p>5 I guess, more or less, seven of your current report</p> <p>6 through, I guess, almost a little more than the middle</p> <p>7 on page nine, you're discussing traffic and traffic</p> <p>8 patterns.</p> <p>9 A. Yes.</p> <p>10 Q. And that analysis, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And so I want to talk to you about that.</p> <p>13 So other than reading the two Traf Tech</p> <p>14 reports that we talked about before, what other</p> <p>15 documentation did you read to formulate your opinion</p> <p>16 with regard to the section I just --</p> <p>17 A. No documentation.</p> <p>18 Q. Just those two reports.</p> <p>19 A. Those two reports and my personal experience.</p> <p>20 Q. All right. So other than those two reports</p> <p>21 and your personal experience, you are not relying on</p> <p>22 anything else?</p> <p>23 A. And my knowledge of the neighborhood.</p> <p>24 Q. Okay. I want to make sure I get everything.</p> <p>25 For that analysis on pages seven through 10 with regard</p>	<p style="text-align: right;">Page 112</p> <p>1 Publix garage is on Bay Road, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you're familiar with the Lofts, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the entrance and exit to the Lofts parking</p> <p>6 garage is on Bay Road.</p> <p>7 A. Yes, sir.</p> <p>8 Q. So you said you had a chance to read both the</p> <p>9 March and the August 22nd, 2018 Traf Tech studies.</p> <p>10 What changes did you observe between the two of them?</p> <p>11 A. Increased the square footage of the commercial</p> <p>12 spaces, increased the number of trips.</p> <p>13 Q. Anything else?</p> <p>14 A. Some of the distribution that the City had</p> <p>15 requested they distributed differently in how they</p> <p>16 enter the area.</p> <p>17 Q. All right. And, also, I'm sure you observed</p> <p>18 that the way entrance and exit is achieved at the</p> <p>19 proposed development on the Sunset Land property is a</p> <p>20 right-hand turn in and a right-hand turn out, correct?</p> <p>21 A. Right-hand turn in and right-hand turn where?</p> <p>22 Q. Into and out of the garage. Instead of being</p> <p>23 able to enter and exit from either a left-hand turn or</p> <p>24 a right-hand turn, you can only make a right in and a</p> <p>25 right out in the my report, correct?</p>
<p style="text-align: right;">Page 111</p> <p>1 to traffic, you are relying on the two Traf Tech</p> <p>2 reports, your experience and the knowledge of the</p> <p>3 neighborhood.</p> <p>4 A. Yes.</p> <p>5 Q. Anything else?</p> <p>6 A. Let me read it again.</p> <p>7 Q. Sure. Take your time.</p> <p>8 A. Actually, I used mostly the traffic report.</p> <p>9 Q. Okay. When you say the traffic report, you</p> <p>10 are talking about the two Traf Tech.</p> <p>11 A. Yes.</p> <p>12 Q. What are they called, studies?</p> <p>13 A. Yes. Traffic studies, yes.</p> <p>14 Q. Okay. Let's talk about a few things then</p> <p>15 within your analysis here. One of the things we are</p> <p>16 talking about is Bay Road, right?</p> <p>17 A. A-ha. Yes.</p> <p>18 Q. The reason that's relevant to your discussion</p> <p>19 and your expert opinion is because that's where Beach</p> <p>20 Towing enters and exits its lot.</p> <p>21 A. Yes, sir.</p> <p>22 Q. In addition, the entrance and exit to -- that</p> <p>23 Sunset Harbour municipal garage is on Bay Road, right?</p> <p>24 A. Farther up, yes.</p> <p>25 Q. And, in fact, the exit and entrance to the</p>	<p style="text-align: right;">Page 113</p> <p>1 A. You have to show me where. I don't remember</p> <p>2 seeing that.</p> <p>3 Q. Let's do this because it's not a closed book</p> <p>4 test and I told you it wasn't.</p> <p>5 A. I'm having a hard time visualizing it.</p> <p>6 Q. Exhibit 13 is the March report.</p> <p>7 (The document referred to</p> <p>8 was thereupon marked as</p> <p>9 Plaintiff's Exhibit Number</p> <p>10 13 for Identification,</p> <p>11 a copy of which is attached</p> <p>12 hereto.)</p> <p>13 THE WITNESS: It's very thin.</p> <p>14 BY MR. BUCKNER:</p> <p>15 Q. If you need them, I will get them, but I did</p> <p>16 not include all the data that backs up the report.</p> <p>17 It's just the report itself.</p> <p>18 A. It's interesting stuff.</p> <p>19 Q. Do you need the data?</p> <p>20 A. I may.</p> <p>21 Q. If you do, you will tell me and I will go</p> <p>22 print it out and bring it to you. It's hundreds of</p> <p>23 pages of data.</p> <p>24 A. I know.</p> <p>25 Q. Exhibit 14. It has your exhibit sticker on</p>

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<p>1 it, Allan.</p> <p>2 (The document referred to</p> <p>3 was thereupon marked as</p> <p>4 Plaintiff's Exhibit Number</p> <p>5 14 for Identification,</p> <p>6 a copy of which is attached</p> <p>7 hereto.)</p> <p>8 BY MR. BUCKNER:</p> <p>9 Q. I'll find it later because I can't remember</p> <p>10 where it is. Let's deal with the August 22nd, 2018.</p> <p>11 If you turn to page 20 with me, you read these two</p> <p>12 tables as part of your reading of this report, correct?</p> <p>13 A. Yes.</p> <p>14 Q. You read both of those tables?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And do you know how the letter grades are</p> <p>17 generated for each of those intersections?</p> <p>18 A. I have an understanding.</p> <p>19 Q. What is that understanding?</p> <p>20 A. They are generated based on the statistical</p> <p>21 analysis of the intersection and how many cars it can</p> <p>22 hold to pass through at a certain number of time</p> <p>23 periods.</p> <p>24 Q. And is it your understanding that these letter</p> <p>25 grades are generated by a piece of software?</p>	<p>1 A. Say that again.</p> <p>2 Q. The intersection of Bay Road and 18th Street</p> <p>3 is the intersection just north of Beach Towing on Bay</p> <p>4 Road.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. The intersection of Bay 17th and Dade</p> <p>7 is the intersection just south of Beach Towing.</p> <p>8 A. That's on the top. Yes.</p> <p>9 Q. That's the intersection just to the south.</p> <p>10 A. Yes.</p> <p>11 Q. And you see here that with regard to 2020, the</p> <p>12 year 2020 with the project completed, the intersection</p> <p>13 level of service on either end of Bay Road from Beach</p> <p>14 Towing, the letter grade is the same with and without</p> <p>15 the project.</p> <p>16 A. Yes.</p> <p>17 Q. And you have no reason to dispute that, do</p> <p>18 you?</p> <p>19 A. I kind of do.</p> <p>20 Q. Okay. What's your basis for disputing it?</p> <p>21 A. I would like to see a different distribution</p> <p>22 of trips.</p> <p>23 Q. Okay. Tell me what you mean.</p> <p>24 A. The way that -- the assumptions that he made</p> <p>25 in this report, which are the assumptions that he made,</p>
Page 115	Page 117
<p>1 A. Yes.</p> <p>2 Q. Have you ever actually done that analysis</p> <p>3 yourself?</p> <p>4 A. No, sir.</p> <p>5 Q. So looking at this, this shows the levels of</p> <p>6 service at each of the intersections around the project</p> <p>7 at issue here.</p> <p>8 At the current time in 2020, without the</p> <p>9 project and 2020 with the project, right?</p> <p>10 A. Yes.</p> <p>11 Q. And what it shows is with regard to both</p> <p>12 intersections on Bay Road nearest the project, those</p> <p>13 would also be the same intersections nearest to Beach</p> <p>14 Towing, correct?</p> <p>15 A. They -- hold on.</p> <p>16 Q. There is 18th and Bay, correct?</p> <p>17 A. You are on the other side.</p> <p>18 Q. Yeah.</p> <p>19 A. Okay.</p> <p>20 Q. 18th and Bay is to the north of Beach Towing</p> <p>21 on Bay, right?</p> <p>22 A. Yes.</p> <p>23 Q. And the intersection of Bay, 17th and Dade</p> <p>24 Boulevard is the intersection just to the south of</p> <p>25 Beach Towing, correct?</p>	<p>1 are based on the fact that so much of the traffic is</p> <p>2 going to go in -- coming in from this direction or that</p> <p>3 direction. Some of those may not hold if their current</p> <p>4 traffic circulation is true and that's -- those are his</p> <p>5 calculations.</p> <p>6 Q. Okay. So anything else you would criticize</p> <p>7 Mr. Vargas for with regard to these two tables?</p> <p>8 MR. REISS: Form.</p> <p>9 THE WITNESS: I don't choose to criticize Mr.</p> <p>10 Vargas. I think he's doing a fine job. However, I</p> <p>11 may have some difference of opinion as to some of</p> <p>12 his assumptions.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Okay. Any other differences of opinion other</p> <p>15 than the one you just gave me?</p> <p>16 A. Not at this point.</p> <p>17 Q. So in terms of the one difference of opinion</p> <p>18 of Mr. Vargas and how he reaches these letter grades</p> <p>19 for these specific intersections we discussed, if I'm</p> <p>20 understanding you correctly, is that he made certain</p> <p>21 assumptions about circulation that you disagree with.</p> <p>22 A. Yes, and so does the City of Miami Beach.</p> <p>23 Q. When you say so does the City of Miami Beach,</p> <p>24 tell me how you know that.</p> <p>25 A. There is a series of e-mails that went back</p>

<p style="text-align: right;">Page 118</p> <p>1 and forth.</p> <p>2 Q. Okay. Do you know --</p> <p>3 A. As to changes in the report.</p> <p>4 Q. Do you know whether the changes to his</p> <p>5 report -- do you know whether the report you are</p> <p>6 looking at, the August 22nd report, is the one</p> <p>7 reflecting those changes?</p> <p>8 A. I'm sure it's the one that Mr. Vargas thinks</p> <p>9 is those changes.</p> <p>10 Q. Are you aware the City has accepted this</p> <p>11 report now?</p> <p>12 A. No, I'm not.</p> <p>13 Q. So as you sit here, other than you think the</p> <p>14 City took issue with it, you would have done different</p> <p>15 circulation than Mr. Vargas did.</p> <p>16 A. I would have asked him to consider different</p> <p>17 circulation.</p> <p>18 Q. And as you sit here, you don't know what that</p> <p>19 different circulation you would ask him to consider,</p> <p>20 how that would effect the letter grades at these</p> <p>21 intersections?</p> <p>22 A. I would think that some of these letter grades</p> <p>23 may be altered slightly.</p> <p>24 Q. When you say you may think, do you have any</p> <p>25 basis to know that?</p>	<p style="text-align: right;">Page 120</p> <p>1 do you have any other disagreements with Mr. Vargas'</p> <p>2 August 22nd, 2018 report?</p> <p>3 A. I don't call them disagreements. I would come</p> <p>4 to different conclusions.</p> <p>5 Q. Okay.</p> <p>6 A. So it's not disagreements.</p> <p>7 Q. Which different conclusions would you come to?</p> <p>8 A. I would disagree that -- can I read through?</p> <p>9 Q. Take your time.</p> <p>10 A. Give me a second.</p> <p>11 Q. Take your time.</p> <p>12 A. I would be skeptical that the valet operations</p> <p>13 would work the way that he says or defines it.</p> <p>14 Q. Okay.</p> <p>15 A. And I would be skeptical not so much</p> <p>16 disagreeing.</p> <p>17 Q. Okay. What is your skepticism based on?</p> <p>18 A. He says that they need eight valet parking</p> <p>19 operators in order for this operation to be successful.</p> <p>20 Eight is a lot of people to have on board at all times.</p> <p>21 Also, their cueing is only for two spaces at a time</p> <p>22 which is what requires the eight valet operators. So</p> <p>23 assuming all residents and all commercial owners are</p> <p>24 going to use the valet operation. Probably some</p> <p>25 residents will choose not to, so there is some</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Not obviously without doing the job.</p> <p>2 Q. And you're not qualified to do the analysis</p> <p>3 yourself, correct?</p> <p>4 A. No, but I'm qualified to request it.</p> <p>5 Q. If I asked you to go assign letter grades to</p> <p>6 these intersections, you couldn't.</p> <p>7 A. I wouldn't.</p> <p>8 Q. Well, you couldn't.</p> <p>9 A. Because I wouldn't.</p> <p>10 Q. Well, couldn't and wouldn't are different</p> <p>11 things. I know you wouldn't. Can you? Are you able?</p> <p>12 A. You can write letters anywhere you want. I</p> <p>13 wouldn't. It's not something I do.</p> <p>14 Q. Have you ever used the software that assigns</p> <p>15 letter grades to intersections?</p> <p>16 A. No.</p> <p>17 Q. Okay. So you don't know how, do you?</p> <p>18 A. I know how it works. I've seen it work. I've</p> <p>19 seen it fed information and information comes out and</p> <p>20 the result is only as good as the information you put</p> <p>21 in.</p> <p>22 Q. True enough. But you have never done it</p> <p>23 yourself.</p> <p>24 A. No, I wouldn't.</p> <p>25 Q. You like that word wouldn't. Other than that,</p>	<p style="text-align: right;">Page 121</p> <p>1 assumptions that are going into this that I'm skeptical</p> <p>2 about and they would be hard to enforce as well.</p> <p>3 Q. Other than those things you mentioned,</p> <p>4 anything else that you're skeptical about?</p> <p>5 A. That's generally it.</p> <p>6 Q. Okay. Nothing else you can point me to today?</p> <p>7 A. No.</p> <p>8 Q. Okay. And when you say eight valet operators,</p> <p>9 is it because you don't think they will have eight</p> <p>10 valet operators on hand at anyone time?</p> <p>11 A. Yes. It's going to be hard for the City to</p> <p>12 enforce eight valet operators on site.</p> <p>13 Q. It's your assessment there will be less than</p> <p>14 that at anyone time.</p> <p>15 A. There will be whatever the valet operator</p> <p>16 chooses to have. Whether it's five or 10.</p> <p>17 Q. As you sit here, you don't know what the valet</p> <p>18 operator is going to choose.</p> <p>19 A. Exactly.</p> <p>20 Q. I noticed from your original report, I guess</p> <p>21 it doesn't have a date on it. The original report that</p> <p>22 I was looking at, the one I received back in July, in</p> <p>23 this section that we are dealing with here on page, top</p> <p>24 of page nine, you talk about an increased number of</p> <p>25 trips and some percentages, but those percentages don't</p>

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<p>1 appear in your current report.</p> <p>2 A. Those were based on the original March numbers</p> <p>3 that Mr. Vargas had provided and because they had</p> <p>4 changed things to the new report, I decided to remove</p> <p>5 them because they didn't quite work out.</p> <p>6 Q. You also noticed that your percentage</p> <p>7 increase, for example, you say here at the top, only</p> <p>8 during weekday peak hours the northbound trips increase</p> <p>9 from current 21 to 71, an increase of 163 percent,</p> <p>10 right?</p> <p>11 A. That was on his report, yeah.</p> <p>12 Q. You know that's incorrect, right?</p> <p>13 A. It was on his original traffic count.</p> <p>14 Q. Let's look at that.</p> <p>15 A. It was on the original, in the number</p> <p>16 distribution.</p> <p>17 Q. Right. So actually where it is, if you go to</p> <p>18 figure three on his first report, right?</p> <p>19 A. Let me check my notes now.</p> <p>20 Q. Okay.</p> <p>21 A. It's coming out of figure six?</p> <p>22 Q. Figure three.</p> <p>23 A. My numbers come out of figure six.</p> <p>24 Q. Okay. We can do that, too. Figure three is</p> <p>25 where you get the original number, which is 27 cars</p>	<p>1 Q. And that's at present, correct?</p> <p>2 A. That's at present, yeah.</p> <p>3 Q. And then if you go to figure --</p> <p>4 A. That's on the day that the traffic engineer</p> <p>5 was taking numbers.</p> <p>6 Q. Right. Do you have any reason to believe that</p> <p>7 the traffic data here is wrong?</p> <p>8 A. No.</p> <p>9 Q. Okay. So then you said, if you go to</p> <p>10 figure -- you said it increases to 71 and that's if you</p> <p>11 go to figure six, that same intersection, and let me</p> <p>12 see if I'm looking at the right thing. It's now 71,</p> <p>13 right?</p> <p>14 A. A-ha.</p> <p>15 Q. Okay. And that's traffic with the project in</p> <p>16 the year 2020.</p> <p>17 A. Yes.</p> <p>18 Q. What's the traffic at that intersection</p> <p>19 heading northbound without the project?</p> <p>20 A. 42.</p> <p>21 Q. Okay. So when you say it's 163 percent</p> <p>22 increase, that includes both the project and organic</p> <p>23 growth in traffic.</p> <p>24 A. Yes.</p> <p>25 Q. But when you look only at the project impact</p>
Page 123	Page 125
<p>1 going north on --</p> <p>2 A. 71.</p> <p>3 Q. Right. You have 27 cars northbound on Bay at</p> <p>4 present, right? That's from figure three.</p> <p>5 MR. REISS: Form.</p> <p>6 BY MR. BUCKNER:</p> <p>7 Q. Well, you tell me.</p> <p>8 A. I have figure five. I don't have figure</p> <p>9 three.</p> <p>10 Q. Let's look at figure five. Figure five --</p> <p>11 A. I don't have figure three in here.</p> <p>12 Q. You don't have figure three in yours.</p> <p>13 A. Figure five is the background traffic, so that</p> <p>14 wouldn't be accurate either.</p> <p>15 Q. When you say it wouldn't be accurate --</p> <p>16 A. I found it.</p> <p>17 Q. You are on figure three?</p> <p>18 A. A-ha.</p> <p>19 Q. I want to just figure out where you got these</p> <p>20 numbers from.</p> <p>21 A. Right here.</p> <p>22 Q. Exactly. Turning right, you have 27 going</p> <p>23 north on Bay from Dade, correct? That's where you get</p> <p>24 the 27.</p> <p>25 A. Yes.</p>	<p>1 itself, it's far less than 163 percent, right?</p> <p>2 A. It's still very significant.</p> <p>3 Q. Did you calculate it?</p> <p>4 A. I chose not to. I chose to write a number.</p> <p>5 Q. You calculated the total traffic going north</p> <p>6 on Bay, including organic growth.</p> <p>7 A. Yes.</p> <p>8 Q. But didn't separate out what's the project.</p> <p>9 A. I didn't separate out.</p> <p>10 Q. But you know it's less than 163 percent.</p> <p>11 A. It's still in the 163 percent growth from now</p> <p>12 until the 2020 with the project, which is the number</p> <p>13 that we were looking for.</p> <p>14 Q. There will be some growth even without the</p> <p>15 project, correct?</p> <p>16 A. Natural growth, yeah.</p> <p>17 Q. That's going to happen whether there is a</p> <p>18 project there or not.</p> <p>19 A. Sure.</p> <p>20 Q. And do you know what impact -- strike that.</p> <p>21 So if we are looking at Bay Road and Purdy</p> <p>22 Road between 18th and Dade, those are both one lane in</p> <p>23 each direction, right?</p> <p>24 A. Say that again.</p> <p>25 Q. Bay Road and Purdy.</p>



<p style="text-align: right;">Page 126</p> <p>1 A. Bay Road and Purdy.</p> <p>2 Q. I want to look at the section between 18th and</p> <p>3 Dade.</p> <p>4 A. Yes.</p> <p>5 Q. Those are both one lane in each direction,</p> <p>6 right?</p> <p>7 A. They are two lane roads, one in each</p> <p>8 direction, yes. Actually Purdy -- at that stretch they</p> <p>9 are one lane, yeah.</p> <p>10 Q. In each direction?</p> <p>11 A. Yes.</p> <p>12 Q. Both of them are the same in that regard.</p> <p>13 A. Right. One has a median and one doesn't, yes.</p> <p>14 Q. Do you know what the total traffic volume is</p> <p>15 today on Purdy?</p> <p>16 A. It's not something I put in my report.</p> <p>17 Q. Okay.</p> <p>18 A. I could look it up if you want, but it's not</p> <p>19 something I know off the top of my read.</p> <p>20 Q. If you look at figure three from the March</p> <p>21 report, northbound traffic on Bay is 27.</p> <p>22 A. Yes.</p> <p>23 Q. Northbound traffic on Purdy is 60 plus 144,</p> <p>24 correct?</p> <p>25 MR. REISS: Form.</p>	<p style="text-align: right;">Page 128</p> <p>1 THE WITNESS: Say that again. I didn't</p> <p>2 understand the question.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. The bubble at Purdy and Dade, it shows</p> <p>5 a right-hand turn and a left-hand turn going north on</p> <p>6 Purdy, correct?</p> <p>7 A. Yes.</p> <p>8 Q. What's the total traffic count going on the</p> <p>9 right-hand turn?</p> <p>10 MR. REISS: Form.</p> <p>11 THE WITNESS: I don't really -- you would have</p> <p>12 to add those numbers.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. I'm just asking you for the right-hand turn.</p> <p>15 MR. REISS: Form.</p> <p>16 THE WITNESS: Would you like me to read it?</p> <p>17 BY MR. BUCKNER:</p> <p>18 Q. Yes.</p> <p>19 A. It's the number 60.</p> <p>20 Q. What is the amount going north on Purdy from</p> <p>21 Dade making a left-hand turn?</p> <p>22 MR. REISS: Form.</p> <p>23 THE WITNESS: 144.</p> <p>24 BY MR. BUCKNER:</p> <p>25 Q. And what's 144 plus 60?</p>
<p style="text-align: right;">Page 127</p> <p>1 THE WITNESS: Yeah. I really would like to</p> <p>2 look at it more carefully.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. You have the figures right there.</p> <p>5 A. I need like a calculator and sit down and</p> <p>6 think about it.</p> <p>7 Q. Let's look at the bubble that's at the</p> <p>8 intersection of Dade and Purdy Road. This is where</p> <p>9 you're getting your figures for traffic volume counts,</p> <p>10 right?</p> <p>11 A. Right. This is the traffic engineer study.</p> <p>12 Q. So when you look or when you are trying to</p> <p>13 figure out how many cars are going northbound on a</p> <p>14 particular road, reading the traffic engineer's study,</p> <p>15 how do you come up with that number?</p> <p>16 A. You adding up what goes in each direction.</p> <p>17 Q. For example, on Bay Road, there is only 27</p> <p>18 cars going northbound.</p> <p>19 MR. REISS: Form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. BUCKNER:</p> <p>22 Q. And on Purdy Road you can see the two arrows</p> <p>23 that go northbound on Purdy are right there and that's</p> <p>24 the one for Purdy and Dade, right?</p> <p>25 MR. REISS: Form.</p>	<p style="text-align: right;">Page 129</p> <p>1 MR. REISS: Form.</p> <p>2 THE WITNESS: Again, you need me to add it up?</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Yeah. Can you add 144 and 60?</p> <p>5 MR. REISS: Form.</p> <p>6 THE WITNESS: Sure, I can add. 204.</p> <p>7 BY MR. BUCKNER:</p> <p>8 Q. Okay. So that's 204 cars going north at peak</p> <p>9 traffic hours on Purdy every day, correct?</p> <p>10 A. Yes, it's a busy road.</p> <p>11 Q. It's a busy road.</p> <p>12 A. Yes.</p> <p>13 Q. And Dade -- I'm sorry, Bay has 27 cars going</p> <p>14 north on it during peak traffic hours.</p> <p>15 A. Yes.</p> <p>16 Q. You said the two roads are one lane in either</p> <p>17 direction.</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if Purdy Road currently functions</p> <p>20 within acceptable norms?</p> <p>21 A. Purdy Avenue doesn't have towing operations on</p> <p>22 it.</p> <p>23 Q. Okay. That's not what I'm asking you.</p> <p>24 Do you know whether Purdy Avenue functions</p> <p>25 effectively with that level of traffic on it today?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. You can look at the traffic report. I'm sure 2 they have a letter grade for it. I can tell you right 3 now it doesn't matter as to my report because it has no 4 traffic -- no towing operations on it. 5 Q. So what volume of cars, given that -- well, 6 let me ask you this. Let's go back to the current 7 report. We were looking on page 20 at all those 8 intersections. Do any of those intersections get a 9 failing grade? 10 A. Again, it's the traffic studies, the 11 engineer's -- 12 Q. Okay. 13 A. --report. 14 Q. Well, you read it. 15 A. I read it. 16 Q. Your opinion is based on it. 17 A. My opinion is based on the data that's 18 contained, yes. 19 Q. And I'm asking you are you aware of any of the 20 intersections in Sunset Harbour getting a failing grade 21 at present? 22 A. Not according to your traffic engineer. 23 Q. And you have no basis to find otherwise, do 24 you? 25 A. No, not at this point.</p>	<p style="text-align: right;">Page 132</p> <p>1 that. 2 Do you have any opinion as to what additional 3 volume of vehicular traffic coming down either 4 northbound or southbound on Bay Road between 18th and 5 Dade would be acceptable? 6 A. It is not in my purview of expertise, no. 7 Q. Do you know what -- have you done any analysis 8 to determine what additional delays the traffic that is 9 projected to come to this proposed project would cause 10 on Bay Road? 11 A. No, I wouldn't do that. 12 Q. Have you done any analysis to determine what 13 Bay Road measure of effectiveness would be after the 14 project was completed? 15 A. I wouldn't do that. 16 Q. And I think I know the answer to this, but 17 I'll ask you anyway. In the course of your entire 18 career, have you ever reviewed a traffic engineering 19 study, and based on your review alone, an agency made a 20 recommendation to an approving board? 21 A. Yes. 22 Q. Based on your review alone without an engineer 23 looking at it, they made a recommendation. 24 A. No. I had an engineer peer review it and then 25 I made a recommendation.</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Are you going to go and do an analysis to find 2 out whether the grades are wrong? 3 A. I don't know if my client will do that in the 4 future. That's not something I would. 5 Q. That's something you can do. 6 A. They would hire a traffic person. 7 Q. Okay. So as you sit here, you have no basis 8 to dispute that all the intersections around Sunset 9 Harbour that are listed on page 20 are currently 10 operating at acceptable intersection levels of service. 11 A. Right. 12 Q. And so in terms of how much additional traffic 13 Bay Road could handle and still be within an acceptable 14 intersection level of service, since Purdy is doing 15 204, presumably something between certainly 27 and 204 16 would be acceptable, correct? 17 A. I'm sure the traffic engineer has an opinion 18 on this, but I don't. 19 Q. Okay. So you don't have an opinion as to what 20 additional of volume of cars coming into and out of Bay 21 Road between 18th -- 22 A. Not from a traffic engineering perspective I 23 don't. 24 Q. Well, I'm asking you do you have any opinion 25 about what additional volume of car traffic -- strike</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. I'm asking you something different. In the 2 course of your career, have you ever made -- in the 3 course of your career, have you ever reviewed a study 4 alone with no traffic engineer, and based on your 5 review alone, an agency made a recommendation to a 6 board? 7 MR. REISS: Form. 8 THE WITNESS: Not based on my review alone. I 9 relied on the traffic engineer peer review. 10 BY MR. BUCKNER: 11 Q. Hang on to the reports. We may come back to 12 them. Let me ask you about a couple things. You had, 13 in your original report on page eight, you had two, 14 what are these called, maps? 15 A. Okay. Diagrams. 16 Q. I want to call them what you call them. 17 A. Diagrams. 18 Q. You had two diagrams, and on your new report, 19 pages eight and nine, are those the same diagrams? 20 A. Identical. 21 Q. So they haven't changed. Let me do this. 22 Exhibit 15. 23 (The documents referred to 24 were thereupon marked as 25 Plaintiff's Exhibit Number</p>

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1 15 & 16 for Identification,  
2 a copy of which is attached  
3 hereto.)  
4 BY MR. BUCKNER:  
5 Q. What I did was, just so you know, I printed  
6 them up from your flash drive that I got because it's a  
7 little hard to see, although I notice they are a little  
8 easier because they are bigger, but the roads  
9 themselves don't show up on these.  
10 A. Yeah.  
11 Q. Let me ask you something about these. In your  
12 flash drive that I got, Exhibit 15 and 16, is that what  
13 it is?  
14 A. 15 and 16.  
15 Q. Exhibit 15 was entitled desired circulation  
16 and Exhibit 16 was entitled non-desired. Did you put  
17 those titles on them?  
18 A. Yes.  
19 Q. What did you mean by that?  
20 A. I meant that one particular diagram of  
21 circulation would be more desirable for my client.  
22 Q. When you say --  
23 A. Would be preferable.  
24 Q. For Beach Towing.  
25 A. Yes.

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1 Q. Let's look at 15 first. So I think what you  
2 said in your report is that current vehicular  
3 circulation conditions dictate that any vehicles which  
4 would patronize businesses in the Sunset Harbour  
5 neighborhood, must use one of the routes marked in red,  
6 right?  
7 A. A-ha.  
8 Q. Is that a yes?  
9 A. Yes.  
10 Q. Obviously looking at Exhibit 15, these are not  
11 all the ways you can access the surface roads through  
12 Sunset Harbour, correct?  
13 A. Those are the main accesses.  
14 Q. Okay. How did you determine that?  
15 A. They are the most used right now, so the  
16 places where you have the most circulation.  
17 Q. When you say the most used routes, based on  
18 what?  
19 A. My experience and it's just how you get there.  
20 It's hard to get there without going through those  
21 routes.  
22 Q. And right now --  
23 A. My knowledge of the area.  
24 Q. You would agree with me that those red routes,  
25 there are other roads in Sunset Harbour, right?

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1 A. Yes.  
2 Q. For example, you don't have any access to the  
3 area, let's take it from the top. You have a red line  
4 coming off of Alton Road and making a left-hand turn to  
5 the south on Bay Road, correct?  
6 A. What? From Alton Road.  
7 Q. I'm following red lines. The red line that  
8 comes -- Alton Road, it comes off of Alton Road and it  
9 eventually makes a left onto Bay. Isn't that what's  
10 that doing?  
11 A. No. Bay Road and Alton Road do not meet each  
12 other.  
13 Q. Your red line is across. Is that --  
14 A. That's 17th. 17 Dade Boulevard.  
15 Q. We are looking at different things. I'm here.  
16 Is that 20?  
17 A. That's 20th Street.  
18 Q. So it comes off of Alton Road, that red line.  
19 A. Yes.  
20 Q. Down 20th and makes a left on Bay.  
21 A. Yes.  
22 Q. Okay. And so it's your testimony that  
23 vehicular traffic entering Sunset Harbour bypasses West  
24 and Purdy and instead goes straight to Bay?  
25 A. If their desired terminus is the municipal

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1 parking garage, yes, that's what they are going to do.  
2 Q. What if the desired terminus is somewhere  
3 else?  
4 A. That's the point.  
5 Q. Well, there are other -- this is as things  
6 currently stand, your Exhibit 15, correct?  
7 A. A-ha.  
8 Q. And you're not showing any other desired  
9 terminus off of Alton from the north except the  
10 municipal garage.  
11 A. Because that's what we are talking about.  
12 Q. I'm asking you something different. What  
13 evidence or facts do you have to suggest that all the  
14 traffic coming from Alton Road to the north into Sunset  
15 Harbour bypasses West and Purdy?  
16 A. All the traffic that is choosing to use, to  
17 patronize the businesses on the current CD-2.  
18 Q. So that's what I wanted to ask you. I want to  
19 make sure I understand what you're saying.  
20 It's your testimony that all the traffic  
21 coming into Sunset Harbour that wants to patronize the  
22 businesses there will come from the north west on 20th,  
23 bypass West Avenue and go straight to Bay and make a  
24 left.  
25 A. Okay. That's a very complicated way of saying

<p style="text-align: right;">Page 138</p> <p>1 it.</p> <p>2 Q. Is that right?</p> <p>3 A. All the traffic -- most of the traffic that is</p> <p>4 coming to the north that is wishing to patronize this</p> <p>5 area is the easiest route for them to come in right now</p> <p>6 from the north, is down 20th Street and probably the</p> <p>7 one chosen by most people.</p> <p>8 Q. And --</p> <p>9 A. Because it's the easiest route.</p> <p>10 Q. And you have them all going to the municipal</p> <p>11 garage.</p> <p>12 A. If they are going to the businesses that don't</p> <p>13 have dedicated parking, yes.</p> <p>14 Q. Okay. Is it your testimony that all</p> <p>15 businesses, everyone coming to patronize businesses</p> <p>16 that don't have their own dedicated parking are</p> <p>17 necessarily going to the municipal garage?</p> <p>18 A. Either that or a valet operation, yes.</p> <p>19 Q. Okay. What data is that based on?</p> <p>20 A. That's just the only available parking right</p> <p>21 now. If they are not parking there, they are parking</p> <p>22 on the street.</p> <p>23 Q. Okay. But you would agree with me there is</p> <p>24 street parking on West, right?</p> <p>25 A. There is street parking all throughout Miami</p>	<p style="text-align: right;">Page 140</p> <p>1 A. I don't understand the question.</p> <p>2 Q. I'm asking you for all the evidence you have</p> <p>3 to back up your assertion with this red line here on</p> <p>4 Exhibit 15, coming off of Alton, crossing 20th to the</p> <p>5 west down Bay to the municipal garage, what is all the</p> <p>6 evidence that you have to support that that is the</p> <p>7 route everyone is choosing to take coming into Sunset</p> <p>8 Harbour from the north on Alton?</p> <p>9 MR. REISS: Form, predicate.</p> <p>10 THE WITNESS: I don't have. I'm not asserting</p> <p>11 that all the traffic is doing anything.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. Okay. You are asserting that some traffic can</p> <p>14 do that.</p> <p>15 A. I'm generalizing, yes.</p> <p>16 Q. Some traffic could also choose coming on 20th</p> <p>17 making a left on West, right?</p> <p>18 A. Yes, if there was a traffic blockage and they</p> <p>19 were under construction, they may choose to do</p> <p>20 something different. Traffic conditions change all the</p> <p>21 time.</p> <p>22 Q. Right. Or if they decide to park on the</p> <p>23 street on West, they can take a left on West.</p> <p>24 A. Surg. Again, there is a limited number of</p> <p>25 parking spaces on the street. Some people may choose</p>
<p style="text-align: right;">Page 139</p> <p>1 Beach, yes.</p> <p>2 Q. And there is street parking all throughout</p> <p>3 Sunset Harbour, right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. They don't have to go to the municipal</p> <p>6 garage.</p> <p>7 A. Street parking is only so much of it, so</p> <p>8 eventually it runs out and you go to the garage.</p> <p>9 Q. What I'm asking you though is they don't have</p> <p>10 to go to the garage, right?</p> <p>11 A. Nobody has to do anything.</p> <p>12 Q. But you have them all going to the garage.</p> <p>13 A. I don't have them all going to the garage. I</p> <p>14 have the majority, the trending movements going to the</p> <p>15 garage because that's where most of the storage is</p> <p>16 located right now.</p> <p>17 Q. And what I'm asking you is, what data do you</p> <p>18 have that shows coming from the north --</p> <p>19 A. There is 489.</p> <p>20 Q. You have to let me finish my question.</p> <p>21 What data do you have coming from the north on</p> <p>22 Alton Road and entering Sunset Harbour on 20th Street</p> <p>23 that all that traffic is going to bypass the surface</p> <p>24 roads and go straight to Bay and go straight to the</p> <p>25 garage?</p>	<p style="text-align: right;">Page 141</p> <p>1 to park on the street. My assertions are based on what</p> <p>2 most of the people might do because that's where the</p> <p>3 parking is available. If most of the parking is</p> <p>4 available in a particular location, that most of the</p> <p>5 cars that can end up at that location necessarily</p> <p>6 because they can't be stored where there is no parking.</p> <p>7 Q. You would agree there is street parking</p> <p>8 throughout the Sunset Harbour area.</p> <p>9 A. Yes.</p> <p>10 Q. I'm asking you what numerical analysis --</p> <p>11 A. I did not use a numerical analysis. I used a</p> <p>12 circulation pattern.</p> <p>13 Q. And so basically other than this document,</p> <p>14 Exhibit 15, do you have any documents that back this</p> <p>15 up, this pattern that you showed here?</p> <p>16 MR. REISS: Form, argumentative.</p> <p>17 THE WITNESS: You just have to drive through</p> <p>18 the street to see where you are going.</p> <p>19 BY MR. BUCKNER:</p> <p>20 Q. But in terms of what percentage of cars coming</p> <p>21 into --</p> <p>22 A. I'm not making an assumption.</p> <p>23 Q. I have to finish the question. You have to</p> <p>24 let me finish.</p> <p>25 In terms of what percentage of cars coming</p>

<p style="text-align: right;">Page 142</p> <p>1 into Sunset Harbour from the north on Alton Road will</p> <p>2 go to the garage versus using one of the other streets</p> <p>3 to look for street parking? Do you have any opinion on</p> <p>4 that?</p> <p>5 A. I'm not making an assertion as to volume.</p> <p>6 Q. You are just showing one possible route to the</p> <p>7 garage.</p> <p>8 A. Yes.</p> <p>9 Q. And from the south, these are all just</p> <p>10 possible routes, but you're not making any assertion as</p> <p>11 to volume.</p> <p>12 A. I'm not making any assertion as to volume.</p> <p>13 Q. These are just possible routes.</p> <p>14 A. Right.</p> <p>15 Q. So where you show no -- on Bay Road, for</p> <p>16 example, where you show towing activities, you don't</p> <p>17 mean to suggest by not having a red line there that</p> <p>18 there is no vehicular traffic --</p> <p>19 A. No. As a matter of fact, the traffic report</p> <p>20 shows 27 going through there.</p> <p>21 Q. Northbound.</p> <p>22 A. Northbound.</p> <p>23 Q. And then let's go to Exhibit 16. If I</p> <p>24 understood your report, Exhibit 16 reflects what the</p> <p>25 resulting traffic pattern would look like with the</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Yes.</p> <p>2 Q. What?</p> <p>3 A. Garage, vacant properties.</p> <p>4 Q. Vacant properties and a garage?</p> <p>5 A. Yes. Some sort of -- it used to be a repair</p> <p>6 garage building.</p> <p>7 Q. Okay.</p> <p>8 A. A couple of empty ones.</p> <p>9 Q. So there is vacant lots and small buildings on</p> <p>10 it.</p> <p>11 A. Yes.</p> <p>12 Q. So as far as you know, how many people are</p> <p>13 going there on a given day, do you know?</p> <p>14 A. Today, zero.</p> <p>15 Q. Are you sure?</p> <p>16 A. No, but I would assume zero.</p> <p>17 Q. So you are assuming?</p> <p>18 A. Yes. You can look at the traffic report and</p> <p>19 find it, but I would assume nobody is going to a vacant</p> <p>20 lot.</p> <p>21 Q. You said there are buildings there, too.</p> <p>22 A. They have been closed for a while.</p> <p>23 Q. Have you been there?</p> <p>24 A. Yes, I have them closed for a while, yes. I</p> <p>25 know them to be closed for a while.</p>
<p style="text-align: right;">Page 143</p> <p>1 construction of the project that is at issue in this</p> <p>2 case, right?</p> <p>3 A. Yes.</p> <p>4 Q. So first of all, you removed the municipal</p> <p>5 garage from the diagram. Why?</p> <p>6 A. Because it's no longer the terminus of the</p> <p>7 trips that we are talking about.</p> <p>8 Q. It's still the terminus for some trips, right?</p> <p>9 A. Sure, but we are not talking about those right</p> <p>10 now.</p> <p>11 Q. So these two diagrams are different things</p> <p>12 because there is no building on Exhibit 15, right?</p> <p>13 A. There is a building on Exhibit 15.</p> <p>14 Q. Let me strike that. Let me come back.</p> <p>15 The project we are talking about, it isn't on</p> <p>16 Exhibit 15.</p> <p>17 A. Not the current one, no.</p> <p>18 Q. No one is going to the project because it</p> <p>19 doesn't currently exist.</p> <p>20 A. And there would be a building there or maybe</p> <p>21 more -- it would be a series of buildings smaller in</p> <p>22 scale, less than 15,000 square feet that don't require</p> <p>23 any parking.</p> <p>24 Q. Do you know what is on the Assemblage right</p> <p>25 now?</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. So it's your testimony that all the buildings</p> <p>2 on the Assemblage are not in use.</p> <p>3 A. No.</p> <p>4 Q. Is there anybody going to the Assemblage lots</p> <p>5 or properties at all at the present time?</p> <p>6 A. I wouldn't know. I wouldn't know without</p> <p>7 looking at your traffic report and I haven't looked for</p> <p>8 it right now.</p> <p>9 Q. What you're showing on Exhibit 16 is, I take</p> <p>10 it, the proposed project with the parking garage</p> <p>11 included, correct?</p> <p>12 A. Say what again.</p> <p>13 Q. Exhibit 16 shows the proposed project on the</p> <p>14 Assemblage with the parking garage included.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. So on Exhibit 15, you've got people --</p> <p>17 these are not people coming to the Assemblage.</p> <p>18 A. These are people coming to the Assemblage,</p> <p>19 yes.</p> <p>20 Q. I thought you said you assumed nobody was</p> <p>21 coming to the Assemblage at present.</p> <p>22 A. Exhibit 15 is not a current condition. It is</p> <p>23 the current condition, but it's the preferred condition</p> <p>24 for the future as well.</p> <p>25 Q. Exhibit 2 on your report says existing</p>

<p style="text-align: right;">Page 146</p> <p>1 vehicular circulation. Is that not right?</p> <p>2 A. We wanted to keep it like that, yeah.</p> <p>3 Q. This is how things are now.</p> <p>4 A. And this is how they should remain. That's</p> <p>5 what we are trying to assert. So yes, now and future.</p> <p>6 Q. What you are advocating for is that the</p> <p>7 traffic pattern not change in this area.</p> <p>8 A. Yes, sir.</p> <p>9 Q. And what I'm trying to figure out is, so</p> <p>10 Exhibit 15 shows the traffic pattern as you understand</p> <p>11 it at present.</p> <p>12 A. Exhibit 15 is, as I understand it, at present,</p> <p>13 yes.</p> <p>14 Q. In the Sunset Harbour area.</p> <p>15 A. Yes.</p> <p>16 Q. At least as it relates to these specific trips</p> <p>17 on these specific roads.</p> <p>18 A. Yes.</p> <p>19 Q. Exhibit 16 is what you understand the traffic</p> <p>20 pattern will look like if the project is built as</p> <p>21 planned.</p> <p>22 A. In its current form, yes.</p> <p>23 Q. And so in terms of Exhibit 15, are any of the</p> <p>24 people accessing Sunset Harbour using those red lines</p> <p>25 that you have there coming to the Assemblage where the</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Exhibit 15 shows people coming into Sunset</p> <p>2 Harbour for any purpose.</p> <p>3 A. Well, for purposes of uses that don't have any</p> <p>4 parking on their site. It excludes Publix, it excludes</p> <p>5 Fresh Market.</p> <p>6 Q. So now we have a higher level of detail and I</p> <p>7 appreciate that. Just so I understand, Exhibit 15</p> <p>8 shows people coming into Sunset Harbour who are going</p> <p>9 to patronize businesses that don't have their own</p> <p>10 parking.</p> <p>11 A. That don't have separated parking, yes.</p> <p>12 Q. And what do you mean by separated parking?</p> <p>13 A. Nothing. Misspoke. It just means parking</p> <p>14 that is dedicated for just them.</p> <p>15 Q. So what you were trying to represent in</p> <p>16 Exhibit 15 is the movement of traffic into Sunset</p> <p>17 Harbour by people who are going to businesses that</p> <p>18 don't have their own parking.</p> <p>19 A. Yes.</p> <p>20 Q. In Exhibit 16, you are trying to show the</p> <p>21 movement of traffic into Sunset Harbour for people who</p> <p>22 are coming to the project.</p> <p>23 A. Yes.</p> <p>24 Q. But not all traffic into Sunset Harbour.</p> <p>25 A. Not all, right.</p>
<p style="text-align: right;">Page 147</p> <p>1 project is going to be?</p> <p>2 A. Are we back to 15?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Some are?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And it's your or is it your testimony</p> <p>8 then that all the people coming to the Assemblage at</p> <p>9 present park in the municipal garage?</p> <p>10 A. Again, assuming that some people are coming to</p> <p>11 the Assemblage?</p> <p>12 Q. Well, that's what I just asked you.</p> <p>13 A. I wouldn't know. If anybody that is coming to</p> <p>14 the Assemblage right now, they would have to park in</p> <p>15 the garage or some street parking, some form of street</p> <p>16 parking.</p> <p>17 Q. But in terms of whether anybody is coming to</p> <p>18 the Assemblage coming now, you don't know.</p> <p>19 A. I wouldn't know, no.</p> <p>20 Q. Okay. Exhibit 16 is with the Assemblage</p> <p>21 built, but it is obviously different because -- well,</p> <p>22 strike that.</p> <p>23 Exhibit 15 shows people coming into Sunset</p> <p>24 Harbour for any purpose, correct?</p> <p>25 A. Exhibit 15 shows what?</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Okay.</p> <p>2 A. Yes, exactly.</p> <p>3 Q. And so help me understand. You have an arrow</p> <p>4 northbound on West Avenue crossing the, is that a</p> <p>5 canal?</p> <p>6 A. Yes.</p> <p>7 Q. Crossing the West Avenue bridge over the canal</p> <p>8 in Exhibit 16, but going north past the project.</p> <p>9 A. Yes.</p> <p>10 Q. So that's not actually coming to the project.</p> <p>11 A. Right. It would be -- I think a little arrow</p> <p>12 got erased. It's a way into the neighborhood, but a</p> <p>13 little arrow got erased as a turning right there.</p> <p>14 Q. You mean turning left to go to the project.</p> <p>15 A. Yeah. Left.</p> <p>16 Q. So you're saying people would come up West and</p> <p>17 make a left somewhere --</p> <p>18 A. On 18th.</p> <p>19 Q. But you didn't represent it on here.</p> <p>20 A. It should have been there.</p> <p>21 Q. And if I'm correct that the ingress and egress</p> <p>22 to the garage has now been changed in the newest report</p> <p>23 to a right-hand entrance and a right-hand exit, that</p> <p>24 would change your analysis here, wouldn't it?</p> <p>25 A. Somewhat. It would still put all the traffic,</p>

<p style="text-align: right;">Page 150</p> <p>1 all the volume on -- it would just change it slightly</p> <p>2 on the geometry, not so much.</p> <p>3 Q. You wouldn't have cars coming north on Bay and</p> <p>4 making a left going into the garage, right?</p> <p>5 A. Right, but they would be coming through the</p> <p>6 building. So it would still go through the Bay area,</p> <p>7 the block between 18th and Dade Boulevard.</p> <p>8 Q. On Bay?</p> <p>9 A. Right.</p> <p>10 Q. But just southbound.</p> <p>11 A. Yes. They would be going in a different</p> <p>12 direction, assuming that's all.</p> <p>13 Q. Okay. That is all I'm asking. Have you done</p> <p>14 any analysis similar to Exhibit 16 for what the</p> <p>15 circulation pattern would look like if instead of</p> <p>16 building the proposed project, the owners of this</p> <p>17 property built 120,000 square feet of commercial space?</p> <p>18 A. Without parking?</p> <p>19 Q. Without parking.</p> <p>20 A. Yes, it would look like that.</p> <p>21 Q. It would look like what?</p> <p>22 A. Exhibit 15.</p> <p>23 Q. And what's your basis to conclude that?</p> <p>24 A. There would be no terminum to the trips there,</p> <p>25 so no trips would finish at the Bay Road area. They</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. What I'm asking you is how much additional</p> <p>2 traffic would there be if people circulating looking</p> <p>3 for parking if we built a 120,000 square foot --</p> <p>4 A. That's a great question for your traffic</p> <p>5 engineer.</p> <p>6 Q. You have no data on that.</p> <p>7 A. I would have no opinion on that. I would look</p> <p>8 for data based on the traffic engineer.</p> <p>9 Q. But you have no data or opinion on that.</p> <p>10 A. Or maybe a psychologist as whether people</p> <p>11 choose to look for parking before they actually go into</p> <p>12 a parking garage. I don't really have an opinion on</p> <p>13 that.</p> <p>14 Q. You don't have an opinion on any of that.</p> <p>15 A. No.</p> <p>16 Q. Why don't we do this. It 2:30. Let's take a</p> <p>17 break and let me see if I can streamline what I got</p> <p>18 left.</p> <p>19 MR. REISS: Sure.</p> <p>20 (Thereupon a recess was taken in</p> <p>21 deposition, after which the</p> <p>22 deposition continued as follows:)</p> <p>23 BY MR. BUCKNER:</p> <p>24 Q. Back on the record. You are still under oath.</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 151</p> <p>1 would all finish elsewhere.</p> <p>2 Q. Is there street parking on Bay Road?</p> <p>3 A. A little bit.</p> <p>4 Q. How many spaces?</p> <p>5 A. Very little.</p> <p>6 Q. How many?</p> <p>7 A. I don't know, but there is not a lot.</p> <p>8 Q. Have you checked?</p> <p>9 A. Not lately. I haven't counted them, but there</p> <p>10 is a lot of driveways and a lot of areas that are</p> <p>11 loading zones, so I tried to park there in the past.</p> <p>12 It's not easy.</p> <p>13 Q. But there is some street parking on Bay.</p> <p>14 A. Limited.</p> <p>15 Q. Okay. And as you sit here, you don't know</p> <p>16 whether some of the people coming to 120,000 square</p> <p>17 feet of commercial space would try to find parking.</p> <p>18 A. I'm sure. I'm positive some would.</p> <p>19 Q. And that would create circulation around the</p> <p>20 building.</p> <p>21 A. A little, yeah.</p> <p>22 Q. And it would create circulation around the</p> <p>23 area on Bay.</p> <p>24 A. A little. That's just natural. There are</p> <p>25 people looking for parking all the time.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. So we took a little break and I took an</p> <p>2 opportunity two read your new report I want to see what</p> <p>3 you covered that I haven't looked at before. I have a</p> <p>4 few questions for you. On page eight of your new</p> <p>5 report, we marked it as Exhibit 6. It should be in</p> <p>6 your pile there.</p> <p>7 A. My neat pile you mean?</p> <p>8 Q. You did a nice job with that.</p> <p>9 A. Page what?</p> <p>10 Q. Eight.</p> <p>11 A. Eight.</p> <p>12 Q. All right. You say here on the top paragraph,</p> <p>13 you say the mixture of residential, commercial and</p> <p>14 industrial uses is a delicate urban condition with</p> <p>15 potential for use conflict. You are talking about</p> <p>16 Sunset Harbour, right?</p> <p>17 A. In general.</p> <p>18 Q. And what does that mean?</p> <p>19 A. That when you are mixing different uses and</p> <p>20 one of the reasons that zoning exists is that we</p> <p>21 separate uses so that the conflict is minimized and the</p> <p>22 place where you mixing them up on purpose, the conflict</p> <p>23 is more likely to arise.</p> <p>24 Q. Okay. The City of Miami Beach designated the</p> <p>25 Assemblage lot as CD-2, right?</p>

<p style="text-align: right;">Page 154</p> <p>1 A. CD-2, yes.</p> <p>2 Q. One of the things that can be built on CD-2 is</p> <p>3 mixed use, residential and commercial.</p> <p>4 A. Yes.</p> <p>5 Q. So one presumes that the City, when it made</p> <p>6 those new zoning designations, took that into account,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And those new designations occurred, that was</p> <p>10 in 1989, right?</p> <p>11 A. Yes.</p> <p>12 Q. Further in that same paragraph you say the use</p> <p>13 of the municipal parking garage at 1900 Bay Road as a</p> <p>14 main vehicle storage facility keeps the commercial</p> <p>15 trips to the neighborhood concentrated in the periphery</p> <p>16 where the mostly the commercial and residential</p> <p>17 corridors, Purdy Avenue and 20th Street are located.</p> <p>18 What is that based on?</p> <p>19 A. The comprehensive land use map and the zoning</p> <p>20 map.</p> <p>21 Q. Okay. But you're talking here about</p> <p>22 commercial trips. What data are you relying on to say</p> <p>23 that most of those commercial trips are kept on Purdy</p> <p>24 and 20th?</p> <p>25 A. That's where most of the commercial activity</p>	<p style="text-align: right;">Page 156</p> <p>1 diagram, figure two. You say thus, at present, there</p> <p>2 is little relative use of Bay Road for entering the</p> <p>3 neighborhood and most likely most of the activity</p> <p>4 reflected on the study can be reasonably attributed to</p> <p>5 the existing businesses on Bay Road. You are talking</p> <p>6 about the Traf Tech study.</p> <p>7 A. Yes, and also the Alcoholics Anonymous site</p> <p>8 and there are a couple of more businesses on Bay Road.</p> <p>9 Q. In terms of your assertion that most of the</p> <p>10 traffic -- that most of the traffic activity on Bay is</p> <p>11 likely activity reflected by people going to those</p> <p>12 existing businesses.</p> <p>13 Do you have any data that backs that up?</p> <p>14 A. Most likely, I mean the block between 18th and</p> <p>15 Dade Boulevard.</p> <p>16 Q. On Bay.</p> <p>17 A. Yes.</p> <p>18 Q. And what I'm asking you is do you have any</p> <p>19 data that backs up that those cars going up and down</p> <p>20 that street are going --</p> <p>21 A. No, that's why I say most likely.</p> <p>22 Q. Okay. So you don't have any data.</p> <p>23 A. We are assuming. We are assuming from the --</p> <p>24 also from the traffic report we are assuming that most</p> <p>25 of those don't go through.</p>
<p style="text-align: right;">Page 155</p> <p>1 is.</p> <p>2 Q. But have you done any traffic analysis --</p> <p>3 A. I don't do traffic analysis.</p> <p>4 Q. So in terms of, that's where the commercial</p> <p>5 activity is, but in terms of where the cars are going,</p> <p>6 you don't know.</p> <p>7 A. The cars are going where the parking is.</p> <p>8 Q. You and I have discussed over the course of</p> <p>9 today there is street parking throughout Sunset</p> <p>10 Harbour, right?</p> <p>11 A. Limited.</p> <p>12 Q. Okay. But there is some.</p> <p>13 A. Some, but if you are asking where 500 cars are</p> <p>14 going, 500 cars are not parking on the street.</p> <p>15 Q. Okay. I understand they are parking in the</p> <p>16 garage, but at any one time, can you tell me how many</p> <p>17 people are going directly to the garage versus how many</p> <p>18 are using the streets and looking for parking?</p> <p>19 A. I'm sure whoever finds a parking spot on the</p> <p>20 street they use it. Other than that, they go to the</p> <p>21 garage.</p> <p>22 Q. But in terms of how much of each, you can't</p> <p>23 quantify.</p> <p>24 A. No, we couldn't.</p> <p>25 Q. You say further down right before your</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Okay. And that's an assumption you're making.</p> <p>2 A. It's an assumption we are both making, the</p> <p>3 traffic engineer and me, yes.</p> <p>4 Q. Okay. First of all, as you sit here, you</p> <p>5 don't know whether people currently are using Bay Road</p> <p>6 to park on. Some people could drive there to do that,</p> <p>7 correct? Just the limited street parking.</p> <p>8 A. All five of them? I mean, there is very few</p> <p>9 parking spaces on Bay Road.</p> <p>10 Q. Are there five?</p> <p>11 A. No, I don't really know the exact number. I</p> <p>12 think if there is -- no, I don't really know the exact</p> <p>13 number.</p> <p>14 Q. Okay. You don't know how many people are</p> <p>15 using Bay to transit other parts of Sunset Harbour.</p> <p>16 A. Again, looking at the traffic report submitted</p> <p>17 by you guys, very few.</p> <p>18 Q. Okay.</p> <p>19 A. At present.</p> <p>20 Q. And that's your analysis of the traffic</p> <p>21 report.</p> <p>22 A. That's my interpretation of the traffic</p> <p>23 report, yes.</p> <p>24 Q. Okay. Any other data besides the traffic</p> <p>25 report?</p>



<p style="text-align: right;">Page 158</p> <p>1 A. No, the traffic report was sufficient for that</p> <p>2 one.</p> <p>3 Q. On page nine of your report, you're showing</p> <p>4 the traffic pattern, as you discussed it with me, what</p> <p>5 you hypothesized the traffic pattern will be going to</p> <p>6 the project if it's built, correct?</p> <p>7 A. Yes.</p> <p>8 Q. But this is obviously only if people can turn</p> <p>9 into the garage, both making a left and right</p> <p>10 obviously, right?</p> <p>11 A. Yes. The geometric configuration would be a</p> <p>12 little different if different turns were not allowed,</p> <p>13 but it still would suffice as to most of the trips</p> <p>14 would be on Bay Road.</p> <p>15 Q. Okay. How much traffic per P.M. peak hour</p> <p>16 would be coming to our garage?</p> <p>17 A. According to your traffic guy?</p> <p>18 Q. Yes. Do you know?</p> <p>19 A. I can look it up.</p> <p>20 Q. Okay.</p> <p>21 A. It's not something I have off the top of my</p> <p>22 head, but I'm sure it's in your traffic report.</p> <p>23 Q. Okay. That's fine. So you would rely on</p> <p>24 whatever is on the traffic report.</p> <p>25 A. Oh, for sure.</p>	<p style="text-align: right;">Page 160</p> <p>1 contracts with the City.</p> <p>2 A. Yes.</p> <p>3 Q. I'm asking you what that's based on.</p> <p>4 A. It stands to reason that adding 1,000 trips on</p> <p>5 a small road.</p> <p>6 Q. Okay.</p> <p>7 A. Would create conflict.</p> <p>8 Q. Well, do you know if you added that 1,000</p> <p>9 trips to that road, 1,054, do you know how that road</p> <p>10 usage would compare, for example, to Purdy.</p> <p>11 A. It depends on -- can you repeat the question?</p> <p>12 Q. Sure. Do you know how that 1,054 additional</p> <p>13 trips a day compares to the total trips per day on</p> <p>14 Purdy?</p> <p>15 A. In what regard?</p> <p>16 Q. Well, is it more or less than Purdy handles?</p> <p>17 A. It's not something that -- it has no bearing.</p> <p>18 Q. So you don't know.</p> <p>19 A. It doesn't matter.</p> <p>20 Q. Well, I understand you may think it doesn't</p> <p>21 matter. Do you know or not?</p> <p>22 A. Do I know how it compares to what Purdy is</p> <p>23 doing right now? It's probably more than what Purdy is</p> <p>24 handling right now.</p> <p>25 Q. Okay. And that's based on what?</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. You say here it's your professional opinion</p> <p>2 that this additional number of additional daily trips</p> <p>3 would create a significant disservice to the safe and</p> <p>4 orderly operations of Beach Towing as required by their</p> <p>5 contract with the City.</p> <p>6 What's that conclusion based on?</p> <p>7 A. Can you point me again to where it was?</p> <p>8 Q. Sure. We are on page nine of your report.</p> <p>9 A. I'm a visual person. I need to see it.</p> <p>10 Q. Okay.</p> <p>11 A. The new report.</p> <p>12 Q. It's the new one.</p> <p>13 A. Exhibit 6 you said?</p> <p>14 Q. Yes. You had it like a second ago.</p> <p>15 A. I know. Yes, right here. Can you repeat the</p> <p>16 page number, please.</p> <p>17 Q. Right before the next bold subject heading.</p> <p>18 A. That's page nine?</p> <p>19 Q. Yes. You say it's your professional opinion</p> <p>20 the addition of 1,054 daily trips on Bay Drive, and I</p> <p>21 assume you meant Bay Road?</p> <p>22 A. Yes.</p> <p>23 Q. Between Dade Boulevard and 18th Street will</p> <p>24 create a significant disturbance to the safe and</p> <p>25 orderly operations of Beach Towing as required by their</p>	<p style="text-align: right;">Page 161</p> <p>1 A. The traffic report. What does the traffic</p> <p>2 report say?</p> <p>3 Q. I'm asking you.</p> <p>4 A. I don't know.</p> <p>5 Q. As you sit here, you don't know --</p> <p>6 A. I did not --</p> <p>7 Q. Let me finish the question before you get to</p> <p>8 answer.</p> <p>9 As you sit here, you don't know whether the</p> <p>10 additional trips that are thought to be coming to this</p> <p>11 project will make the traffic on Bay Road more</p> <p>12 voluminous or less voluminous than the traffic on</p> <p>13 Purdy, do you?</p> <p>14 A. The traffic on Purdy currently or the traffic</p> <p>15 on Purdy then?</p> <p>16 Q. Let's go with the traffic on Purdy in 2020.</p> <p>17 A. I didn't look at that.</p> <p>18 Q. How about the traffic on Purdy currently?</p> <p>19 A. I didn't look at that either.</p> <p>20 Q. And when you say create a significant</p> <p>21 disturbance, what does that mean?</p> <p>22 A. Disturbance. Problem.</p> <p>23 Q. Disturbance, does that have a definition</p> <p>24 within planning?</p> <p>25 A. It's common. It's a common word.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. Okay. I'm trying to find out, it's not a</p> <p>2 traffic term, right?</p> <p>3 A. It's not a traffic term.</p> <p>4 Q. It's not a planning term.</p> <p>5 A. No, it's a common term. I'm trying to write</p> <p>6 in lay terms.</p> <p>7 Q. That's fine. So what amount of additional</p> <p>8 traffic on Bay would not causes a significant</p> <p>9 disturbance to Beach Towing?</p> <p>10 A. Obviously as little as possible. There is</p> <p>11 no --</p> <p>12 Q. So you're saying any traffic at all on Bay</p> <p>13 Road would be a disturbance to Beach Towing.</p> <p>14 A. For sure. I'm sure they would prefer to have</p> <p>15 no traffic on Bay. I'm sure they would prefer the road</p> <p>16 to be entirely closed.</p> <p>17 Q. Okay. But I'm asking your professional</p> <p>18 opinion. Is it your professional opinion that Bay Road</p> <p>19 can handle no additional traffic without disturbing</p> <p>20 Beach Towing?</p> <p>21 A. It's my opinion that there is already some</p> <p>22 disturbance to Beach Towing from current conditions.</p> <p>23 Any additional traffic would cause more disturbance.</p> <p>24 There would be an increase in disturbance.</p> <p>25 Q. So any additional traffic on Bay Road at all</p>	<p style="text-align: right;">Page 164</p> <p>1 meaning 1,054 cars. They are meaning somewhere between</p> <p>2 950 and 1,200. There is a lot of variable in here.</p> <p>3 Q. I'm asking you something different.</p> <p>4 A. It's a difference in the way you're asking.</p> <p>5 Q. You rendered an opinion that the 1,054 daily</p> <p>6 trips, and is that the way traffic engineers analyze</p> <p>7 things, based on daily trips?</p> <p>8 A. Traffic engineers like to put in exact</p> <p>9 numbers.</p> <p>10 Q. But do they work off of daily trips or peak</p> <p>11 hour trips?</p> <p>12 A. They work out of both. Sometimes out of one</p> <p>13 and sometimes a combination of the two and they make</p> <p>14 extrapolations based on both.</p> <p>15 Q. You only listed the total daily trips here.</p> <p>16 A. Right. That's what he put in his report as</p> <p>17 well. He also talked about peak hour.</p> <p>18 Q. Is there any of his chart that show daily</p> <p>19 trips, any of his maps that show daily trips? They are</p> <p>20 all peak hour trips, right?</p> <p>21 A. That's when he took his measurements, but yes,</p> <p>22 he does talk about daily trips as well.</p> <p>23 Q. What I'm asking you is, what amount of</p> <p>24 additional daily trips on Bay Road between Dade and</p> <p>25 18th Street would not create a significant disturbance</p>
<p style="text-align: right;">Page 163</p> <p>1 would be an additional disturbance to Beach Towing.</p> <p>2 A. Sure.</p> <p>3 Q. Your opinion is there should be no additional</p> <p>4 traffic on Bay Road of any kind.</p> <p>5 A. That's not my opinion. That's not what I</p> <p>6 said.</p> <p>7 Q. What is your opinion on that?</p> <p>8 A. I don't have -- it's not about volume again.</p> <p>9 It's how that volume happens.</p> <p>10 Q. Well, you just said any additional traffic on</p> <p>11 Bay Road would cause a disturbance to Beach Towing.</p> <p>12 A. Yes.</p> <p>13 Q. What I'm asking you is, is it your opinion</p> <p>14 then that there should be no additional traffic on Bay</p> <p>15 Road to avoid a disturbance to Beach Towing?</p> <p>16 A. No, that's not my opinion.</p> <p>17 Q. Okay. So even one additional car per hour,</p> <p>18 would that create a significant disturbance to the safe</p> <p>19 and orderly operation of Beach Towing?</p> <p>20 A. That probably would be negligible and probably</p> <p>21 variable. When you are talking about statistics, it's</p> <p>22 hard to really ascertain one car versus 10 cars.</p> <p>23 Q. That's what I'm trying to figure out.</p> <p>24 A. This is all statistics. They are talking</p> <p>25 about exact numbers of cars, but they are not really</p>	<p style="text-align: right;">Page 165</p> <p>1 to the safe and orderly operation of Beach Towing?</p> <p>2 A. That's not a question I would answer.</p> <p>3 Q. Okay. So you just think 1,054 would cause a</p> <p>4 significant disturbance.</p> <p>5 A. Sure.</p> <p>6 Q. But as to whether 500 would or would not, you</p> <p>7 don't have an opinion.</p> <p>8 A. Probably 500, too. That would probably be a</p> <p>9 large number as well.</p> <p>10 Q. How about 200?</p> <p>11 A. Probably that would cause a little bit or a</p> <p>12 lesser disturbance.</p> <p>13 Q. Okay. That's 200 over a 24 hour period.</p> <p>14 A. That's quite a few cars.</p> <p>15 Q. How many cars per hour is that?</p> <p>16 A. It has no bearing. It could be all</p> <p>17 concentrated in one hour. It can all spread out</p> <p>18 through the day.</p> <p>19 Q. When you say 1,054 trips --</p> <p>20 A. They are not spread out evenly throughout the</p> <p>21 day.</p> <p>22 Q. Okay. When are those --</p> <p>23 A. That's the crux of the question.</p> <p>24 Q. I'm asking you.</p> <p>25 A. That's what you would read in your traffic</p>

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1 report.

2 Q. But it's your professional opinion. I'm not

3 concerned about Mr. Vargas' opinion at this point. I'm

4 concerned about yours, and what I'm asking you is, you

5 say those 1,054 additional daily trips would cause

6 significant disturbance. What time of the day do those

7 trips occur?

8 A. It would be reflected on the traffic report.

9 Q. So as you sit here, you don't know.

10 A. I can read it in the traffic report. It's not

11 something I have memorized or it's something that I

12 have reflected on my report.

13 Q. Let me ask you this differently. If it was

14 200 daily trips on the same distribution as those

15 1,054, would that be a significant disturbance?

16 A. It would probably be a lesser disturbance.

17 Q. But would it be a significant disturbance?

18 A. It would be lesser disturbance.

19 Q. I understand, but you're not answering my

20 question. You used the term significant disturbance

21 and I'm trying to figure out where that line is.

22 A. It's a fuzzy line. You are trying to look for

23 a line where it's really fuzzy. It depends on a lot of

24 variables.

25 Q. What variables does it depend on?

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1 A. It depends on the time of the day, it depends

2 on --

3 Q. Okay. But you're the expert here and it's

4 your opinion --

5 A. I'm not a traffic expert, though. I'm a

6 planning expert. So my concern is more with how -- not

7 so much with specific numbers, which I'm taking your

8 traffic expert numbers. I'm not contesting his

9 numbers. I'm just using them to infer other things.

10 Q. What I'm asking you is, am I reading your

11 statement in your report incorrectly?

12 A. No, you're not.

13 Q. So it is your professional opinion that the

14 addition of 1,054 daily trips on Bay Road between Dade

15 Boulevard and 18th Street will create a significant

16 disturbance to the safe and orderly operations of Beach

17 Towing as required by their contracts with the City.

18 That is your expert professional opinion?

19 A. Yes.

20 Q. Okay. What I'm asking you is, what number of

21 daily trips on that same roadway would not create a

22 significant disturbance?

23 A. Again, it depends if you're only talking for

24 Beach Towing.

25 Q. I'm asking for your professional opinion.

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1 A. Again, I'm sure they would prefer to have zero

2 trips on that street, but that's not realistic.

3 Q. Right. In your professional opinion, which is

4 what you're offering here. It's the only thing you can

5 offer here.

6 In your professional opinion, forget what

7 Beach Towing would like. I want to know your

8 professional opinion. What number of daily trips would

9 not create a significant disturbance?

10 MR. REISS: Asked and answered, argumentative.

11 THE WITNESS: That's a fuzzy line. There is

12 not a magic number.

13 BY MR. BUCKNER:

14 Q. So you can't answer that for me.

15 A. I don't think anybody could.

16 Q. Okay. But you can't.

17 A. Certainly not.

18 MR. REISS: Can I take a short break?

19 MR. BUCKNER: Yes.

20 (Thereupon a recess was taken in

21 deposition, after which the

22 deposition continued as follows:)

23 BY MR. BUCKNER:

24 Q. Okay. I'm trying to bounce around a little

25 because I want to clear up a few things.

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1 Am I correct that a conditional permit is

2 required for all projects in the City of Miami Beach

3 over 50,000 square feet?

4 A. Not true.

5 Q. What parts of the City is that required?

6 A. Sunset Harbour.

7 Q. Just Sunset Harbour.

8 A. No, and other places, too, but I'm not sure.

9 Q. Okay. Sunset Harbour and other parts of the

10 City, but not the entire City.

11 A. I don't think in the entire City, no.

12 Q. But are you sure?

13 A. No, I'm not sure. I have to check the code

14 for that.

15 Q. Okay.

16 A. I only read the code specific to Sunset

17 Harbour.

18 Q. Here in the last part of your report, you talk

19 about the development proposal by Sunset Land

20 Associates requires additional relief from the City of

21 Miami Beach boards to be approved.

22 A. Yes.

23 Q. And this is your analysis of the proposal

24 under the code.

25 A. Yes. Of the proposal that was submitted as of

<p style="text-align: right;">Page 170</p> <p>1 July, which I believe has changed slightly.</p> <p>2 Q. Okay. So you analyzed the proposal as of July</p> <p>3 and what you did was you applied the code to it.</p> <p>4 A. Yes.</p> <p>5 Q. So, if you would, summarize for me what you</p> <p>6 think. Let me break this into pieces.</p> <p>7 As you sit here, based on your analysis of the</p> <p>8 plan submitted by Sunset Harbour -- strike that.</p> <p>9 As you sit here having analyzed the plan</p> <p>10 submitted by Sunset Land Associates back in July, the</p> <p>11 plans you looked at. By the way, are those plans in</p> <p>12 the materials you gave me on the flash drive?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So whatever plans --</p> <p>15 A. Whatever is in there is what I saw.</p> <p>16 Q. Let's take this in pieces. With regard to</p> <p>17 those plans what, if anything, do you think is</p> <p>18 incorrect about them?</p> <p>19 A. Incorrect? Define incorrect.</p> <p>20 Q. I'm trying to find a way to ask this. I want</p> <p>21 to use your phrase.</p> <p>22 Did you see anything in those plans that you</p> <p>23 thought could not be approved because it doesn't comply</p> <p>24 with the code?</p> <p>25 A. Right now, yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. I see. I misunderstood. Your assessment of</p> <p>2 their July plans were it doesn't provide enough</p> <p>3 parking.</p> <p>4 A. Yes.</p> <p>5 Q. How much does it provide?</p> <p>6 A. It provides only parking for the residential</p> <p>7 portion.</p> <p>8 Q. And how much do you think they shall have</p> <p>9 under the code?</p> <p>10 A. They should provide parking for all the</p> <p>11 additional commercial areas. I haven't calculated the</p> <p>12 number, but enough for 19,000 square feet of commercial</p> <p>13 that add some restaurants.</p> <p>14 Q. But as you sit here, you haven't calculated</p> <p>15 what that number is?</p> <p>16 A. No, but significantly more parking that it's</p> <p>17 currently serving.</p> <p>18 Q. What else about the plan that you reviewed</p> <p>19 cannot be approved in current form?</p> <p>20 A. The height and the parking.</p> <p>21 Q. So when you say the height, it's the five</p> <p>22 feet.</p> <p>23 A. Yes.</p> <p>24 Q. And the parking is the additional spaces.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Tell me what they are.</p> <p>2 A. It would need additional relief from the City.</p> <p>3 Q. What would they need?</p> <p>4 A. They would need approval from the planning</p> <p>5 board for sure.</p> <p>6 Q. Okay.</p> <p>7 A. And the design review board.</p> <p>8 Q. Okay. What else?</p> <p>9 A. And that would include the five extra feet of</p> <p>10 height.</p> <p>11 Q. So they would have to get five extra feet of</p> <p>12 height approved by those boards.</p> <p>13 A. A-ha.</p> <p>14 Q. Is that a yes?</p> <p>15 A. Yes. That's a yes.</p> <p>16 Q. What else?</p> <p>17 A. Let me remind myself what else.</p> <p>18 Q. Sure.</p> <p>19 A. Also the fact that they are not proposing any</p> <p>20 parking on the site right now, I don't believe it's</p> <p>21 correct. I think the town code requires all parking to</p> <p>22 be provided, including for all the commercial parcels.</p> <p>23 Q. The current plans have a parking garage.</p> <p>24 A. It's only providing required parking for the</p> <p>25 residential part. It's not sufficient parking.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. That we just talked about. Other than that,</p> <p>2 anything else?</p> <p>3 MR. REISS: Form.</p> <p>4 THE WITNESS: Define anything else.</p> <p>5 BY MR. BUCKNER:</p> <p>6 Q. Okay.</p> <p>7 A. I didn't find anything else.</p> <p>8 Q. You didn't find anything else that would not</p> <p>9 comply with the current code.</p> <p>10 MR. REISS: Form.</p> <p>11 THE WITNESS: Not in the previous version, no.</p> <p>12 BY MR. BUCKNER:</p> <p>13 Q. I know you haven't reviewed the current</p> <p>14 version. I'm just asking about the one you reviewed.</p> <p>15 A. There has been a lot of versions.</p> <p>16 Q. You say on page 10 of your report, in order to</p> <p>17 be approved, the project would have to add a minimum of</p> <p>18 44 additional parking spaces to satisfy its parking</p> <p>19 requirements.</p> <p>20 A. I get -- that would be based on the previous</p> <p>21 numbers of the -- the previous numbers of the proposal,</p> <p>22 so not on the current proposal, yes.</p> <p>23 Q. I'm only asking about the one you reviewed,</p> <p>24 the July plans.</p> <p>25 A. Yeah, there would be. I guess I did calculate</p>

<p style="text-align: right;">Page 174</p> <p>1 it.</p> <p>2 Q. And can you tell me how you came up with that</p> <p>3 number?</p> <p>4 A. Following the parking requirements for</p> <p>5 commercial and restaurants.</p> <p>6 Q. And you also, in the course of your expert</p> <p>7 work in this case, you reviewed Mr. Vargas' declaration</p> <p>8 with regard to the three hypotheticals --</p> <p>9 A. Yes.</p> <p>10 Q. One is the current -- I guess it's three</p> <p>11 hypotheticals. You reviewed that?</p> <p>12 A. I reviewed that, yes.</p> <p>13 Q. With regard to Mr. Vargas' expert declaration,</p> <p>14 do you have any disagreement with his analysis?</p> <p>15 A. No, not necessarily with the analysis.</p> <p>16 Q. Do you have any disagreement with it at all?</p> <p>17 A. I have a disagreement with the underlying</p> <p>18 premise.</p> <p>19 Q. Which is?</p> <p>20 A. Two of the -- two of the cases had no parking</p> <p>21 on them. Let me go back. Can you point to me where it</p> <p>22 is?</p> <p>23 Q. Actually, I don't think we have --</p> <p>24 A. I want to be specific.</p> <p>25 Q. That's the one thing I may not have a copy of.</p>	<p style="text-align: right;">Page 176</p> <p>1 Have you previously reviewed this?</p> <p>2 A. I read it, yes.</p> <p>3 Q. Thank you. And I asked you what, if anything,</p> <p>4 you disagreed with in Exhibit 17.</p> <p>5 A. I don't disagree with it.</p> <p>6 Q. Okay. And you may have answered this.</p> <p>7 Forgive me if you did. We were talking a moment ago</p> <p>8 about the plans you reviewed, the July plans for the</p> <p>9 project.</p> <p>10 A. A-ha. Approximately --</p> <p>11 Q. I'm not holding you. Whatever ones in the</p> <p>12 flash drive, that's the one you read, right?</p> <p>13 A. Yes.</p> <p>14 Q. And I wasn't sure if I asked you this or not,</p> <p>15 but you brought up it's got to get planning board and</p> <p>16 design review board approval.</p> <p>17 A. Yes. Sometimes they go together, but yes.</p> <p>18 Q. They need the five extra feet of height</p> <p>19 approved.</p> <p>20 A. Yes.</p> <p>21 Q. And they need a minimum of 44 additional</p> <p>22 parking spaces.</p> <p>23 A. Yes.</p> <p>24 Q. Other than those things, is there anything</p> <p>25 else that in your reading of the plans that the project</p>
<p style="text-align: right;">Page 175</p> <p>1 Let's go off the record.</p> <p>2 (Discussion off the record.)</p> <p>3 MR. BUCKNER: Exhibit 17.</p> <p>4 (The document referred to</p> <p>5 was thereupon marked as</p> <p>6 Plaintiff's Exhibit Number</p> <p>7 17 for Identification,</p> <p>8 a copy of which is attached</p> <p>9 hereto.)</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Mr. Vargas' report.</p> <p>12 A. I'm ready when you are.</p> <p>13 Q. A couple of things about this. We talked</p> <p>14 earlier today, you said that under 130-33 of the code,</p> <p>15 the Assemblage, at least theoretically could have up to</p> <p>16 120,000 square feet of commercial on it.</p> <p>17 A. Yes.</p> <p>18 Q. And that analysis is not on Mr. Vargas'</p> <p>19 report.</p> <p>20 A. No.</p> <p>21 Q. He does 22,500, 50,625 and the project,</p> <p>22 correct?</p> <p>23 A. And the project, yeah.</p> <p>24 Q. And so one of the things I asked you was --</p> <p>25 well, maybe I should start at the beginning.</p>	<p style="text-align: right;">Page 177</p> <p>1 needs, but does not have?</p> <p>2 MR. REISS: Form.</p> <p>3 THE WITNESS: There are some things I haven't</p> <p>4 looked at. There are things I haven't considered.</p> <p>5 Like those are the big ticket items.</p> <p>6 BY MR. BUCKNER:</p> <p>7 Q. I just want to know if there is anything I</p> <p>8 missed.</p> <p>9 MR. REISS: Form.</p> <p>10 THE WITNESS: I'm sure there is a lot of</p> <p>11 things you missed, but not that I can think of</p> <p>12 right now.</p> <p>13 BY MR. BUCKNER:</p> <p>14 Q. Okay. And is there anything -- well, strike</p> <p>15 that.</p> <p>16 Are there any -- in talking about your</p> <p>17 analysis that we discussed today and that's in your</p> <p>18 expert report, is there any scholarly literature that</p> <p>19 you rely on that discusses how you do the kind of</p> <p>20 analysis you've done?</p> <p>21 A. I'm sure. I do it more as a matter of</p> <p>22 practice.</p> <p>23 Q. Okay.</p> <p>24 A. So I don't have anything off the top of my</p> <p>25 head that I use on a regular basis as a reference.</p>

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<p>1 Q. Is there anything that would explain how 2 one -- strike that. 3 Is there any reference material, scholarly 4 literature or the like that explains how one does the 5 circulation analysis that you were describing before? 6 A. Again, you do it in architecture school, you 7 do it in urban planning school. That's one thing we 8 get trained to do, yes. So I'm sure there is plenty 9 written out there. 10 Q. But as you sit there, nothing comes to mind? 11 A. No, I wouldn't be referencing one particular. 12 It's more of a scale than anything. 13 Q. Okay. What kind of continuing education do 14 you take to keep up with those skills? 15 A. I'm required to take continuing education. 16 Q. What is the requirement? 17 A. I forget. 36 credits of this and I have to 18 take some planning law and I have to -- some 19 transportation points. It's a long list. 20 Q. And is that required by your job or required 21 by a license? 22 A. My certification. My certification. 23 Q. As a planner. 24 A. As a planner, yes. 25 MR. BUCKNER: Okay. I actually have no more</p>	<p>1 A. Yes, sir. 2 Q. And your experience working for the City of 3 Miami Beach? 4 A. Yes. 5 Q. And also your personal presence in the City of 6 Miami Beach? 7 A. Yes. 8 MR. BUCKNER: Objection, leading. 9 MR. REISS: It's cross. 10 MR. BUCKNER: It's your witness. 11 MR. REISS: You called the witness here today. 12 I'm taking cross. 13 BY MR. REISS: 14 Q. You see where the Beach Towing property is? 15 A. Yes. 16 Q. It says Beach Towing. 17 A. Yes. 18 Q. So there is a building? 19 A. Yes. 20 Q. And then there is a paved storage area? 21 A. Yes. 22 Q. There is no vacant lot there at all, is there? 23 A. Oh, no. 24 Q. It's not vacant land as defined by the code, 25 is there?</p>
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<p>1 questions. 2 CROSS EXAMINATION 3 BY MR. REISS: 4 Q. Super quick. Mr. Buckner was asking you a lot 5 about the Sunset Harbour plans. Do you remember those 6 questions? 7 A. Yes. 8 Q. Did you do a thorough study of the plans to 9 determine in all respects those plans might not comply 10 with the City code? 11 A. No. 12 Q. Were you hired for that purpose? 13 A. No. 14 Q. Did you undertake that process? 15 A. No, sir. 16 Q. So when you told him things that you did pick 17 up on that were not within the scope of the City of 18 Miami Beach code, those were incidental to the reason 19 why you were looking at the plans, correct? 20 A. Yes. 21 Q. Looking at Exhibit 8. You prepared Exhibit 8, 22 right? 23 A. Yes, sir. 24 Q. And you prepared it based on your expertise as 25 a planner, correct?</p>	<p>1 A. No, sir. 2 Q. In fact, the building itself is part of the 3 towing business, correct? 4 A. Yes. 5 MR. BUCKNER: Object to the form. 6 MR. REISS: What's the matter with the form? 7 MR. BUCKNER: You are leading. You can't 8 treat this cross as your witness. 9 MR. REISS: Yes, I can. 10 BY MR. REISS: 11 Q. The storage area is paved, correct? 12 A. The storage area, yes, it's paved. 13 Q. At Beach Towing's property. 14 A. Yes. 15 Q. And there is lighting. 16 A. Yes. 17 Q. And landscaping. 18 A. A little, yes. 19 Q. And there is drainage. 20 A. Yes. 21 Q. It's not vacant land. 22 A. No, sir. 23 MR. BUCKNER: Object to form. 24 BY MR. REISS: 25 Q. Have you read Thomas Mooney's determination</p>

<p style="text-align: right;">Page 182</p> <p>1 dated August 30th, 2018 that Beach Towing's use of the</p> <p>2 property located at 1349 Dade Boulevard is a legal</p> <p>3 nonconforming use?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you agree with that?</p> <p>6 A. I agree with it.</p> <p>7 Q. And in your capacity as an expert planner, do</p> <p>8 you agree with the determination of Thomas Mooney on</p> <p>9 August 30th, 2018 that Beach Towing's use of the</p> <p>10 property located at 1349 Dade Boulevard is a legal</p> <p>11 nonconforming use?</p> <p>12 A. Yes, sir.</p> <p>13 Q. If I understand your testimony, you are</p> <p>14 currently the planner for what city?</p> <p>15 A. The town of Miami Lakes.</p> <p>16 Q. And so if I understand your testimony, you</p> <p>17 hold the position analogous to Thomas Mooney, but up in</p> <p>18 Miami Lakes. Is that correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you consider yourself to be an expert in</p> <p>21 city planning, correct?</p> <p>22 A. Yes.</p> <p>23 Q. I think you were talking during your direct</p> <p>24 examination with Mr. Buckner about what you did in 2010</p> <p>25 to determine what other companies pre-1989 were in the</p>	<p style="text-align: right;">Page 184</p> <p>1 conflict may arise.</p> <p>2 Q. Is traffic a concern in the planning</p> <p>3 department in the City of Miami Beach?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Was it when you worked there?</p> <p>6 A. Yes, sir.</p> <p>7 Q. As a city planner, is traffic a consideration?</p> <p>8 A. It consumes us.</p> <p>9 Q. Is that one of the primary issues a planner</p> <p>10 deals with?</p> <p>11 A. Yes.</p> <p>12 Q. And in the ordinary course in your profession</p> <p>13 as an expert in and planning, do you ordinarily rely on</p> <p>14 traffic reports?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you orderly rely on reports and read</p> <p>17 reports like the ones produced by Mr. Vargas in this</p> <p>18 case?</p> <p>19 A. Yes, sir.</p> <p>20 Q. You mentioned -- do we have his whole report</p> <p>21 here? Do you have it printed out with his appendix?</p> <p>22 A. Yes.</p> <p>23 Q. You mentioned and we were talking about</p> <p>24 whether you found any mistakes. Is that the new report</p> <p>25 or the old report? Which date is that?</p>
<p style="text-align: right;">Page 183</p> <p>1 C-5 and C-6 district doing towing. Do you remember</p> <p>2 that?</p> <p>3 MR. BUCKNER: Object to form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. REISS: What's the matter with the form?</p> <p>6 MR. BUCKNER: I think you are</p> <p>7 mischaracterizing the testimony.</p> <p>8 BY MR. REISS:</p> <p>9 Q. Did I mischaracterize your testimony?</p> <p>10 A. Okay. A little bit.</p> <p>11 Q. Okay. What did you testify to?</p> <p>12 A. I said we did some research into what previous</p> <p>13 licenses had existed at the site.</p> <p>14 Q. Okay. At just that site or at C-5 and C-6?</p> <p>15 A. Just in that site, yes.</p> <p>16 Q. Okay. When you worked at the City of Miami</p> <p>17 Beach in the planning department, was traffic</p> <p>18 circulation an issue that you dealt with?</p> <p>19 A. Yes.</p> <p>20 Q. In what respect?</p> <p>21 A. I did the -- when I did parking analysis, one</p> <p>22 of the things that we looked at a lot was where valet</p> <p>23 operations would store their vehicles and what route</p> <p>24 would be the most expedient to get there and what route</p> <p>25 would be the one they would prefer to use and where</p>	<p style="text-align: right;">Page 185</p> <p>1 A. This is the March, 2018 and I have the new one</p> <p>2 in another folder. The new one is in this folder.</p> <p>3 Q. With the appendix?</p> <p>4 A. Yes.</p> <p>5 Q. Can you go to Vargas 557?</p> <p>6 A. 557 you said?</p> <p>7 Q. Yes. What's your understanding of that</p> <p>8 document?</p> <p>9 A. It's a diagram of an intersection.</p> <p>10 Q. It's part of Mr. Vargas' report?</p> <p>11 A. Yes.</p> <p>12 Q. And is that some of the data that he relies on</p> <p>13 to reach his conclusions?</p> <p>14 A. Yes.</p> <p>15 Q. Is that accurate, that page?</p> <p>16 A. No.</p> <p>17 Q. What's not accurate about it?</p> <p>18 A. Is says the intersection is not signalized and</p> <p>19 this intersection happens to have a light on it.</p> <p>20 Q. Okay. Is that significant?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. If it's part of the report, how do you</p> <p>23 rely on the data if they don't know whether an</p> <p>24 intersection has a signal or not?</p> <p>25 A. Yeah, it makes me wonder.</p>

<p style="text-align: right;">Page 186</p> <p>1 Q. I'm asking because I think you mentioned to</p> <p>2 Mr. Buckner that you didn't find any other mistakes in</p> <p>3 the report and I don't think you mentioned that.</p> <p>4 If you go to the previous page, 556. Is that</p> <p>5 about the same intersection?</p> <p>6 A. 556 is about the same intersection? It would</p> <p>7 appear, yes.</p> <p>8 Q. And what does it say?</p> <p>9 A. Not signalized.</p> <p>10 Q. So that's wrong, too.</p> <p>11 A. Yes.</p> <p>12 Q. So the data is flawed in this report.</p> <p>13 A. Yes.</p> <p>14 Q. So how can you rely on a report when the data</p> <p>15 is obviously flawed?</p> <p>16 A. I have to rely on what I have.</p> <p>17 Q. Okay. So you relied on it despite the fact</p> <p>18 that it's flawed.</p> <p>19 A. I believe so.</p> <p>20 Q. How about as a professional planner in</p> <p>21 general, if you got this on your desk at the City of</p> <p>22 Miami Lakes, would you question the --</p> <p>23 A. I would question him.</p> <p>24 Q. Is that something normally a planner does when</p> <p>25 not reviewing but when reading --</p>	<p style="text-align: right;">Page 188</p> <p>1 is that referring to?</p> <p>2 A. It's referring to the same intersection.</p> <p>3 Q. It says what about whether there is a signal?</p> <p>4 A. It is not signalized.</p> <p>5 Q. As a professional planner, you said one of the</p> <p>6 major issues you deal with is traffic, right?</p> <p>7 A. Yes.</p> <p>8 Q. Is there anything mysterious about your</p> <p>9 conclusion that if there is more cars on a street,</p> <p>10 there is more accidents?</p> <p>11 A. No.</p> <p>12 Q. That's something that requires data to --</p> <p>13 A. Common knowledge, yeah.</p> <p>14 Q. Also, we were talking about the -- let's go to</p> <p>15 your report. Actually, let's go to your diagram,</p> <p>16 Exhibit 15.</p> <p>17 If I understand what you're trying to show</p> <p>18 here, this is generally the traffic circulation, in</p> <p>19 your professional opinion, that would more often than</p> <p>20 not be followed if they built this project with no</p> <p>21 parking garage, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you felt it was in Beach Towing's best</p> <p>24 interest that there not be the parking garage at the</p> <p>25 Sunset Harbour project that they are contemplating</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Yes.</p> <p>2 Q. -- a traffic report?</p> <p>3 A. Yes.</p> <p>4 Q. Go to page 548 in Vargas' report. What is</p> <p>5 that?</p> <p>6 A. Same problem. It's another diagram of an</p> <p>7 intersection.</p> <p>8 Q. How many intersections does this report</p> <p>9 approximately analyze?</p> <p>10 A. Five or six.</p> <p>11 Q. Five or six and two of them he doesn't know</p> <p>12 whether or not there is a signal there.</p> <p>13 A. Yes.</p> <p>14 Q. What intersection is on page 548?</p> <p>15 A. 548 is the intersection of Dade Boulevard and</p> <p>16 Purdy Avenue.</p> <p>17 Q. To your personal knowledge, there is, in fact,</p> <p>18 a signal there.</p> <p>19 A. Yes. I sat at that signal quite a few times.</p> <p>20 Q. It's just a blatant error.</p> <p>21 A. Yes.</p> <p>22 Q. So how can you rely on the traffic count if</p> <p>23 they don't know if there is a light there or not?</p> <p>24 A. Yes, exactly.</p> <p>25 Q. The page before that, 547. What intersection</p>	<p style="text-align: right;">Page 189</p> <p>1 because that would direct most of the traffic away from</p> <p>2 the road where they are towing trucks. Is that</p> <p>3 correct?</p> <p>4 MR. BUCKNER: Object to form.</p> <p>5 THE WITNESS: Rephrase.</p> <p>6 BY MR. REISS:</p> <p>7 Q. Okay. It's my understanding that Exhibit 5 is</p> <p>8 intended to demonstrate that if they built their</p> <p>9 project without a parking garage component, the</p> <p>10 majority of the traffic going to their project would be</p> <p>11 redirected away from Bay Road to the municipal garage.</p> <p>12 A. Yes.</p> <p>13 MR. BUCKNER: Object to form.</p> <p>14 BY MR. REISS:</p> <p>15 Q. Is that the conclusion you are trying to</p> <p>16 depict?</p> <p>17 A. That's the conclusion I'm trying to depict,</p> <p>18 yes.</p> <p>19 Q. And this is a -- and that's your opinion as a</p> <p>20 certified planner, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And is it your -- you say in your report</p> <p>23 having considered all the materials on page seven of</p> <p>24 10, you say adding vehicles to Bay Road and access</p> <p>25 roads around Beach Towing would slow in and out</p>



<p>Page 190</p> <p>1 operations and increase opportunity for accidents to</p> <p>2 complete towing vehicles in privately operated</p> <p>3 vehicles. In conclusion, it is my professional opinion</p> <p>4 it would serve Beach Towing's interest to restrict or</p> <p>5 curtail any parking in its immediate vicinity.</p> <p>6 A. Yes.</p> <p>7 Q. And when you say any parking, would you</p> <p>8 include curtailing a parking lot across the street?</p> <p>9 A. Yes.</p> <p>10 Q. Would that include a storage in a facility</p> <p>11 across the street?</p> <p>12 A. Yes.</p> <p>13 Q. Would that include another tow truck company</p> <p>14 across the street?</p> <p>15 A. Oh, definitely, yes.</p> <p>16 Q. And has there been any change in circumstances</p> <p>17 in the neighborhood since 2003 to today that would</p> <p>18 change your opinion in that regard?</p> <p>19 A. No, sir.</p> <p>20 Q. Traffic has been an issue in Miami Beach since</p> <p>21 you started working there when?</p> <p>22 A. Yes, sir. 2010.</p> <p>23 Q. So traffic has been an issue then and it's an</p> <p>24 issue now.</p> <p>25 A. It's an issue.</p>	<p>Page 192</p> <p>1 Q. And in this project, it's a proposed garage.</p> <p>2 Would your opinion be the same if they were putting a</p> <p>3 parking lot across the street?</p> <p>4 A. Definitely.</p> <p>5 Q. Would your opinion be the same if they were</p> <p>6 putting a storage facility across the street?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Would your opinion be the same if they were</p> <p>9 putting a tow truck company across the street?</p> <p>10 A. Yes.</p> <p>11 Q. That's because the terminus of the trips, to</p> <p>12 use whatever language, I don't know if it's parking or</p> <p>13 if it's traffic or planning, would be across the</p> <p>14 street.</p> <p>15 A. Yes.</p> <p>16 Q. So the more Beach Towing can keep the terminus</p> <p>17 away from across the street on Bay Road where there is</p> <p>18 no other exit between 18th and Dade Boulevard, the</p> <p>19 better it is for Beach Towing.</p> <p>20 A. Definitely. Yes, sir.</p> <p>21 Q. It's your opinion that Beach Towing's use of</p> <p>22 the building and parking storage area adjacent to it at</p> <p>23 1349 Dade Boulevard is a legal nonconforming use.</p> <p>24 A. Yes.</p> <p>25 Q. Do you anticipate, as a city planner, for the</p>
<p>Page 191</p> <p>1 Q. And it's a matter of degree, right? It could</p> <p>2 always be worse. The idea is to try to keep traffic</p> <p>3 flowing as best you can, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And no change in conditions in Sunset Harbour</p> <p>6 over the last 15 years has changed that, has it?</p> <p>7 A. No, not at all.</p> <p>8 Q. Since 2003 to the present, it's your</p> <p>9 professional opinion it would be -- that Beach Towing</p> <p>10 has an interest in keeping as much traffic away from</p> <p>11 Bay Road as possible, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Even if it helps a little bit, it's still in</p> <p>14 Beach Towing's best interest, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. So Exhibit 16, I believe it shows a depiction</p> <p>17 of, if the proposed project goes up, it will be just a</p> <p>18 general description of increased traffic on Bay Road</p> <p>19 where the two tow truck companies are, right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And you agree with Mark Festa that the less</p> <p>22 traffic on Bay Road the better, right?</p> <p>23 A. Yes.</p> <p>24 Q. At least for Beach Towing anyway.</p> <p>25 A. Yes, sir.</p>	<p>Page 193</p> <p>1 foreseeable future, that Beach Towing will continue to</p> <p>2 have an interest in keeping traffic on Bay Road to a</p> <p>3 minimum?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you think anything changing -- do you</p> <p>6 foresee any changes in the neighborhood in the future</p> <p>7 that will undermine that interest?</p> <p>8 A. Quite the opposite.</p> <p>9 Q. Why?</p> <p>10 A. Probably more interest as the neighborhood</p> <p>11 becomes more congested.</p> <p>12 Q. And just because it's getting more congested,</p> <p>13 does that, as a city planner, does that mean that you</p> <p>14 stop trying to keep it from getting worse?</p> <p>15 A. No.</p> <p>16 Q. The worse it gets, actually the more you try</p> <p>17 to keep it to a minimum, correct?</p> <p>18 A. Right.</p> <p>19 Q. Not the opposite.</p> <p>20 A. Right.</p> <p>21 Q. You looked at the affidavit of Ms. Dougherty</p> <p>22 and she listed some changes from allegedly -- she lists</p> <p>23 two sets of changes allegedly in the neighborhood. Do</p> <p>24 you remember going over that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Does any of that have any relationship to</p> <p>2 whether or not Beach Towing would have an interest in</p> <p>3 keeping traffic on Bay Road its sole means of ingress</p> <p>4 and egress to a minimum?</p> <p>5 A. No, it has no bearing.</p> <p>6 Q. So all these changes in the neighborhood have</p> <p>7 nothing to do with Beach Towing's interest in keeping a</p> <p>8 terminus end of a trip for parking from across the</p> <p>9 street.</p> <p>10 A. No, sir.</p> <p>11 Q. No, I'm wrong or it doesn't change your</p> <p>12 opinion?</p> <p>13 A. No, it doesn't change anything.</p> <p>14 MR. BUCKNER: You have a call, Allan.</p> <p>15 MR. REISS: I know. I pushed it off a little</p> <p>16 bit. They are all waiting. I know you have</p> <p>17 redirect, so I'm just trying to wrap. Did I create</p> <p>18 a nightmare? Are you going to go here for another</p> <p>19 hour?</p> <p>20 MR. BUCKNER: No.</p> <p>21 MR. REISS: Did you put that all on the</p> <p>22 record?</p> <p>23 THE REPORTER: Unless you tell me to go off.</p> <p>24 MR. REISS: You're right. I'm wrong. I'm</p> <p>25 speaking to the court reporter.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. And that's why it says figure two, existing</p> <p>2 vehicular circulation.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Exhibit 15 is figure two from your report,</p> <p>5 correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Mr. Reiss asked you, and I don't have</p> <p>8 Vargas 556 and 557, what intersection, we were talking</p> <p>9 about the signalized intersection. Do you recall that?</p> <p>10 A. One is Purdy Avenue and the other one is on</p> <p>11 West, West and Dade Boulevard.</p> <p>12 Q. West and Dade --</p> <p>13 A. Purdy and Dade, yeah.</p> <p>14 Q. Okay. He asked you whether those were</p> <p>15 mistakes in the report, correct?</p> <p>16 A. They are mistakes in the data, yes.</p> <p>17 Q. We are talking about Mr. Vargas' traffic</p> <p>18 analysis for the City, not his expert report here,</p> <p>19 correct?</p> <p>20 A. It's what was submitted in the March version</p> <p>21 of the report, yes.</p> <p>22 Q. The March report to the City.</p> <p>23 A. I would assume it's the one submitted to me.</p> <p>24 I don't know where else he has submitted it.</p> <p>25 Q. I want to make sure that what we are not</p>
<p style="text-align: right;">Page 195</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. To your knowledge, where were you before 1989?</p> <p>3 A. High school.</p> <p>4 MR. REISS: That's all I have.</p> <p>5 MR. BUCKNER: It's up to you. Do you want me</p> <p>6 to do it or do you want to take your call?</p> <p>7 MR. REISS: Can you do it in 10 minutes?</p> <p>8 MR. BUCKNER: I can try.</p> <p>9 REDIRECT EXAMINATION</p> <p>10 BY MR. BUCKNER:</p> <p>11 Q. Let me ask you a few things.</p> <p>12 First of all, Mr. Reiss asked you about</p> <p>13 Exhibit 15. Do you recall that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Exhibit 15, according to your report, is the</p> <p>16 existing vehicular circulation in Sunset Harbour, is it</p> <p>17 not?</p> <p>18 A. Yes.</p> <p>19 Q. That's what it is.</p> <p>20 A. It's how the existing circulation functions,</p> <p>21 yes.</p> <p>22 Q. Today right now.</p> <p>23 A. Yes.</p> <p>24 Q. Without any changes to the area.</p> <p>25 A. Without any changes, yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 referring to is Exhibit 17.</p> <p>2 A. We are not referring to Exhibit 17, no.</p> <p>3 Q. And have you asked Mr. Reiss or Mr. Andrade to</p> <p>4 go have someone do a new traffic study to see if there</p> <p>5 was anything wrong with the Vargas traffic study?</p> <p>6 A. It has been discussed, yes.</p> <p>7 Q. Did you ask them to do it?</p> <p>8 A. It wouldn't be me to ask them.</p> <p>9 Q. Okay. Were you comfortable rendering your</p> <p>10 opinion today based on Mr. Vargas' reports without</p> <p>11 having a new report done?</p> <p>12 A. I'm comfortable using his data with the caveat</p> <p>13 that there is some data that may be not quite great.</p> <p>14 Q. Okay. So you were willing to come in here --</p> <p>15 A. So on a general -- generally yes, I still keep</p> <p>16 that in the back of my mind that there is some mistakes</p> <p>17 in the collection of data.</p> <p>18 Q. And the two mistakes you found were two</p> <p>19 intersections not at issue here, that he had as not</p> <p>20 signalized that actually are signalized, correct?</p> <p>21 A. I don't agree with that.</p> <p>22 Q. Okay. Neither one of them is Bay Road.</p> <p>23 A. Yeah, but they are very important</p> <p>24 intersections.</p> <p>25 Q. Well, before you told me earlier in your</p>

<p style="text-align: right;">Page 198</p> <p>1 testimony when I was asking you to compare Bay to</p> <p>2 Purdy, that Purdy was irrelevant. One of those</p> <p>3 intersections is Purdy and Dade, right?</p> <p>4 A. I did not say the word irrelevant.</p> <p>5 Q. So Purdy, the traffic on Purdy is important in</p> <p>6 your analysis.</p> <p>7 A. I didn't say that either. My analysis, I was</p> <p>8 not looking at Purdy directly. I was more concerned</p> <p>9 with Bay Road. However, for purposes of the traffic</p> <p>10 study, yes, Purdy is very important. I did not</p> <p>11 microanalyze Purdy.</p> <p>12 Q. For purposes of your expert opinion in this</p> <p>13 case, did you look at Purdy Road or not?</p> <p>14 A. I glanced at it.</p> <p>15 Q. Okay. So whether there is a mistake with</p> <p>16 regard to signalizing or not signalizing on Purdy,</p> <p>17 since you just glanced at it, it doesn't affect your</p> <p>18 opinion.</p> <p>19 A. It makes me worry about what else is wrong in</p> <p>20 the report, yes. It makes me look at it more closely.</p> <p>21 Q. So other than those two areas, did you find</p> <p>22 any others?</p> <p>23 A. I didn't go through it with a fine tooth comb.</p> <p>24 Those were very obvious.</p> <p>25 Q. Okay. So the answer to my question is no, you</p>	<p style="text-align: right;">Page 200</p> <p>1 faulty data, correct?</p> <p>2 A. No.</p> <p>3 Q. Is that correct?</p> <p>4 A. Yes, that's correct.</p> <p>5 Q. Okay. So you were willing to come in here</p> <p>6 based on Mr. Vargas' data, correct?</p> <p>7 A. I am not testifying based on Mr. Vargas' data.</p> <p>8 I'm testifying that I have looked at Mr. Vargas' data</p> <p>9 and his numbers inform my opinion, but I'm not basing</p> <p>10 my opinion based on his data solely.</p> <p>11 Q. Well, when you say his numbers inform your</p> <p>12 opinion, do you have any other traffic count numbers</p> <p>13 from any other source other than Mr. Vargas' report?</p> <p>14 A. My opinions don't necessarily come only from</p> <p>15 traffic counts.</p> <p>16 Q. Okay. There are traffic counts in your</p> <p>17 report, are there not?</p> <p>18 A. Yes, and I'm citing Mr. Vargas' numbers.</p> <p>19 Q. So you relied on his report.</p> <p>20 A. It is the report that has been submitted to</p> <p>21 the City, so that is the report that the City is going</p> <p>22 to be working off of, yes.</p> <p>23 Q. And you relied on that report.</p> <p>24 A. The City is relying on that report.</p> <p>25 Q. And you relied on that report.</p>
<p style="text-align: right;">Page 199</p> <p>1 found no other errors.</p> <p>2 A. I found no other errors.</p> <p>3 Q. And you were willing to come in here and</p> <p>4 render do an expert opinion and do an expert report</p> <p>5 based on Mr. Vargas' traffic studies, correct?</p> <p>6 A. Sure.</p> <p>7 Q. And you didn't demand a new traffic study to</p> <p>8 be done before you were willing to render your expert</p> <p>9 opinion, correct?</p> <p>10 A. It is not my place to require traffic studies.</p> <p>11 Q. You are here as an expert witness, right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You were being asked to testify. This is your</p> <p>14 first time testifying as an expert, right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And if you were being asked to testify as an</p> <p>17 expert based on data that you found faulty, would you</p> <p>18 agree to do that?</p> <p>19 A. Probably not.</p> <p>20 Q. Probably not?</p> <p>21 A. Well --</p> <p>22 Q. Are there circumstances under which you would</p> <p>23 come in and testify based on faulty data?</p> <p>24 A. No.</p> <p>25 Q. So you would not testify as an expert based on</p>	<p style="text-align: right;">Page 201</p> <p>1 A. I'm fighting. I'm quoting it.</p> <p>2 Q. Okay. When you include it in your expert</p> <p>3 report, you don't think you are relying on it?</p> <p>4 A. I am quoting it.</p> <p>5 Q. Do you expect the court to ignore that part of</p> <p>6 your expert opinion where you talk about traffic</p> <p>7 counts?</p> <p>8 A. My report is not about the traffic counts.</p> <p>9 I'm just quoting the traffic report. So if the traffic</p> <p>10 counts are right or wrong, I'm not saying that those</p> <p>11 traffic counts are right or wrong. The traffic study</p> <p>12 will say whether those counts are right or wrong. I</p> <p>13 don't have an opinion as to whether they are right or</p> <p>14 wrong.</p> <p>15 Q. So is it your practice as an expert to include</p> <p>16 data that you have questions about in your report?</p> <p>17 A. I'm quoting it, yes.</p> <p>18 Q. Okay. Where in your report does it say I have</p> <p>19 questions about this data?</p> <p>20 A. It doesn't say that, no.</p> <p>21 Q. And so as you sit here, you have no questions</p> <p>22 about this data, do you?</p> <p>23 A. I have questions about this data.</p> <p>24 Q. So you have questions about this data, but you</p> <p>25 haven't put it anywhere in your report that you have</p>

<p style="text-align: right;">Page 202</p> <p>1 questions about this data.</p> <p>2 A. No, I haven't put that in my report.</p> <p>3 Q. You submitted this report as part of your</p> <p>4 testimony as an expert in this case, but you haven't</p> <p>5 told the court that you have questions about the data</p> <p>6 that you're submitting.</p> <p>7 MR. REISS: Objection. That's just nasty and</p> <p>8 argumentative. She's not telling the court</p> <p>9 anything, but go ahead and answer the question.</p> <p>10 THE WITNESS: I'm testifying to it right now.</p> <p>11 BY MR. BUCKNER:</p> <p>12 Q. Okay. And if you had questions -- strike</p> <p>13 that.</p> <p>14 Have you asked Mr. Reiss or Mr. Andrade or</p> <p>15 anybody on their side of the case to go get you new</p> <p>16 data?</p> <p>17 A. I have asked them to consider it, yes.</p> <p>18 Q. Have they done it?</p> <p>19 A. I think they are looking for someone.</p> <p>20 Q. Okay. But as you sit here right now, you are</p> <p>21 testifying based on what's in Mr. Vargas' report.</p> <p>22 MR. REISS: Objection. It's been answered</p> <p>23 like four times.</p> <p>24 THE WITNESS: It's the only data available.</p> <p>25 So yes, I'm basing conclusions on data that was</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Those are scenarios Mr. Reiss just gave you,</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. So the scenario in Exhibit 16 is the proposal</p> <p>5 to build the project that Sunset land plans to build,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. But if under Mr. Reiss' hypothetical, there</p> <p>9 was a parking lot there, the entry and egress point</p> <p>10 could be on Purdy Road, for example, right?</p> <p>11 A. Could be.</p> <p>12 Q. It could be on 18th Street, correct?</p> <p>13 A. Could be.</p> <p>14 Q. And if it was a tow truck company, the entry</p> <p>15 and exit point could be on Purdy, correct?</p> <p>16 A. Could be.</p> <p>17 Q. And it could be on 18th, correct?</p> <p>18 A. No.</p> <p>19 Q. Why couldn't it be on 18th?</p> <p>20 A. Because the block on 18th is already built</p> <p>21 out, so you would have to assemble those lots as well.</p> <p>22 Q. Okay. So it could be on -- we are talking</p> <p>23 about the proposed garage. Doesn't it go all the way</p> <p>24 to 18th Street?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 203</p> <p>1 found in the report submitted by the plaintiff,</p> <p>2 yes.</p> <p>3 BY MR. BUCKNER:</p> <p>4 Q. Okay. Mr. Reiss asked you about Exhibit 16,</p> <p>5 the project with the proposed garage. Do you remember</p> <p>6 those questions?</p> <p>7 A. 16, yes.</p> <p>8 Q. On Exhibit 16, you show the entry and exit</p> <p>9 from the garage. Actually, you just show two points of</p> <p>10 entry into the garage on Bay Road.</p> <p>11 A. Yes.</p> <p>12 Q. Now, if there was a parking lot there instead</p> <p>13 of a garage, there could be -- the entrance could be on</p> <p>14 Purdy for example, right?</p> <p>15 A. That is not the scenario that was submitted.</p> <p>16 Q. I'm not asking you that. Mr. Reiss asked you</p> <p>17 about parking lots. Do you remember that?</p> <p>18 A. Yes.</p> <p>19 Q. And he asked about storage yards.</p> <p>20 A. Yes.</p> <p>21 Q. He asked you about tow truck companies.</p> <p>22 A. Yes.</p> <p>23 Q. None of those scenarios were submitted to the</p> <p>24 City, correct?</p> <p>25 A. Not that I know of.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Is there a building or something in between</p> <p>2 the proposed garage --</p> <p>3 A. Yes.</p> <p>4 Q. -- and 18th Street?</p> <p>5 A. Yes.</p> <p>6 Q. It does not about 18th?</p> <p>7 A. No, it does not.</p> <p>8 Q. So if you had a storage yard on the proposed</p> <p>9 project site, the entry and exit point to that storage</p> <p>10 yard could be on Purdy, correct?</p> <p>11 A. It could potentially be anywhere.</p> <p>12 Q. It doesn't have to be on Bay.</p> <p>13 A. It doesn't have to be on Bay.</p> <p>14 Q. And if it was on any of those other streets,</p> <p>15 it wouldn't affect traffic on Bay.</p> <p>16 A. I would have to see -- I would have to see</p> <p>17 what it looked like and do an analysis of how people</p> <p>18 enter and exit.</p> <p>19 Q. Okay. So as you sit here, if someone put a</p> <p>20 parking lot, a storage yard or tow truck company on</p> <p>21 that proposed space instead of the project that's</p> <p>22 proposed, it's possible that the way it was configured</p> <p>23 might have no impact on traffic on Bay Road.</p> <p>24 A. It depends on the geography and how things are</p> <p>25 configured. Again, it's a hypothetical that I would be</p>

<p style="text-align: right;">Page 206</p> <p>1 uncomfortable answering.</p> <p>2 Q. Well, you answered Mr. Reiss' hypotheticals.</p> <p>3 I'm asking you the same hypotheticals.</p> <p>4 A. Yes, but his hypotheticals did not include</p> <p>5 geography and geometric questions. It's a little</p> <p>6 different.</p> <p>7 Q. Let me ask you this. Instead of putting the</p> <p>8 project on the site, if somebody put a parking lot, is</p> <p>9 there any scenario you can envision under which that</p> <p>10 parking lot would not affect traffic on Bay Road?</p> <p>11 A. It is difficult to answer. It would depend</p> <p>12 how it would be designed.</p> <p>13 Q. You would need to know a lot more.</p> <p>14 A. I would need a lot more information.</p> <p>15 Q. As you sit here today, you cannot tell me</p> <p>16 unequivocally that no matter what a storage yard or</p> <p>17 parking lot or a tow truck company was placed on that</p> <p>18 property, it would definitely affect traffic on Bay</p> <p>19 Road.</p> <p>20 A. I don't understand that question.</p> <p>21 Q. Okay. As you sit here right now --</p> <p>22 A. I'm sitting.</p> <p>23 Q. Hypothetically if the proposed site of this</p> <p>24 project was instead a storage yard parking lot or a tow</p> <p>25 truck company, can you say unequivocally that if it was</p>	<p style="text-align: right;">Page 208</p> <p>1 affect on Bay Road.</p> <p>2 A. Yeah, but very particularly if you include --</p> <p>3 Q. Anything built on that lot. Your testimony is</p> <p>4 anything built on that lot is going to affect traffic</p> <p>5 on Bay Road.</p> <p>6 A. To more degree or less, yes.</p> <p>7 Q. Anything you do with that lot, anything at all</p> <p>8 will increase traffic on Bay Road.</p> <p>9 A. There is a natural increase of traffic that</p> <p>10 happens anyway, and when you increase density in a</p> <p>11 neighborhood, traffic volumes go up naturally. So yes,</p> <p>12 any increase in density will have an increase in Bay</p> <p>13 Road.</p> <p>14 Q. I didn't say increase --</p> <p>15 MR. REISS: You are interrupting her.</p> <p>16 THE WITNESS: If you are adding any use in a</p> <p>17 currently vacant land, any use that you add in a</p> <p>18 currently vacant land is going to increase</p> <p>19 intensity in the neighborhood. Once you start</p> <p>20 increasing intensity in the neighborhood, you are</p> <p>21 increasing the volume of traffic in the</p> <p>22 neighborhood and that is naturally going to</p> <p>23 increase the traffic on Bay Road as an organic way.</p> <p>24 Is there ways in which you can configure land uses</p> <p>25 to not impact one side more than the other? Yes.</p>
<p style="text-align: right;">Page 207</p> <p>1 any of those three things, it would definitely affect</p> <p>2 traffic on Bay Road?</p> <p>3 A. Definitely?</p> <p>4 Q. Yes.</p> <p>5 A. Definitely, as in like?</p> <p>6 Q. Unequivocally, definitely, no set of</p> <p>7 circumstances under which it would not affect traffic</p> <p>8 on Bay Road.</p> <p>9 A. Anything you build on that lot is going to</p> <p>10 affect traffic on Bay Road.</p> <p>11 Q. So you're saying that that lot should be left</p> <p>12 completely undeveloped in order to protect --</p> <p>13 A. There is no -- I have no assertion as to</p> <p>14 whether or not it should be developed at all.</p> <p>15 Q. You are saying any use, any use of that lot at</p> <p>16 all would affect traffic on Bay Road.</p> <p>17 A. That is natural, yes. Any use on any lot in</p> <p>18 the surrounding neighborhood has bearing on any other</p> <p>19 use in the neighborhood, yes. Uses have bearings on</p> <p>20 other uses, yes.</p> <p>21 Q. So if park was built on that lot, would that</p> <p>22 affect on the road?</p> <p>23 A. Yes, it would affect anything that were built</p> <p>24 on any lot would have.</p> <p>25 Q. So anything built on that lot is going to</p>	<p style="text-align: right;">Page 209</p> <p>1 BY MR. BUCKNER:</p> <p>2 Q. So your testimony is any use put to the</p> <p>3 Assemblage -- strike that.</p> <p>4 Any use put to the land that's subject to the</p> <p>5 covenant here is going to increase traffic on Bay Road.</p> <p>6 A. Some uses more than others.</p> <p>7 Q. But is the answer to my question yes?</p> <p>8 A. In a relative way, yes.</p> <p>9 Q. Okay. Some uses will have more --</p> <p>10 A. There are so many caveats on that that I could</p> <p>11 be here all day.</p> <p>12 Q. But that's my question because you don't want</p> <p>13 to say there is any use that could not increase</p> <p>14 traffic. I'm trying to make sure I understand you.</p> <p>15 Is there any use that could be put to the</p> <p>16 property subject to the covenant that would not</p> <p>17 increase traffic on Bay Road?</p> <p>18 A. Again, that's an absolute that I'm</p> <p>19 uncomfortable going to.</p> <p>20 Q. So you can't answer my question.</p> <p>21 A. It's too absolute.</p> <p>22 Q. Mr. Reiss asked you if you put a parking lot</p> <p>23 on the covenant properties, would that increase traffic</p> <p>24 on Bay Road. Your answer was yes.</p> <p>25 A. Yes.</p>

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<p>1 Q. And that would be whether -- no matter where</p> <p>2 the entrance or exit point was for that parking lot.</p> <p>3 A. There would be preferred options for it if we</p> <p>4 had to choose, but any parking on that lot would</p> <p>5 increase traffic on Bay Road, yes.</p> <p>6 Q. No matter where the entrance point was.</p> <p>7 A. Again, some configurations would be preferred.</p> <p>8 Q. That wasn't my question.</p> <p>9 MR. REISS: She can answer it and you can ask</p> <p>10 your next question, but you can't interrupt her.</p> <p>11 Finish your answer.</p> <p>12 THE WITNESS: The configuration is key in this</p> <p>13 whole thing. It's really not about, sometimes it's</p> <p>14 not about -- it is about what you put on it and</p> <p>15 then how you configure it on the lot.</p> <p>16 BY MR. BUCKNER:</p> <p>17 Q. Okay. So if I put a parking lot on the</p> <p>18 covenant property and I configure it so that the</p> <p>19 entrance and exit point was on Purdy, would that</p> <p>20 increase traffic on Bay Road?</p> <p>21 A. Yes.</p> <p>22 Q. If I put a storage yard on the -- strike that.</p> <p>23 If I put storage yard on the covenant property</p> <p>24 and the entry and exit point was only Purdy, would that</p> <p>25 increase traffic on Bay Road?</p>	<p>1 A. In this map.</p> <p>2 Q. Other than this map, anything else?</p> <p>3 A. No, that's it.</p> <p>4 Q. There are no traffic counts on this map.</p> <p>5 A. I'm not a traffic engineer, so I don't do</p> <p>6 traffic counts.</p> <p>7 Q. So you don't know what impact -- well, let me</p> <p>8 ask you. Where on this map does it show what the</p> <p>9 affect of putting a storage yard on the covenant</p> <p>10 property would be?</p> <p>11 A. I didn't do the individual, every individual</p> <p>12 or every variation of an individual. It would be 2,800</p> <p>13 pages if I did that.</p> <p>14 Q. The only thing you studied was whether the</p> <p>15 proposed project, that's the only thing you actually</p> <p>16 studied.</p> <p>17 A. Yes.</p> <p>18 MR. BUCKNER: No further questions.</p> <p>19 RECROSS EXAMINATION</p> <p>20 BY MR. REISS:</p> <p>21 Q. Okay.</p> <p>22 MR. BUCKNER: You don't get re-recross.</p> <p>23 MR. REISS: You can object.</p> <p>24 MR. BUCKNER: I object to this entirely.</p> <p>25 BY MR. REISS:</p>
Page 211	Page 213
<p>1 A. Yes.</p> <p>2 Q. And if I put anything on the covenant</p> <p>3 property, regardless of where the entry and exit point</p> <p>4 is, would that increase traffic?</p> <p>5 A. If there is any vehicles arriving onto the</p> <p>6 covenant properties, whether they are entering from</p> <p>7 Purdy or Bay Road, there is still going to be maybe a</p> <p>8 lesser impact, but there is still going to be an impact</p> <p>9 on Bay Road.</p> <p>10 Q. Let's say I have no parking on the property,</p> <p>11 but I build something there. Is that going to impact</p> <p>12 traffic on Bay Road?</p> <p>13 A. That's probably what's going to impact it the</p> <p>14 least.</p> <p>15 Q. Okay. But it will still impact traffic on Bay</p> <p>16 Road.</p> <p>17 A. Again, any use on the vacant land will</p> <p>18 increase traffic on Bay Road, but it's on a gradient.</p> <p>19 So the gradient will be on the lesser side.</p> <p>20 Q. Okay. Have you done an analysis of those</p> <p>21 hypotheticals that Mr. Reiss gave you to determine</p> <p>22 which of them would be the most or least cause of</p> <p>23 increased traffic on Bay Road?</p> <p>24 A. Yes, I've done a quick analysis.</p> <p>25 Q. Where is that analysis reflected?</p>	<p>1 Q. He was asking you about impact if he put the</p> <p>2 ingress and egress for various projects over on Purdy.</p> <p>3 On their proposed project, if they put the entrance</p> <p>4 over on Purdy instead of Bay, would that reduce the</p> <p>5 impact on Bay?</p> <p>6 A. Yes, sir.</p> <p>7 MR. REISS: No further questions.</p> <p>8 MR. BUCKNER: No further questions. We are</p> <p>9 done.</p> <p>10 MR. REISS: She will read.</p> <p>11 MR. BUCKNER: I'll get back to you.</p> <p>12 MR. REISS: You can e-mail me a copy if he</p> <p>13 orders.</p> <p>14 (The deposition was concluded at 4:30 p.m.)</p> <p>15 (Reading and signing of the deposition was not</p> <p>16 waived by the witness and all parties.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE OF OATH

2 STATE OF FLORIDA

3 COUNTY OF DADE

4

5 I, Victor Selvaggi, Jr., Florida Professional


6 Reporter, Notary Public, State of Florida, certify that

7 SUSANA ALONSO, AICP, personally appeared before me on

8 September 6, 2018 and was duly sworn.

9 Signed this 24th day of September, 2018.

10

11 

12

13 Victor Selvaggi, Jr.

14 Florida Professional Reporter

15 Notary Public, State of Florida

16 Commission No.: DD879317

17 Expires: May 10, 2021

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF DADE

4

5 I, Victor Selvaggi, Jr., Florida Professional

6 Reporter, certify that I was authorized to and did

7 stenographically report the deposition of SUSANA

8 ALONSO, AICP, pages 5 through 213; that a review of the

9 transcript was requested; and that the transcript is a

10 true record of my stenographic notes.

11 I further certify that I am not a relative,

12 employee, attorney, or counsel of any of the parties,


13 nor am I a relative or employee of any of the parties'

14 attorneys or counsel connected with the action, nor am

15 I financially interested in the action.

16 Dated this 24th day of September, 2018.

17

18 

19

20 Victor Selvaggi, Jr., FPR

21 Florida Professional Reporter

22

23

24

25

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1 September 24, 2018

2

3 Susana Alonso, AICP

4 c/o Allan S. Reiss, Esq.

5 Levine & Partners

6 3350 Mary Street

7 Miami, Florida 33133

8

9 In Re: Sunset Land Associates v. Mark Festa

10

11 Deposition taken on September 6, 2018

12 U.S. Legal Support Job No. 1792134

13 The transcript of the above-referenced proceeding has

14 been prepared and is being provided to your office for

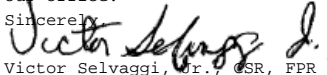
15 review by the witness.

16 We respectfully request that the witness complete their

17 review within 30 days and return the errata sheet to

18 our office.

19 Sincerely,

20 

21 Victor Selvaggi, Jr., FPR

22 U.S. Legal Support

23 One Southeast Third Avenue

24 Miami, Florida 33131

25 (305)373-8404

David M. Buckner, Esq.

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1 ERRATA SHEET

2 DO NOT WRITE ON THE TRANSCRIPT

3 ENTER CHANGES ON THIS PAGE

4 IN RE: Sunset Land v. Mark Festa

5 Susana Alonso, AICP

6 September 6, 2018

7 Job No. 1792134

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Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Date \_\_\_\_\_ Susana Alonso, AICP

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# **EXHIBIT “J”**

ORDINANCE NO. 2008-3608

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," BY CLARIFYING PURPOSE AND PERMITTED USES; AMENDING CHAPTER 130, "OFF-STREET PARKING," ARTICLE III, "DESIGN STANDARDS," BY ADDING THE I-1 DISTRICT AS A DISTRICT PERMITTING GARAGES AS A MAIN USE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the district purpose of the I-1, Light Industrial District is not clearly defined and requires clarity in order to avoid adverse impacts on the surrounding residential and commercial districts; and

**WHEREAS**, the residents of the Sunset Harbor neighborhood are concerned that uses in the I-1 Light Industrial District may have an adverse impact on their quality of life; and

**WHEREAS**, at the January 23, 2007 meeting, the Planning Board held a workshop open to the public regarding issues within the Sunset Harbor Neighborhood, and the I-1, Light Industrial District; and

**WHEREAS**, at the March 27, 2007 meeting, the Planning Board directed Planning Department staff to prepare an amendment to the Land Development Regulations of the City Code that clarifies the Purpose and Permitted Uses for the I-1 zoning district; and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**Section 1.** That Chapter 142, "Zoning Districts and Regulations," Division 11, "I-1 Light Industrial District," is hereby amended as follows:

Division 11. I-1 Urban Light Industrial District\*

**Section 142-481. Purpose.**

The primary purpose of the I-1 urban light industrial district is a utilitarian district characterized by offices on the second floor, sales, storage, processing, wholesaling, motor vehicles repairs and towing services. This district shall not include any residential uses. to permit light industrial uses that are generally compatible with one another and with adjoining residential or commercial districts. Uses that are compatible and complement light industrial uses, such as a limited range of offices, and commercial

uses shall also be permitted. This district shall not include any residential uses.

**Section 142-482. Main permitted uses.**

The main permitted uses in the I-1 urban light industrial district are those uses that are consistent with the district purpose including the following:

1. Assembly or packaging of goods including food and beverage products, small electronics, watches, jewelry, clocks, musical instruments, and products from previously prepared materials (cloth, leather, canvas, rubber, etc.);
2. Light manufacturing, including: ceramic products, glass products, hand tools, and electronic equipment;
3. Professional, business, research or administrative offices, either as a main permitted use or as part of a permitted industrial use;
4. Printing, engraving, lithographing, and publishing;
5. Wholesale businesses and sales, warehouses, mini and other storage buildings, and distribution facilities, except those storing or distributing flammable or explosive materials;
6. Automobile service stations, including car wash, auto repair, and towing services;
7. Machine shop, welding shop, furniture, cabinet and wood working shops, glass blowing shop;
8. Plumbing, electrical, and other similar type shops, which may wholesale and store parts on site;
9. Tailoring services, including dry cleaning;
10. Main Use Parking Garages and Parking Lots;
11. Utilities;
12. Landscaping services, including nursery facilities;
13. Commercial uses that provide support services to the light industrial uses and to the adjacent RM-3 residents, including retail sales, photocopying, coffee shop, standard restaurant, video rental, bank;
14. Marine-related uses; and
15. Any use similar and compatible to the uses described in this district and the district purpose as determined by the Planning Director.



#### **Section 142-483. Conditional uses.**

The conditional uses in the I-1 urban light industrial district are any use ~~which~~ that includes the retail sale of gasoline; new construction of structures, as defined in section 114-1, of 50,000 square feet and over, which review shall be the first step in the process before the review by any of the other land development boards; recycling receiving stations; outdoor entertainment establishment; neighborhood impact establishment; open air entertainment establishment.

#### **Section 142-484. Accessory uses.**

The accessory uses in the I-1 urban light industrial district are as follows: Those uses customarily associated with the district purpose. (See article IV, division 2 of this chapter).

#### **Section 142-485. Prohibited uses.**

The prohibited uses in the I-1 urban light industrial district are accessory outdoor bar counters, bars, dance halls, or entertainment establishments (as defined in section 114-1 of this Code), and all residential uses.

**Section 2.** That Chapter 130, "Off-Street," Article III, "Design Standards," is hereby amended as follows:

#### **Section 130-68. Commercial and noncommercial parking garages.**

Commercial and noncommercial parking garages as a main use on a separate lot shall be subject to the following regulations, in addition to the other regulations of this article:

- (1) When located in the CD-1, CD-2, CD-3, C-PS1, C-PS2, C-PS3, C-PS4, and MXE and I-1 districts and in GU districts adjacent to commercial districts, a commercial or noncommercial parking garage shall incorporate the following:
  - a. Residential (when permitted) or commercial uses at the first level along every facade facing a street, sidewalk, waterway or the ocean. For properties not having access to an alley, the required residential or commercial space shall accommodate entrance and exit drives.
  - b. Residential (when permitted) or commercial uses above the first level along every facade facing a waterway or the ocean.
  - c. All facades above the first level, facing a street or sidewalk, shall include a substantial portion of residential or commercial uses; the total amount of residential or commercial space shall be determined by the design review or historic preservation board, as applicable, based upon their respective criteria.

However, in no instance shall the above described residential (when permitted) or commercial spaces exceed 25 percent of the total floor area of the structure. Additionally, in no instance shall the amount of floor area of the structure used for parking, exclusive of the required parking for the above described residential or commercial space, be less than 50 percent of the total floor area of the structure, so as



to insure that the structure's main use is as a parking garage.

\* \* \*

**Section 130-70. Temporary parking lot standards.**

- (1) Temporary commercial or noncommercial parking lots may be operated in the MR marine district, GU government use district, MXE mixed use entertainment district, I-1 urban light industrial district or in any commercial district. These lots may be operated independent of a primary use. Temporary, noncommercial lots may be located in the R-PS1--4 and in any multifamily residential district or within the architectural district as defined in section 114-1. One sign per street frontage is permitted. The maximum size of each sign shall be five square feet per 50 feet of street frontage. This sign shall also include copy that indicates the name of the operator, the phone number of operator to report complaints, and who can use the parking facility; i.e., whether it is open to the general public, private, valet or self-parking.

\* \* \*

**Section 130-71. Provisional parking lot standards.**

When permitted, the following standards are established for provisional parking lots:

- (1) Provisional commercial or noncommercial parking lots may be operated in the CD1-3 (commercial, low to high intensity) districts, CPS-1 and 2 (commercial performance standards districts), I-1 (urban light industrial) district, and MXE (mixed use entertainment) district. These lots may be operated independent of a primary use. One sign per street frontage is permitted. The maximum size of each sign shall be five square feet per 50 feet of street frontage, not to exceed 20 square feet. This sign shall also include copy that indicates the name of the operator, the phone number of operator to report complaints, the phone number for Code Compliance, and who can use the parking facility; i.e., whether it is open to the general public, private, valet or self-parking.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

**SECTION 4. CODIFICATION.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 5. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

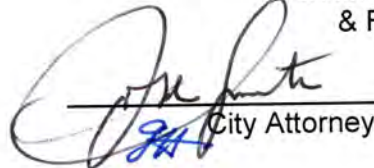
PASSED and ADOPTED this 25th day of June, 2008.

  
Matti Herrera Bower, **MAYOR**

ATTEST:

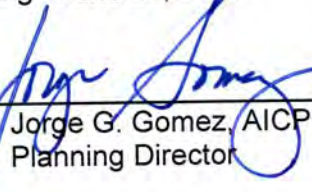
  
CITY CLERK Robert Parcher

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

 6/26/08  
City Attorney Date

First Reading: April 16, 2008  
Second Reading: June 25, 2008

Verified by:

  
Jorge G. Gomez, AICP  
Planning Director

Underscore denotes new language

T:\AGENDA\2008\June 25\Regular\1830 - Urban Light Industrial Ord.doc

# **EXHIBIT “K”**

ORDINANCE NO. 2009-3663

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," DIVISION 11, "I-1 URBAN LIGHT INDUSTRIAL DISTRICT," BY AMENDING THE LIST OF PERMITTED, CONDITIONAL AND PROHIBITED USES; AND BY AMENDING SECTION 142-487 "SETBACK REQUIREMENTS;" PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the residents of the Sunset Harbor neighborhood are concerned that uses in the I-1 Urban Light Industrial District may have an adverse impact on their quality of life; and

**WHEREAS**, the Land Use and Development Committee discussed the I-1 Urban Light Industrial district in the context of the Sunset Harbour neighborhood and directed staff to address resident's concerns about incompatible uses by amendments to the existing district regulations; and

**WHEREAS**, Planning Department staff held a community workshop meeting with Sunset Harbour residents, and has crafted a proposed ordinance amendment reflecting the consensus reached with regard to the various uses which would be permitted in the district.

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**Section 1.** That Chapter 142, "Zoning Districts and Regulations," Division 11, "I-1 Light Industrial District," is hereby amended as follows:

**DIVISION 11. I-1 LIGHT INDUSTRIAL DISTRICT**

**Sec. 142-481. Purpose.**

The primary purpose of the I-1 urban light industrial district is to permit light industrial uses that are generally compatible with one another and with adjoining residential or commercial districts. Uses that are compatible and complement light industrial uses, such as a limited range of offices, and commercial uses shall also be permitted. This district shall not include any residential uses, except as provided herein.

Sec. 142-482. Main permitted uses.

The main permitted uses in the I-1 urban light industrial district are those uses that are consistent with the district purpose including the following:

- (1) Assembly or packaging of goods not utilizing heavy machinery, including food and beverage products, small electronics, watches, jewelry, clocks, musical instruments, and products from previously prepared materials (cloth, leather, canvas, rubber, etc.);
- (2) Light manufacturing, not utilizing heavy machinery, including: ceramic products, glass products, hand tools, and electronic equipment;
- (3) Professional, business, research or administrative offices, either as a main permitted use or as part of a permitted light-industrial use;
- (4) Printing, engraving, lithographing, media services and publishing, not utilizing heavy machinery;
- (5) Wholesale businesses and sales, warehouses, mini and other storage buildings, and distribution facilities, except those storing or distributing flammable or explosive materials;
- (6) ~~Automobile service stations, including~~ Hand car wash services, ~~auto repair, and towing services~~;
- (7) ~~Machine shop, welding shop~~ Artisan studios, including but not limited to crafts, furniture, cabinet and wood working shops, glass blowing and similar shops;
- (8) Plumbing, electrical, air conditioning and other similar type shops, which may wholesale and store parts on site;
- (9) Tailoring services, including dry cleaning;
- (10) Main use parking garages and parking lots;
- (11) Utilities;
- (12) Landscaping services, including nursery facilities;
- (13) Commercial uses that provide support services to the light industrial uses and to the adjacent RM-3 residents, including retail sales, photocopying, coffee shop, standard restaurant, video rental, bank;
- (14) Marine-related uses (when located adjacent to waterfront areas); and
- (15) Any use similar and compatible to the uses described in this district and the district purpose as determined by the planning director.

Sec. 142-483. Conditional uses.

The conditional uses in the I-1 urban light industrial district are:

- (1) any use that includes the retail sale of gasoline;
- (2) automobile service stations;
- (3) mechanical car wash facilities;
- (4) auto repair;
- (5) new construction of structures, as defined in section 114-1, of 50,000 square feet and over, which review shall be the first step in the process before the review by any of the other land development boards;
- (6) Developments on properties ~~made up of more~~ greater than 20,000 square feet of lot area.
- (7) machine, welding, and printing shops, involving heavy machinery
- (8) recycling receiving stations;
- (9) utilities;
- (10) residential uses, including live-work units, when included in rehabilitation of buildings existing as of the date of this ordinance October 24, 2009;
- (11) ~~outdoor entertainment establishment; neighborhood impact establishment; open air entertainment establishment. and,~~
- (12) towing services:  
Lots reviewed pursuant to the conditional use process shall also comply with the following criteria:
  - (1) A schedule of hours of vehicle storage and of hours of operation shall be submitted for review and approval by the planning board.
  - (2) If the towing yard is proposed to be within 100 feet of a property line of a lot upon which there is a residential use, the planning board shall analyze the impact of such storage and/or parking on the residential use. The analysis shall include, but not be limited to, visual impacts, noise, odors, effect of egress and ingress and any other relevant factor that may have an impact on the residential use.

- (c) Towing yards must be fully screened from view as seen from any right-of-way or adjoining property, when viewed from five feet six inches above grade, with an opaque wood fence, masonry wall or other opaque screening device not less than six feet in height.
- (d) Parking spaces, backup areas and drives shall be appropriately dimensioned for the type of vehicles being parked or stored.
- (e) Towing yards shall be required to satisfy the landscaping requirements of subsection 126-6(2), and shall be subject to the design review procedures, requirements and criteria as set forth in chapter 118, article VI.

Sec. 142-484. Accessory uses.

The accessory uses in the I-1 urban light industrial district are as follows: Those uses customarily associated with the district purpose. (See article IV, division 2 of this chapter).

Sec. 142-485. Prohibited uses.

The prohibited uses in the I-1 urban light industrial district are accessory outdoor bar counters, bars, dance halls, or entertainment establishments (as defined in section 114-1 of this Code) and all residential uses, except as provided for in Section 142-483(10).

Sec. 142-486. Development regulations.

There are no lot area, lot width or unit area or unit size requirements in the I-1 light industrial district. The maximum floor area ratio, building height and story requirements are as follows:

- (1) Maximum floor area ratio is 1.0.
- (2) Maximum building height is 40 feet.
- (3) Maximum number of stories is four.

Sec. 142-487. Setback requirements.

The setback requirements for the I-1 light industrial district are as follows:

- (1) Front yard: 20 feet when abutting a residential district, otherwise none.
- (2) Side yard, interior: Ten feet when abutting a residential district, otherwise none.

(3) Side yard, facing a street: Ten feet when abutting a residential district, otherwise none.

(4) Rear yard: Ten feet when abutting a residential district, otherwise none.

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

**SECTION 3. CODIFICATION.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.


**PASSED and ADOPTED** this 14th day of October, 2009.

  
Matti Herrera Bower **MAYOR**

**ATTEST:**

  
CITY CLERK Robert Parcher

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

  
City Attorney 11/2/09 Date

First Reading: September 9, 2009  
Second Reading: October 14, 2009

Verified by:

  
Jorge G. Gomez, AICP  
Planning Director

Underscore denotes new language



# **EXHIBIT “L”**

**CITY OF MIAMI BEACH**  
**CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT**

---

1700 Convention Center Drive  
Miami Beach, Florida 33139-1819

TRADE NAME: ALTON GULF SERVICE INC  
DBA: ALTON GULF SERVICE INC  
IN CARE OF: VINCENT FESTA  
ADDRESS: 1349 Dade Blvd  
MIAMI BEACH, FL 33139-1420

LICENSE NUMBER: RL-85017671  
Beginning: 10/04/2018  
Expires: 09/30/2019  
Parcel No: 0232330120680

TRADE ADDRESS: 1349 Dade Blvd

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

Code	Business Type
95008302	AUTOMOBILE/TRUCK: BODY SHOP, GARAGE, STORAGE

Repair Shops: #Locations	1
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This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Additional Information

Storage Locations

FROM: CITY OF MIAMI BEACH  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139-1819

PRESORTED  
FIRST CLASS  
U.S. POSTAGE  
PAID  
MIAMI BEACH, FL  
PERMIT No 1525

ALTON GULF SERVICE INC  
1349 Dade Blvd  
MIAMI BEACH, FL 33139-1420  
[Barcode]

**1700 Convention Center Drive  
Miami Beach, Florida 33139-1819**

**LICENSE NUMBER:** RL-10003672  
**Beginning:** 10/04/2018  
**Expires:** 09/30/2019  
**Parcel No:** 0232330120680

Truck/Wrecker Service: #Trucks	1
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**PRESORTED  
FIRST CLASS  
U.S. POSTAGE  
PAID  
MIAMI BEACH, FL  
PERMIT No 1525**

BEACH TOWING SERVICES OF MIAMI INC  
1349 Dade Blvd, #B  
MIAMI BEACH, FL 33139-1420

**1700 Convention Center Drive  
Miami Beach, Florida 33139-1819**

**LICENSE NUMBER:** RL-86098263  
**Beginning:** 10/04/2018  
**Expires:** 09/30/2019  
**Parcel No:** 0232330120680

Truck/Wrecker Service: #Trucks	8
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**PRESORTED  
FIRST CLASS  
U.S. POSTAGE  
PAID  
MIAMI BEACH, FL  
PERMIT No 1525**

BEACH TOWING SERVICES, INC.  
1349 Dade Blvd  
MIAMI BEACH, FL 33139-1420  
[Barcode]

Company Name	DBA Name	Business Type	License Number	License Type	Classification	Address	Status	Application Date	Issue Date	Expiration Date
BEACH TOWING SERVICES OF MIAMI INC	BEACH TOWING SERVICES OF MIAMI INC	WRECKER/TOWING SERVICE	RL-10003672	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2015 12:00:00 AM	10/01/2016	09/30/2017
BEACH TOWING SERVICES OF MIAMI INC	BEACH TOWING SERVICES OF MIAMI INC	WRECKER/TOWING SERVICE	RL-10003672	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Active	7/3/2018 7:38:54 PM	10/04/2018	09/30/2019
BEACH TOWING SERVICES OF MIAMI INC	BEACH TOWING SERVICES OF MIAMI INC	WRECKER/TOWING SERVICE	RL-10003672	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2017 12:00:00 AM	10/01/2017	09/30/2018
BEACH TOWING SERVICES OF MIAMI INC	BEACH TOWING SERVICES OF MIAMI INC	TOW TRUCK, WRECKER	RL-10003672	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2015 12:00:00 AM	10/01/2015	09/30/2016
BEACH TOWING SERVICES, INC.	BEACH TOWING SERVICES, INC.									
BEACH TOWING SERVICES, INC.	BEACH TOWING SERVICES, INC.	WRECKER/TOWING SERVICE	RL-86098263	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2015 12:00:00 AM	10/01/2016	09/30/2017
BEACH TOWING SERVICES, INC.	BEACH TOWING SERVICES, INC.	TOW TRUCK, WRECKER	RL-86098263	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2015 12:00:00 AM	10/01/2015	09/30/2016

Company Name	DBA Name	Business Type	License Number	License Type	Classification	Address	Status	Application Date	Issue Date	Expiration Date
BEACH TOWING SERVICES, INC.	BEACH TOWING SERVICES, INC.	WRECKER/TOWING SERVICE	RL-86098263	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Active	7/3/2018 9:15:10 PM	10/04/2018	09/30/2019
BEACH TOWING SERVICES, INC.	BEACH TOWING SERVICES, INC.	WRECKER/TOWING SERVICE	RL-86098263	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL 33139-1420	Expired	10/1/2017 12:00:00 AM	10/01/2017	09/30/2018
MIAMI BEACH TOWING SERVICES, INC.		WRECKER/TOWING SERVICE	BTR004246-06-2018	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL -331391420	Pending	6/4/2018 10:51:26 AM		
MIAMI BEACH TOWING SERVICES, INC.		WRECKER/TOWING SERVICE	BTR004246-06-2018	Business License	BTR	1349 DADE BLVD MIAMI BEACH, FL -331391420	Pending	8/1/2018 1:22:57 AM		

**RESOLUTION NO.            2018-30161**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE RENEWAL OF THE POLICE AND PARKING DEPARTMENT TOWING PERMITS TO BEACH TOWING SERVICES, INC. AND TREMONT TOWING, INC. FOR A TERM OF ONE (1) YEAR, COMMENCING ON MARCH 1, 2018 AND EXPIRING ON FEBRUARY 28, 2019.**

**WHEREAS**, Article V, Division 2, Sections 106-211 through 106-222, of the Miami Beach City Code, provides for the issuance by the City Commission of towing permits for the towing of vehicles identified by the City as requiring removal from the public way (the Police and Parking Department Towing Permits); and

**WHEREAS**, on January 11, 2006, the Mayor and City Commission approved Resolution No. 2006-26100, issuing Towing Permits to Beach Towing Services, Inc., and Tremont Towing, Inc. (collectively, the "Permittees") commencing on March 1, 2006, and expiring on February 28, 2009; and

**WHEREAS**, on January 28, 2009, the Mayor and City Commission approved Resolution No. 2009-26999, extending the Towing Permits issued to Permittees commencing on March 1, 2009, and expiring no later than August 31, 2009; and

**WHEREAS**, on July 22, 2009, the Mayor and City Commission approved Resolution No. 2009-27151, extending the Towing Permits issued to Permittees, commencing on September 1, 2009 and expiring on the earlier of August 31, 2011, or the date that Tremont Towing, Inc. was required to vacate its then current premises for commencement of construction of the Sunset Harbor Garage Project; and

**WHEREAS**, on July 13, 2011, the Mayor and City Commission approved Resolution No. 2011-27689, extending the Towing Permits issued to Permittees, commencing on September 1, 2011, and expiring on December 31, 2011; and

**WHEREAS**, the term of the Towing Permits issued to Permittees expired on December 31, 2011, and were extended on a month-to-month term through November 30, 2012; and

**WHEREAS**, on November 14, 2012, the Mayor and City Commission approved Resolution No. 2012-28069, issuing new Towing Permits to Permittees, commencing on December 1, 2012 and expiring on November 30, 2015; and

**WHEREAS**, on February 11, 2015, the Mayor and City Commission approved Resolution No. 2015-28918, extending the Towing Permits issued to Permittees, commencing on March 1, 2015 and expiring on February 28, 2018; and

**WHEREAS**, the Permittees are the only two service providers which satisfy all the requirements in the Miami Beach City Code and Administrative Rules and Regulations for the Police and Parking Department Towing Permits, including the requirement to provide vehicle storage facilities within the City limits; and

**WHEREAS**, the removal of improperly parked and disabled vehicles from the public way is a necessary tool for the Police Department and Parking Department to properly manage traffic and parking throughout the City; and

**WHEREAS**, pursuant to Section 106-214 of the City's Code, the City Manager has reviewed the Permittees' application and considered all relevant factors, and recommends the approval of two (2) permits and the renewal of Permittees for said permits; and

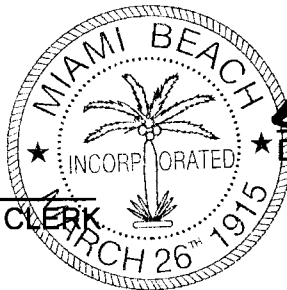
**WHEREAS**, one February 14, 2018, the Mayor and City Commission approved the towing permits to the Permittees for a period of one (1) year; directed the Administration to work with the Permittees to improve service and tow yard enclosures; and further referred the item to the Neighborhood/Community Affairs Committee.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve the renewal of the Police and Parking Department Towing Permits to Beach Towing Services, Inc. and Tremont Towing, Inc. for a term of one (1) year, commencing on March 1, 2018 and expiring on February 28, 2019.

**PASSED and ADOPTED** this 14th day of February, 2018.

**ATTEST:**

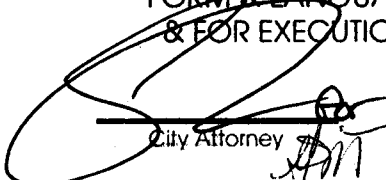
  
\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK



  
\_\_\_\_\_  
DAN GELBER, MAYOR

JLM/KGB/SF  
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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

3/5/18  
Date



# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: February 14, 2018

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER (AS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION) AND APPROVING THE RENEWAL OF THE POLICE AND PARKING DEPARTMENT TOWING PERMITS TO BEACH TOWING SERVICES, INC. AND TREMONT TOWING, INC., WITH SAID PERMITS HAVING A THREE (3) YEAR TERM, COMMENCING ON MARCH 1, 2018 AND EXPIRING ON FEBRUARY 28, 2021.

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### **RECOMMENDATION**

Approve the Resolution extending the Police and Parking Departments Towing Permits to the "Permittees", Beach Towing Services, Inc. and Tremont Towing Services, Inc., commencing on March 1, 2018 and expiring on February 28, 2021.

### **ANALYSIS**

Vehicle impoundment is a traffic/parking management tool that allows for the removal of a vehicle for either public safety reasons or unauthorized use of a parking space. A byproduct is that towing also serves as an educational tool and a disincentive for illegal parking.

Chapter 106, Article V, Division 2 of the Miami Beach City Code, provides for the issuance by the Mayor and City Commission of two (2) towing permits for the towing of vehicles identified by the City as requiring removal from the public right-of-way.

On November 14, 2012, the Mayor and City Commission approved Resolution No. 2012-28069, issuing new Towing Permits to the Permittees which commenced on December 1, 2012 and expired on November 30, 2015. On February 11, 2015, the Mayor and City Commission approved Resolution No. 2015-28918, extending the Towing Permits issued to the Permittees, commencing on March 1, 2015 and expiring on February 28, 2018.

The Police Department and Parking Department utilize Beach Towing Services, Inc. and Tremont Towing Services, Inc. for the removal of vehicles in the course of each department's duties. Moreover, both "Beach" and "Tremont" are the only qualified towing service providers who satisfy the permit requirement for vehicle storage to be maintained within the city limits.

The alternative would require relaxation of this requirement which would then allow vehicle storage in Miami-Dade County. However, this is not recommended as visitors and/or residents would then be required to travel to the mainland to retrieve their vehicle, causing more delay, expense, and

frustration to an already somewhat traumatic experience. Although vehicle impoundment is a necessary tool in parking enforcement and designed to be an incentive to park legally, the patron's vehicle retrieval process should certainly be an efficient and expedient one.

### **CONCLUSION**

The Administration recommends the Mayor and City Commission adopt the Resolution approving an extension of the Police and Parking Departments Towing Permits to the "Permittees", Beach Towing Services, Inc. and Tremont Towing Services, Inc., commencing on March 1, 2018 and expiring on February 28, 2021.

### **Legislative Tracking**

Parking

### **Sponsor**

Vice-Mayor John Elizabeth Aleman

### **ATTACHMENTS:**

#### **Description**

- Resolution
- Administrative Rules and Regulations for Police and Parking Towing

**CITY OF MIAMI BEACH**  
**ADMINISTRATIVE RULES AND REGULATIONS**  
**FOR**  
**POLICE AND PARKING TOWING PERMITS**  
**REVISED ON DECEMBER 13, 2017**

**ATTACHMENT 1**

# **CITY OF MIAMI BEACH ADMINISTRATIVE RULES AND REGULATIONS FOR POLICE AND PARKING TOWING PERMITS**

## Introduction

Pursuant to Section 106-212 of the City Code, and subject to City Commission approval, the City Manager shall promulgate rules and regulations as may be necessary to govern the discharge of towing or storage of vehicles identified by the City of Miami Beach Police Department (hereinafter, "MBPD" or the Police Department) as requiring removal from the public right of ways. Each applicant issued a permit by the City to tow or store vehicles, in accordance with Article V (entitled, "Police Vehicle Towing"), Division 2, Sections 106-211 through 106-255 of the City Code, shall comply at all times with the administrative rules and regulations hereinafter set forth, and as same may be amended from time to time (the "Administrative Rules and Regulations"). An applicant issued a permit to tow or store vehicles (hereinafter, the "Permit") pursuant to the aforestated Code section shall hereinafter be referred to as a "Permittee".

A Permittee's failure to comply may result in suspension or revocation of a Permit by the City Manager.

### **1. QUALIFICATIONS OF APPLICANT**

Prior to the issuance of a Permit, an applicant shall be required to evidence, to the reasonable satisfaction of the City Manager, that it has the necessary facilities, equipment, skills, personnel, and financial responsibility to furnish the services required under the Permit in a satisfactory manner. An applicant shall be required to evidence a record of satisfactory past performance, and, in support thereof, may be required to submit references and provide such other documentation, upon request by the City Manager. Failure to qualify with any or all of the following requirements shall be

sufficient justification for the City Manager to reject an application for a Permit (including rejection for renewal of a Permit).

## **2. COMPETENCY OF APPLICANTS**

Permit applications shall only be considered from firms with proven experience in the towing business, which have an established and satisfactory record of performance, and have available the required equipment, facilities, storage space, and personnel sufficient to ensure that they can properly execute the work/services required. The City Manager or his designee reserves the right to inspect an applicant's existing or proposed facilities and storage space following submission of a Permit application.

To receive consideration, an applicant must identify a facility (which serves as its base of operations) and storage space located within the city limits of the City of Miami Beach.

Applicants must have all necessary licenses and permits, as required to operate and provide the required work/services including, without limitation, all applicable licenses and permits required by the City, Miami-Dade County, and the State of Florida.

By City's issuance of the Permit, and acceptance of the Permit by applicant/Permittee, applicant/Permittee thereby represents and warrants to the City that it has made itself familiar with all applicable Federal, State, Miami-Dade County, and City laws, ordinances, and rules and regulations that may, in any way, affect and/or apply to the work/services to be provided (and applicant/Permittee shall continue to make itself aware and familiar with any subsequent updates in any such laws). Ignorance of the law on the part of the applicant/Permittee will in no way relieve it from any responsibility and/or liability under the Permit.

By submission of an application, the applicant shall declare, represent and certify to the City that the only person or persons interested in the Permit is/are the principal or principals named therein; that no person or persons (other than therein mentioned) has/have any interest in the Permit; that the Permit is issued by the City without connection to any person(s), company(ies) or party(ies) making the application; and that it is in all respects fair, in good faith, and without collusion or fraud.

### **3. PERMIT FEE/MONTHLY BILLING**

Permittee shall pay to the City a monthly Permit fee, in the amount of \$30.00, for each vehicle towed. The monthly Permit fee shall be reduced to \$25.00 for each vehicle towed that receives a Miami Beach Resident Discount pursuant to Section 22.M herein.

The City shall bill Permittee, by the 10th of each month, for all tows occurring in the previous month. A late charge of \$50.00, plus the greater of (i) eighteen percent (18%) interest per annum, or ii) the maximum rate allowable under Florida law, shall be assessed on all payments received after the 20th day of the billing month.

Payments to the City shall be by check and remitted to the City of Miami Beach Finance Department (Revenue Section). Checks shall be clearly marked "Police Tow" or "Parking Department Tow."

### **4. INDEMNIFICATION/HOLD HARMLESS AND INSURANCE REQUIREMENTS**

Permittee shall be responsible for any work and services, and every part thereof, undertaken pursuant to the Permit. For purposes of this Section 4, the term "Permittee" shall include, without limitation, all Permittee's officers, directors, employees, agents, contractors, and servants, as well as any facilities, equipment, and property of every description, used in connection with the performance of the work and/or services required under the Permit. Permittee shall specifically and distinctly assume, and by

the City's issuance of the Permit does so expressly assume, all risks of damage or injury to property or persons used or employed on, or used or retained by, Permittee in connection with work/services under the Permit, and of all injury or damage to any person or property, wherever located, resulting from any action or operation under the Permit, or in connection with the work and/or services thereunder.

As separate and additional consideration for the City's issuance of the Permit, Permittee shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City of Miami Beach, Florida, its officers, employees, agents, contractors, and servants, from and against any and all claims, liabilities, demands, causes of action, costs and expenses (including reasonable attorneys' fees at trial and all levels of appeal) of whatsoever kind or nature arising out of error, omission, negligent act or willful misconduct of Permittee, its officers, directors, employees, agents, contractors, and servants ("Claims"), whether directly or indirectly, from the provision of work and/or services pursuant to the Permit; provided, however, that there is expressly excluded from the foregoing obligations any Claims to the extent resulting from the gross negligence or willful misconduct of the City. The indemnification provisions of this Section 4 shall survive expiration or termination of the Permit.

In addition to, and separate from, Permit's obligation to indemnify and hold the City harmless (as set forth in the preceding paragraphs), Permittee shall maintain the following insurance coverage in full force and effect at all times throughout the Permit term:

- a. Commercial General Liability insurance in amounts prescribed by the City Manager or his designee, and as necessary to protect the Permittee and the interests of the City against all risks of injury to persons (including

death) or damage to property, wherever located, resulting from any action or operation under the Permit or in connection with the work/services thereto.

- b. Automobile Liability Insurance, including Property Damage, covering all owned, non-owned or hired automobiles and equipment used in connection with the work/services;
- c. Workers' Compensation and Employer's Liability Insurance, as required to meet the statutory requirements of the State of Florida; and
- d. Any other additional coverage(s) as may reasonably be required from time to time by the City Manager or his designee.

Permittee shall be the named insured under all such policies. The City of Miami Beach, Florida, shall be named as an additional insured on all required liability policies. Permittee shall also be responsible for requiring that any required policy endorsements state that the City will not be liable for the payment of any premiums or assessments.

All liability insurance coverage and policies required herein shall contain a provision acknowledging and agreeing to the indemnification and hold harmless requirements (and language) set forth in this Section 4.

All required policies shall provide full coverage from the first dollar of exposure. No deductibles will be allowed unless approved, in writing, by the City's Risk Manager (prior to issuance of the policy).

No change or cancellation in insurance shall be made without thirty (30) days prior written notice to the City's Risk Manager.



All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and these companies must have a rating of at least B+:VI or better, per Best's Key Rating Guide, latest edition.

Original signed certificates of insurance, evidencing the required coverage and endorsements, shall be approved by the City Manager or his designee and filed with the City's Risk Manager prior to commencement of the Permit term, and/or prior to commencement of any work and/or services under the Permit (whichever is earlier).

It is understood and agreed that all policies of insurance required hereunder shall be primary to any insurance or self-insurance the City of Miami Beach.

Permittee will also be solely responsible for securing and maintaining policies for any and all of its subcontractors, to the extent and in accordance with the same insurance requirements as applies to Permittee pursuant to this Section 4.

Notwithstanding compliance by Permittee and its subcontractors with the insurance requirements in this Section 4. Permittee shall be ultimately responsible and liable for any negligent acts, errors or omissions of its subcontractor(s) (and of persons employed by such subcontractor(s)), to the extent that Permittee would be responsible (for the negligent acts, errors and omissions of persons employed and/or retained by Permittee) under the requirements of this Section 4.

Should Permittee fail to provide proof of coverage for any insurance (and/or other term or condition) required in this Section 4, within seven (7) days of receipt of written notice from the City Manager or his designee, the City reserves any and all right to immediately terminate the Permit.

## **5. STORAGE AREA(S) AND ON-PREMISES FACILITY(IES)**

Permittee shall have available outside storage for a minimum of thirty-one (31) vehicles and no more than a maximum of one hundred (100) vehicles. Said storage area will be enclosed in accordance with applicable zoning requirements. At a minimum, Permittee shall surround the storage area with a chain-link fence or solid-wall type fence at least six (6') feet high. The storage area shall be sufficiently illuminated to reveal persons and vehicles at a distance of at least 150 feet during evening hours. Permittee shall use such security measures as necessary to prevent theft, vandalism, stripping and dismantling of parts from vehicles in all storage areas.

Permittee shall provide a completely enclosed inside storage area (solid walls, roof, and access door) for at least five (5) vehicles. Said area will be secured against entry by unauthorized persons.

All vehicle keys shall be secured separately.

In the event Permittee's storage areas are filled to capacity, the Permittee shall not be relieved of its responsibility with regard to storage of vehicles pursuant to the Permit, and shall be required to make alternate arrangements for storage (as required to comply with the terms of the Permit). Any storage area proposed to be utilized by Permittee, which was not identified in its Permit application, must obtain the prior written approval of the City Manager or his designee prior to commencement of such use.

Permittee's storage area must be located within the city limits of Miami Beach and shall only be used by Permittee to store vehicles towed within the city limits of Miami Beach. Vehicles shall be stored for a minimum of one (1) day, after which they may be removed to a storage area outside the city limits of Miami Beach, but within Miami-Dade County, Florida.

Any vehicle with a "police hold," shall not be stored outside the city limits of Miami Beach.

Permittee may not charge an additional towing fee for removal of a vehicle for storage outside the city limits of Miami Beach. An owner (or other authorized individual) claiming a vehicle stored outside the city limits of Miami Beach shall be given the option, without charge, of either free transportation to the vehicle, or having the vehicle returned to the Permittee's Miami Beach storage area.

No storage charges shall be assessed for any vehicle which, pursuant to authorization of the City Manager or his designee, is stored at a City facility.

In addition to the storage area(s), the Permittee shall have a permanent on-premises office, which shall be staffed on a 24-hour basis by at least one (1) employee.

Permittee shall also provide on-premises security in the form of one or more of the following: night dispatcher or watchman; security guard service; security dog; or security cameras.

Notwithstanding the preceding paragraph, Permittee shall be required to hire City off-duty police officers on the premises on holidays and during all major events in the City. "Holidays" are herein defined as any City of Miami Beach recognized/observed legal holiday. Major events are herein defined as those events identified in the City's Major Event Planning (MEP), as same may be amended from time to time. In the event that the MBPD is unable to fulfill the off-duty requirement, Permittee may satisfy the requirement by hiring off-duty police officers from other jurisdictions (i.e. Miami-Dade, City of Miami, etc.).

Permittee must post a City-approved sign at its on-premises facility indicating charges (as shall have been approved by the City). This sign must include a statement

about the accepted methods of payment and the number and kinds of identification required. At a minimum, the sign must be in one inch (1") lettering, with contrasting background, permanently and prominently posted in the area where the charges are paid to Permittee.

All areas accessible to the public must be well lighted, with provisions to accommodate seating for members of the public retrieving vehicles. Permittee shall be prohibited from utilizing or maintaining any sort of public announcement (PA) system from its premises, so as to eliminate and/or reduce amplified and other noise to the surrounding neighborhood that occurs after 11:00 p.m.

Additional Conditions for Permittee's Storage Area(s) and On-Premises Facility(ies):

1. Storage and/or parking of vehicles must be fully screened from view, as seen from any right-of-way or adjoining property, when viewed from five feet six inches (5'6") above grade, with an opaque wood fence, masonry wall, or other opaque screening device not less than six feet (6') in height.
2. Parking spaces, backup areas, and drives shall be appropriately dimensioned for the type of vehicles being parked or stored.
3. The City shall retain the right to modify the Permit and the conditions of operation should there be complaints about loud, excessive, unnecessary, or unusual late night noise that occurs after 11:00 p.m.
4. The Permittee shall be responsible for maintaining the immediate areas adjacent to its on-premises facility and storage area including, without limitation, the adjacent sidewalks, curbs, and gutters, in a clean and sanitary manner, free of refuse, at all times during hours of operation.

5. Permittee shall be required to satisfy the landscaping requirements of Section 126-6 (2) of the City Code.
6. A plan for a recurring maintenance schedule that includes, but is not limited to, cleaning Permittee's on-premises storage area, clipping of hedge material, removing and replacement of dead plant material, fertilization and irrigation, shall be submitted to the City Manager or his designee, within thirty (30) days of the commencement of the Term, for the Manager or his designee's review and approval, which shall not be unreasonably withheld, conditioned, or delayed.
7. The lighting in Permittee's on-site facility and storage area must satisfy the City Code and the Florida Building Codes. The light from light poles shall be contained on-site. Any light poles shall not exceed fifteen feet (15') in height, measured from grade.
8. Permittee shall be responsible for operating its on-premises facility and storage area in an orderly, clean and quiet manner so that neighboring residents are not disturbed during the hours of operation. At a minimum, this shall include removing all trash from the lot not less than twice daily. The sounding of car alarms, automobile horns, playing of radios or any kind of audio system (including by the valet attendants), and screeching of tires shall be prohibited. A sign addressing City Code provisions regarding car alarms, and a sign prohibiting the screeching of tires and sounding of horns, shall be posted on-site so they are plainly visible by, and legible to, users of the facility.
9. Violation of Section 46-152 of the City Code, as same may be amended (the City's Noise Ordinance) may be deemed a violation of the terms of the Permit.

Accordingly, in the event of such violation, the City Manager reserves any and all right to suspend or terminate the Permit.

#### **6. TOWS WITH POLICE HOLD**

Vehicles impounded with a "police hold", shall be stored at Permittee's storage area (within the City limits) for a period of up to five (5) working days, excluding Saturday, Sunday and Holidays; at no charge for the first five (5) working days, or until the police hold is released, whichever occurs first.

If, after expiration of the five (5) working days, the vehicle requires a police hold for a longer period of time, the City Manager or his designee may direct Permittee, in writing, to remove the vehicle to a City facility, without charge to the City. In the alternative, the City's notice may request that Permittee continue to store the vehicle at Permittee's storage facility. If the City's notice elects to have the vehicle remain at Permittee's storage facility, the City shall be responsible for any storage charges incurred after aforesaid initial five (5) working days.

If the Permittee does not receive such written notification from the City, within the time period provided above, the Permittee may release the vehicle to the registered owner or lien holder; provided however, that the Permittee shall provide the City Manager or his designee with written notice of Permittee's intent to release, prior to the actual release date.

If the City's notice authorizes Permittee to remove the vehicle from Permittee's storage facility, but the vehicle has already been released to the owner or lien holder, the owner or lien holder (and not the City) will be responsible for any tow and storage charges for the number of days the vehicle was stored at Permittee's storage facility.

The towing and storage rates charged to an owner/lien holder shall not exceed the rates that would be charged to the City.

All police holds must include the following information:

1. name and agency of the law enforcement agency;
2. date and time the hold is placed on the vehicle;
3. a general description of the vehicle, including color, make, model, body style and year, VIN, registration plate with state and year, and validation sticker number with state and year;
4. the specific reason for placing the hold;
5. the condition of the vehicle;
6. the location where the vehicle is being held; and
7. the name, address, and phone number of the storage facility where the vehicle is stored.

In cases where a vehicle has a police hold pursuant to a violation of Article IX, Sections 106-391, through 106-395 (the City's Vehicle Impoundment Ordinance of the City Code), Permittee shall reduce removal, towing, and storage charges as (and if) ordered by the City's Special Master.

After the initial five (5) working days of storage, all vehicles impounded for a violation of the Vehicle Impoundment Ordinance shall also be removed by Permittee to a City storage facility without charge to the City.

The Permittee shall not divulge any information with respect to a towed vehicle when such vehicle has a police hold. Anyone wishing to obtain information on a vehicle with a police hold shall be referred to the MBPD.

## **7. STORAGE PROCEDURES FOR VEHICLES**

The Permittee shall provide storage for impounded vehicles in its outside storage area unless specific written instructions are given for inside storage by the impounding MBPD officer or City Parking Enforcement Specialist.

If required by the City for proper processing for investigative purposes, the Permittee shall move an impounded vehicle to an area designated by the City Manager or his designee, within the City limits, prior to storage, at no additional charge to the City. When the City orders a vehicle involved in a criminal investigation to be towed to a location only other than Permittee's storage facility, that vehicle may only be released from such location to the owner and/or lien holder, and then only upon prior written approval by an MBPD supervisor. If so approved, the City shall be responsible for the initial tow charges. Notwithstanding the preceding, and in the event the vehicle was not claimed by the owner or lien holder at the location where the investigation took place, the City shall not be held responsible for, nor required to, assure that further arrangements have been made (or pay) for towing and storage following completion of the vehicle processing. Permittee shall return any such vehicle to the Permittee's storage area (and the City shall only be responsible for the cost of the initial tow).

## **8. LOCATION CHANGES OF IMPOUNDED VEHICLES**

Permittee shall not change the type of storage (inside and/or outside) or storage location without the prior written approval of the City Manager or his designee.

## **9. ATTENDANT ON DUTY**

The Permittee shall make available, on a 24-hour, 7-days a week basis, attendants for immediate response to calls for service from the City. Permittee shall



also have adequate personnel available to staff its on-premises facility, on a 24-hour, 7-days a week basis, for the purpose of dispatching calls and releasing towed vehicles.

#### **10. VEHICLE LOADING**

All vehicle loading shall only be conducted on Permittee's premises (off-street and interior to storage lot). The use of a forklift or similar device shall be strictly prohibited on any City right-of-way.

#### **11. EQUIPMENT**

Permittee shall operate and maintain any and all equipment, as required to satisfactorily perform the work/services required under the Permit. All equipment shall be maintained in a state of readiness for response. In the event that Permittee utilizes any equipment not owned by it, the City shall require that Permittee demonstrate, to the City Manager's satisfaction, that it has the primary use and control of such equipment throughout the Permit term (whether by providing proof of an equipment lease, or other legally binding contract evidencing use and control of any required equipment). Any equipment not owned by Permittee must be made available to Permittee on a first priority basis.

At a minimum, Permittee shall maintain and have available during the Permit term the following type(s) of equipment:

##### **A. WRECKERS (TOW TRUCKS)**

All wreckers will be registered and shall have appropriate licenses to operate as wreckers. Permittee's towing license number shall be displayed on the front of the vehicle in letters at least three (3") inches high. Permittee's company name shall be displayed on the driver and passenger side of the vehicle in letters at least three (3") inches high. The company's address and

telephone number shall be displayed on the driver and passenger side of the vehicle in letters at least one (1") inch high.

All wreckers shall display a current decal issued by the City. Permittee shall maintain mobile equipment between its trucks and base stations.

## **B. MINIMUM RATINGS FOR WRECKERS**

Wreckers shall meet the following minimum ratings:

- (1) Class "A" Wrecker:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 10,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 56 inches
  - (c) Dual rear wheels
  - (d) Commercially manufactured boom with a minimum capacity of 8,000 pounds
  - (e) Hydraulically operated winch(es) with a minimum total winching capacity of 8,000 pounds
  - (f) One hundred (100') feet of 3/8 inch steel core cable per winch
  - (g) Wheel life with a retracted rating of not less than 3,500 pounds and an extended rating of not less than 2,000 pounds
  - (h) Tow sling with a safe lift rating of 3,500 pounds
  - (i) Two (2) 3/8 inch high test safety chains
  - (j) Dolly equipped
  - (k) One (1) motorcycle sling

- (l) Four-way lug wrench
- (m) One (1) pair of jumper cables
- (2) Class "A" Slide Back Car Carrier:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 10,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 102 inches
  - (c) Dual rear wheels
  - (d) Seventeen (17') feet or longer hydraulically operated slide back or tilt bed
  - (e) Hydraulically operated winch(es) with a minimum total winching capacity of 8,000 pounds
  - (f) Sixty five (65') feet of 3/8 inch steel core cable
  - (g) Two (2) tie down chains, each ten (10') feet in length
  - (h) Four-way lug wrench
  - (l) One (1) pair of jumper cables
- (3) Class "B" Wrecker:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 18,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 84 inches
  - (c) Commercially manufactured hydraulic boom(s) with a minimum total capacity of 16,000 pounds
  - (d) Hydraulically operated winch(es) with a minimum total winching capacity of 16,000 pounds
  - (e) Two hundred (200) feet of 1/2 inch steel core cable per winch

- (f) Under reach with a retracted rating of not less than 6,000 pounds and an extended rating of not less than 4,000 pounds
  - (g) Tow sling with a safe lift rating of 8,500 pounds
  - (h) Two (2) 5/16 inch alloy safety chains
  - (i) Tow bar equipped
  - (j) Two (2) snatch blocks, minimum 8,000 pound capacity each
  - (k) Two (2) scotch blocks
  - (l) Brake lock
  - (m) Six (6') to eight (8') feet of extra towing chain with hooks, minimum 4,000 pound capacity chain with hooks, minimum 4,000 pound capacity
  - (n) Four-way lug wrench
  - (o) One (1) pair of jumper cables
- (4) Class "B" Slide Back Car Carrier:
- (a) Commercially manufactured unit, with a rated capacity of not less than 20,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 138 inches
  - (c) Dual rear wheels
  - (d) Twenty one (21') feet or longer hydraulically operated slide back or tilt bed
  - (e) Hydraulically operated winch with a minimum winching capacity of 8,000 pounds
  - (f) One hundred (100') feet of 3/8 inch steel core cable

- (g) Two (2) tie down chains, each ten (10') feet in length
  - (h) One (1) snatch block, minimum 8,000 pound capacity
  - (I) Four-way lug wrench
  - (j) One (1) pair of jumper cables
  - (k) Commercial Non-restricted license plate
- (5) Class "C" Wrecker:
- (a) Commercially manufactured unit, with a rated capacity of not less than 36,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 144 inches
  - (c) Commercially manufactured boom(s) with a minimum total capacity of 50,000 pounds
  - (d) Winch(es) with a minimum total winching capacity of 50,000 pounds
  - (e) Two hundred (200') feet of 5/8 inch steel core cable per winch
  - (f) Under reach with a retracted rating of not less than 25,000 pounds and an extended rating of not less than 12,000 pounds
  - (g) Rear support jacks or outriggers
  - (h) Tow sling with a safe lift rating of 12,000 pounds
  - (I) Two (2) ½ inch alloy safety chains
  - (j) Tow bar equipped
  - (k) External air hookup and hoses to supply air to disabled vehicles

- (l) Two (2) snatch blocks, minimum 24,000 pound capacity each
- (m) Two (2) scotch blocks
- (n) Spring brake - air lock
- (o) Six (6') to eight (8') feet of extra towing chain with hooks, minimum 4,000 pound capacity
- (p) Where two (2) Class "C" wreckers are required, at least one (1) shall be under reach equipped.

**C. ADDITIONAL EQUIPMENT REQUIRED ON EACH VEHICLE**

- (1) Two-way radio
- (2) Proper safety lights
- (3) Amber rotation dome light
- (4) Two (2) flood lights to rear
- (5) Sand (50 pounds minimum)
- (6) Heavy duty sweeping broom (24" wide)
- (7) Two (2) safety cones (day-glow orange, 3 feet high)
- (8) One set of three (3) reflectors
- (9) Six (6) thirty minute flares
- (10) Flat shovel
- (11) Ax
- (12) Fire extinguisher 5 lb. dry chemical underwriter approved
- (13) First aid kit - minimum 16 units

#### **D. COMMUNICATIONS SYSTEM**

Permittee shall provide its own two-way radio communications system, or alternate communications system, as may be approved by the City Manager or his designee (upon written request by Permittee and prior to implementation of such alternate system). The communications system shall be between the Permittee's base station and service trucks utilized in providing work/services under the Permit. In addition, Permittee shall provide the City's Parking Department with a radio to communicate with Permittee.

#### **E. TECHNOLOGICAL IMPROVEMENTS**

(1) Permittee shall, at its sole cost and expense, procure, install, and implement a GPS tracking system on all of its vehicles that provide towing services to the City pursuant to the Permit, which will be accessible to the City for monitoring purposes only, in accordance with the following procedures:

(a) Permittee shall implement the use of a GPS tracking system that meets the City's minimum specifications and standards, incorporated herein by reference and attached as Exhibit "A" hereto (the approved GPS tracking system);

(b) Prior to the commencement of work/services under the Permit, Permittee shall have the approved GPS tracking system installed and operational in all vehicles that provide towing services to the City pursuant to the Permit, and certify to the City, in writing, substantially in the form attached as composite Exhibit "B" hereto, that it is compliant with this requirement. Permittee shall also be required to provide additional certifications, as may be requested from time to time by the City Manager

or his designee. Non-compliance with this requirement may be grounds for suspension or revocation of the Permit;

(c) Notwithstanding anything to the contrary contained herein, the City specifically acknowledges and agrees that Permittee may deactivate the GPS tracking system on any vehicle that is not in the process of providing towing services to the City pursuant to the Permit; provided, however, that Permittee shall maintain the GPS tracking system active at all times on no less than two of its vehicles and/or on the number of vehicles sufficient to respond to the City's requests for tows within (20) minutes of receipt of the request.

## **12. EMPLOYEES OF PERMITTEE**

Permittee shall be solely responsible for selecting, training and employing (or otherwise retaining) such personnel as is necessary for Permittee to satisfy the requirements of the Permit and to satisfactorily perform the work and services required under the Permit.

a. Permittee shall perform driver's license screening on all employees with driving responsibilities and a copy of each employee's driver's license shall be kept on file by Permittee and made available upon request of the City Manager or his designee.

b. Permittee shall be required to provide all employees with uniforms, which shall be subject to the prior written approval by the City Manager or his designee.

c. Permittee shall perform drug test screening on all employees and provide pass/fail results to the City Manager or his designee, upon request.

Any and all employees and/or other individuals retained by Permittee, shall not, for any purposes, be considered to be employees of the City of Miami Beach, and



Permittee shall be solely responsible for their supervision and daily direction and control.

It is the intent of the City and Permittee, and Permittee acknowledges, that the Permittee is legally considered to be an independent contractor and that neither it, nor its officers, directors, employees, agents, contractors or servants, shall, under any circumstances, be considered officers, directors, employees, contractors, agents or servants of the City, and that the City shall at no time be legally responsible or liable for any negligent acts, errors, omissions, or misconduct on the part of Permittee, or any of its officers, directors, employees, contractors, agents or servants. Additionally, toward that end, Permittee agrees to have no markings on either vehicles, buildings, or correspondence that indicates or tends to indicate any official relationship between the Permittee and the City of Miami Beach.

### **13. REQUESTS FOR TOW SERVICE**

All requests for service by the City shall be made through the MBPD or by a City Parking Enforcement Specialist. The dispatching unit of the MBPD or the City's Parking Department will assign tows to Permittees on a rotating basis, alternating every tow.

The City reserves the right to cancel a request for Permittee's services on a particular tow, at any time, up to the time of hook-up of the vehicle. Permittee acknowledges and agrees that the mere response to a City service call, without other action, shall not constitute a service for which charges are applicable.

Except in situations where a vehicle has a "police hold," if the registered owner of the vehicle (or other legally authorized person in control of the vehicle) arrives at the scene of the tow prior to the towing or removal of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and the vehicle owner (or legally

authorized individual in control of the vehicle) shall be allowed to remove the vehicle, without interference (See also Section 23 herein).

In those situations where the immediate removal of a legally parked vehicle is necessary in the interest of public safety including, without limitation, due to a fire, storm, flood, other emergency, or a crime scene, upon prior authorization of a commanding officer or supervisor of the MBPD, the Permittee shall remove the vehicle to the nearest public parking area (where parking is available), at no cost to the City (or to the owner of the vehicle).

If, at the option of the MBPD officer or Parking Enforcement Specialist at the scene of a tow, the vehicle requires special weather protection, it will be so noted on the vehicle storage receipt, and the Permittee shall be required to cover the vehicle completely with a weatherproof material and, accordingly, shall be allowed to charge the sum of fifty cents (\$.50) per day for this service.

If a request for a tow involves the removal of a vehicle or boat which is located underwater, the Permittee shall provide underwater divers to handle the hook-up of such vehicle or boat. Underwater recovery salvage divers must be SCUBA certified. For every diver, duty time shall be computed from the time of arrival at the scene to the time the vehicle or boat is rigged and hoisted to dry land.

#### **14. DELAYS**

Permittee shall respond to requests for tows within twenty (20) minutes of receipt of the request. In the event that Permittee cannot respond within twenty (20) minutes, it shall notify the requesting City party of the estimated time of delay and the reasons thereof, and the City shall have the option, at its sole discretion, to cancel the request

and contact another Permittee, without cost and/or other liability to the Permittee to which the initial request for tow was directed.

#### **15. REMOVAL OF HAZARDS**

Upon arrival at the scene of a tow, Permittee's tow truck operator shall promptly remove any hazards or debris from the public right of way prior to proceeding to impound the vehicle.

#### **16. IMPROPER TOWS**

An MBPD supervisor or Parking Enforcement supervisor may request Permittee's tow truck operator to release a vehicle that has been engaged (but not removed from the scene of the tow) should the impoundment of the vehicle be deemed improper by said supervisor. The release of the vehicle shall be authorized in writing by such supervisor by signing in the indicated section of the tow slip. The supervisor's decision shall be final and the tow truck operator shall proceed and comply with the release. The City shall be responsible for payment of the towing fees for an improper tow.

Any vehicle released pursuant to an improper tow under this Section 15 shall be towed to any location the owner or driver requests within the limits of Miami-Dade County, at mileage rates in accordance with the published rates. In instances where a vehicle has been improperly towed and such vehicle belongs to a disabled operator, Permittee shall deliver said vehicle to the original scene of the tow or to such other location within the City (as directed by the City) and the City shall pay the towing fees.

#### **17. IMPOUND REPORTS/OWNER NOTIFICATION**

When the City requests a vehicle to be towed, an inventory and written record of all personal property found in the vehicle before the vehicle is removed by Permittee will

be prepared. The MBPD officer or Parking Enforcement Specialist on the scene of the tow will be responsible for obtaining the information required for the vehicle storage receipt. Permittee shall not remove a vehicle from the scene of a tow without a copy of a vehicle storage receipt.

Permittee shall be solely responsible for ensuring that an impounded vehicle remains in the same condition and retains the same equipment at the time of release that it had at the time it was impounded. The Permittee shall also be solely responsible for any article(s) of value left in the vehicle and listed on the vehicle storage receipt. The Permittee shall replace any equipment and/or article(s) of value upon verification of the loss by the City Manager or his designee.

Permittee shall be responsible for notifying the registered owner of the vehicle, or lien holder, via certified mail, return receipt requested, of the whereabouts of the vehicle within twenty four (24) hours of impoundment. If, at the time of impounding, the name and address of the registered owner or lien holder is not readily available, Permittee shall notify the City Manager or his authorized designee, in writing, and the City shall use reasonable efforts to provide this information to Permittee within five (5) working days from the first date of storage of the vehicle. Upon receipt of the name and address of the registered vehicle owner or lien holder, Permittee shall notify the party(ies) of the whereabouts of the vehicle, certified mail return receipt requested. The notice(s) shall be sent within seven (7) days from the first date of storage (or within seven (7) days from Permittee's receipt of the information from the City). Telephone notice shall also be given whenever possible.

Notwithstanding the preceding paragraph, if the state of registration is unknown, the Permittee shall utilize best efforts in notifying the registered owner or lien holder of

the whereabouts of the impounded vehicle, within a reasonable period of time from the first date of storage. At a minimum, "best efforts" means that Permittee has performed the following due diligence to establish the state of registration:

1. Check of vehicle for any type of tag, tag record, temporary tag, or regular tag;
2. Check of law enforcement report for tag number or an out-of-state address indicated from drivers license information (if the vehicle was towed at the request of a law enforcement officer);
3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle at beginning of tow (if private tow);
4. Check of vehicle for inspection sticker or other stickers and decals that may indicate a state of possible registration; and
5. Check of the interior of the vehicle for any papers that may be in the glove box, trunk, or other areas for a state of registration.

The Permittee shall maintain a separate log of vehicles in which the owner or lien holder cannot be determined, which log shall be kept at Permittee's principal place of business, and which shall list the date and time of the tow, location towed from, total towing and storage charges, and best efforts made to notify the owner or lien holder.

#### **18. VIEWING OF IMPOUNDED VEHICLES**

Permittee shall allow the registered owner of an impounded vehicle, or the registered owner's authorized representative (including, without limitation, an insurance representative), upon producing proper identification, to view and inspect the vehicle within a reasonable time upon his/her arrival at Permittee's storage facility, and before payment of any charges. The vehicle owner (or authorized representative) shall be

permitted to remove any personal possessions from the vehicle that are not affixed to the vehicle (including telephones, tapes, tools, etc.) and the Permittee shall reasonably assist the owner (or authorized representative) in doing so. The vehicle owner (or authorized representative) shall acknowledge receipt of all personal property on a form provided by Permittee.

#### **19. VEHICLE RELEASES**

Permittee shall release an impounded vehicle to the registered vehicle owner (or authorized representative) upon payment of the appropriate fee(s), and no later than thirty (30) minutes from receipt of such payment. The Permittee shall release any vehicle except a vehicle that has been marked as a "police hold".

A person or persons who make application for the release of a vehicle shall be required to produce proof that he/she (or they) are either the registered owner of the vehicle or, in cases where release is not to the owner(s), that he/she or they have been designated as the owner's legally authorized representative. For a registered owner(s) sufficient proof may be demonstrated by presentation of the vehicle title or registration and photo identification. For legally authorized representatives of the owner(s), proof of agency shall be required which may include, without limitation, a written permission fully executed by the authorized owner(s), a duly executed power of attorney, such other written documentation evidencing that the person claiming release of the vehicle is authorized to do so by the owner(s). A photo ID will also be required. A photocopy of the documentation and of the photo ID used for the vehicle release shall be attached to the copy of the vehicle storage receipt (such copies shall be clearly legible/identifiable).

Notwithstanding the preceding, or any other term or condition of the Permit, Permittee shall be solely responsible for whatever means and methods, as it deems

necessary to ensure and ascertain that a vehicle has been released to the registered owner(s) or a duly authorized representative of the owner(s) and the City shall have no liability, whether to Permittee, the vehicle owner(s), or any other third parties, as a result of an improper or erroneous release of a vehicle by Permittee.

All vehicles that have not been claimed shall be disposed of according to applicable law(s). Permittee will be required, within three (3) days after a sale or, if a title is surrendered for payment, to submit a detailed listing of the vehicle identification number, tow receipt number, police case number (if applicable), year, make, model of vehicle, monies received, and the purchaser's name, address and local telephone number.

In the event that a vehicle is "junked," Permittee shall provide the City with a copy of the certificate of destruction (as required by State law). This copy shall be attached to the copy of the vehicle storage receipt. In the release section of the vehicle storage receipt, information shall be recorded as to the name, address, and local telephone number of the person or company that takes possession.

In cases where the registered owner(s) of the vehicle relinquishes all claims to the vehicle and transfers ownership of the vehicle to Permittee, Permittee shall not charge a fee for services rendered.

Permittee shall notify the City Manager or his designee of all abandoned/unclaimed vehicles prior to such vehicles being slated for auction. All vehicles slated for auction must first be approved in writing by the City Manager or his designee. The City shall have the right to bid on such vehicles, and may obtain title upon payment of towing and storage charges, provided there are no other bidders. The City Manager

shall designate an MBPD representative to track the vehicle auctions and make the appropriate bidding on behalf of the City.

## **20. EMERGENCY TOWING OF CITY VEHICLES**

Permittee shall provide emergency towing services for City vehicles at no charge to the City. Each Permittee shall provide such services for one month at a time, on a rotating basis. This service is designed to remove and secure vehicles owned by the City which become disabled. Such emergency service is limited to Miami-Dade and Broward Counties.

Permittee may receive requests for emergency towing of City vehicles from the City Manager or his designee, who will provide Permittee with the following information:

1. location of the vehicle, with the nearest street address;
2. make, year, model and tag number of the City vehicle, together with all information available as to the condition of the vehicle; and
3. name of the City employee operating the vehicle.

The Permittee shall tow and return a disabled City vehicle to the Mechanical Maintenance Garage at 140 MacArthur Causeway. Disabled MBPD vehicles may, at the instruction of the police officer operating the vehicle, be towed to the Miami Beach Police Station at 1100 Washington Avenue (instead of the Mechanical Maintenance Garage).

## **21. ABANDONED VEHICLES**

Permittee shall remove abandoned vehicles on public streets, highways, right of ways, and other City or publicly owned property, upon request of the City Manager or his designee. For purposes of this section, the term "vehicle" shall include, without limitation, automobiles, trucks, truck bodies, and house trailers (including vehicles which



may be partly or entirely dismantled, or consist of only a major portion of the body or framework).

An MBPD officer or a City Parking Enforcement Specialist shall issue and affix stickers on abandoned vehicles. After a minimum of two (2) days, if the vehicle is not removed, it may be towed at the request of the City. However, vehicles parked where parking is prohibited, or so as to be a hazard or obstruction to traffic, may be towed immediately.

Notwithstanding the preceding paragraph, vehicles properly parked in one of the City's Residential Parking Permit Districts and displaying a valid Residential Parking Decal shall not be regarded as abandoned.

Permittee shall notify, by certified letter return receipt requested, the registered vehicle owner or lien holder, advising of the vehicle location, and that the vehicle must be claimed within thirty-five (35) days (including full payment of towing, storage, and any other charges).

Abandoned vehicles may be stored at Permittee's storage facility or at a salvage company.

Permittee shall pay the City twenty dollars (\$20.00) per tow for every abandoned vehicle that Permittee tows.

Permittee shall assume and be solely responsible for, and shall fully defend, indemnify and hold the City, its officers, employees, agents, contractors, and servants, harmless from and against all claims and demands by any and all parties whatsoever for violation of Section 713.78(5), Florida State Statutes (as same may be amended from time to time). The Permittee shall pay all judgments obtained by reason of a violation of Section 713.78, Florida Statutes, as specified in suit or suits against the

City, including all legal costs, court expenses and attorney fees, and other like expenses. Permittee shall have the right to join in the defense of such suits.

## **22. MAXIMUM ALLOWABLE RATES**

The City Commission shall establish the maximum rates for towing, removal, and storage services provided under the Permit. The Permittee shall not charge in excess of the following maximum allowable rates established by the City (as same may be amended from time to time):

A. The first eight (8) hours of storage shall be without charge. Thereafter the following storage rates shall apply per day:

- |     |   |         |
|-----|---|---------|
| (1) | Inside-Interior   |         |
| (a) | Motorcycles or Scooters                                     | \$12.00 |
| (b) | Any vehicle less than 20 feet in length and 8 feet in width | \$30.00 |
| (c) | Any vehicle over 20 feet in length                          | \$40.00 |
| (2) | Outside-Exterior  |         |
| (a) | Motorcycles or Scooters                                     | \$10.00 |
| (b) | Any vehicle less than 20 feet in length and 8 feet in width | \$30.00 |
| (c) | Any vehicle over 20 feet in length                          | \$30.00 |
| (3) | Boat and Trailer (Owner's Unit)                             |         |
| (a) | Unit under 20 feet in length                                | \$20.00 |
| (b) | Unit 21 feet to 35 feet in length                           | \$35.00 |
| (c) | Unit over 35 feet in length                                 | \$45.00 |

B. Tow Rate Class "A" Tow Truck and

Class "A" Car Carrier, including:

1. First 30 minutes at the scene \$140.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Wheel lift equipment
5. Use of Dolly

C. Class "B" Tow Truck including:

1. First 30 minutes at the scene \$145.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Under reach equipment

D. Class "C" Tow Truck including:

1. First 30 minutes at the scene \$175.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Removal of air dams, shafts, or axles
5. Air hookup
6. Under reach equipment

E. Tow Rate Class "D" Tow Truck, including:

1. First 30 minutes at the scene \$200.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Removal of air dams, shafts, or axles
5. Air hookup

6. Under reach equipment
- F. Tow Rate Class "B" or "C" Car Carrier \$125.00
- including:
1. First 30 minutes at the scene
  2. Unlocking door
  3. Dropping/hooking up linkage
- G. Use of Contractor's Boat Trailer, any length,  
including storage, per day:
1. Trailer up to 18 feet in length \$ 50.00
  2. Trailer 18 to 30 feet in length \$ 75.00
  3. Trailer over 30 feet in length \$150.00
- H. Special and additional charges:
1. Extra labor or extra waiting time \$16.50 per hour  
after the first 30 minutes at the scene and prorated  
after the 1st hour in 15 minute increments.
  2. Mileage charges: \$6.00 per mile, maximum of \$42  
per tow
  3. Administrative fee: \$35.00 maximum per tow
  4. Dollies or Flatbed Services: \$40.00

5. Labor to Engage/Tow:

This is not an automatic fee and may only be imposed when access to enter the vehicle is required to properly engage/tow vehicle.

\$30.00

6. After Hour Fee:

An After Hours Fee may be assessed for tows retrieved between the hours of 8:00 PM and 8:00 AM. \$30.00

I. Road Service. Jump start, delivery of gas, door opening, tire change when there is no tow.....\$ 20.00.

J. Cost of any waiting time or extra labor (i.e., "retrieving", special handling) accomplished within thirty (30) minutes of arrival at the scene of a tow shall be included in the base tow rate. If, and only if, such waiting time or extra labor consumes more than thirty (30) minutes, an extra waiting time or extra labor charge, per fifteen (15) minutes or any fraction thereof, may be assessed (commencing thirty (30) minutes after arrival at the scene). Any extra waiting time or extra labor charge authorization should be made by the MBPD officer or Parking Enforcement Specialist on the scene, whenever possible, and shall be so indicated in writing on the vehicle storage receipt.

K. A maximum administrative charge, not exceeding \$30.00 (and not as an automatic "add-on", but only when required to comply with Florida Statutes), may be imposed by Permittee for administrative services such as processing of paperwork, clerical work, or title research. "Administrative charges" are defined as costs associated with verification of a vehicle identification number; search of vehicle for ownership information; preparation of paperwork required by Florida Statutes; preparation and

mailing of the notification letter(s); and preparation of vehicle for auction (including notification to owner or lien holder). Administrative charges shall not be imposed on vehicles with a "police hold" until or unless the hold is removed. Storage for City (confiscated) vehicles with "police holds" is free of charge to the City.

L. Indexing Provision:

The City Manager or his designee may initiate an administrative review of the Maximum Allowable Rates whenever the cumulative change in the Consumer Price Index (CPI – All Urban consumers – US City average – All items – Base Period 1982–84 = 100 ) (CPI), between the current CPI and the date of the CPI used to establish the last rate adjustment, is greater than five percent (5%). Upon reaching this threshold and, further, following a survey conducted by the City of maximum allowable towing rates for similar services in surrounding communities, and/or an analysis to review the current cost of providing such services, the City Manager or his authorized designees shall prepare a recommendation as to whether there should be an adjustment to the Maximum Allowable Rates; which recommendation shall be subject to final approval by the Mayor and City Commission.

M. Miami Beach Resident Discount:

The rate adjustments to the Maximum Allowable Rates set forth in Section 22 hereof shall not apply to City of Miami Beach residents (such exemption(s) for City of Miami Beach residents shall hereinafter be referred to as the "Miami Beach Resident Discount"). In order to be eligible for the Miami Beach Resident Discount, residents must provide proof of residency within the City of Miami Beach, and their driver's license information must match the registration information of the vehicle being towed. Permittee shall maintain a log documenting discounts given to City residents pursuant

to the Miami Beach Resident Discount, which log shall be available for inspection and copying by the City Manager or his designee, upon request. Permittee shall prominently post a sign displaying the Maximum Allowable Rates for both City and non-City residents within the area(s) on its premises designated for the vehicle owner or his agent to transact business.

### **23. RESPONSIBILITY FOR PAYMENT**

The vehicle owner (or legally authorized representative) of the vehicle shall be responsible for payment of charges imposed by the Permittee, due upon vehicle release.

The City shall not be responsible for any charges imposed for towing and storage, or for securing payments due upon vehicle release.

Permittee shall accept the following as acceptable forms of payment: cash, travelers checks, personal bank checks drawn on a bank in Miami-Dade, Broward, or Monroe Counties, or credit cards. Permittee may require two (2) forms of identification, one of which shall be a picture identification.

Permittee shall install and continuously operate and maintain in good working order at least one (1) automatic teller machine (ATM) on its premises.

### **24. WAIVER OF "DROP FEES"**

Drop fees occur when a vehicle owner (or other legally authorized person in control of the vehicle) arrives on the scene of a tow, prior to removal of the vehicle from the scene, and the vehicle has been engaged (hooked) by the tow truck, but has not left the scene. Although Florida law and Section 106-261 of the City Code allows Permittee to assess a "drop fee" (of not more than 50% of the posted towing rates), and continuing throughout the Permit term, Permittee hereby agrees to voluntarily waive any

and all drop fees for registered vehicle owners or other legally authorized person in control of the vehicle arriving at the scene prior to the removal or towing of the vehicle. The provisions of this section shall not apply where a vehicle has a "police hold".

## **25. REPORTS AND FILES**

The Permittee shall maintain the following records at its principal place of business within the City:

A. Permittee shall provide standardized, printed, sequentially numbered, City designed invoice forms listing the nature of the work performed by it for tows. An invoice shall be made for each and every vehicle towed.

Permittee shall keep on file for three (3) years from the expiration of the permit, copies of all paid invoices, together with vehicle storage receipts, and any and all impound logs (filed sequentially by MBPD case number or Parking Department sequentially numbered forms) during the Permit term. These records shall be subject to inspection by the City or its authorized representatives during regular business hours.

B. Standardized, printed, sequentially numbered vehicle storage receipts (yellow and goldenrod copies) for each and every vehicle towed by authority of the City, indicating reason for impoundment, vehicle description, date and time towed, location towed from and to, date and time released, proof of ownership notification, and all itemized charges.

Once the release occurs, the yellow copy is to be returned to the City with information including name, address, and telephone number of the individual to whom the vehicle was released (This information must appear legibly on both the yellow and goldenrod copies). The goldenrod copy will be retained by Permittee. These files will



be maintained sequentially according to the MBPD or Parking Department case number.

C. A log of all calls for service by the MBPD and/or Parking Department on a weekly basis.

D. An Impound/Notification Log indicating, at a minimum, date, time and method of notification to the registered owner of an impounded vehicle.

E. A log indicating vehicles to be auctioned, date of auction, name and address of owner and lien holder, and date contacted.

F. A log indicating vehicles sold at auction, date auction notice was published, proceeds of auction, and distribution of proceeds.

G. Permittee shall keep on file for three (3) years from the expiration of the permit, copies of all paid invoices, together with vehicle storage receipts, and any and all impound logs (filed sequentially by MBPD case number or Parking Department sequentially numbered forms) during the Permit term. These records shall be subject to inspection by the City or its authorized representatives during regular business hours.

All of Permittee's files, records, and logs shall be available for inspection by the City or its authorized representatives during regular business hours. Permittee shall make available adequate work space including, but not limited to, a table and chair, for City representatives inspecting records.

## **26. FORWARDING REPORTS TO POLICE DEPARTMENT, PARKING DEPARTMENT AND THE CITY MANAGER'S OFFICE**

The Permittee shall be solely responsible for forwarding to the following reports to the MBPD, Parking Department, and the City Manager's Office, by 3:00 P.M. of each Friday during the Permit term:

- A. Copies of all vehicle storage receipts for vehicles released the previous week, together with copy of completed numbered invoice for each vehicle.
- B. Original log of all calls for service by the on a weekly basis.
- C. Original log of all vehicles with police holds in the custody of Permittee.
- D. Original impound/notification Log for previous week.
- E. Original log completed prior to vehicle auctions.
- F. Copy of public notice of auction (10 days prior to auction).
- G. Original log completed immediately following auction.

All copies shall be legible. Originals shall be provided, upon request by the City Manager or his designee.

## **27. INSPECTIONS AND AUDITS**

Permittee agrees that all of its records, equipment, personnel, office and storage facilities will be subject to periodic inspection and audits by the City Manager or his authorized representative and, in the case of inspection checks, without the need for prior notice to Permittee.

The City and Permittee agree to the procedures, systems, and controls attached as Exhibit "C" hereto, for the purpose of the City conducting financial audits concerning Permittee's operations pursuant to the Permit.

## **28. ETHICS AND CONDUCT**

The Permittee shall conduct its business in an orderly, ethical, and business-like manner at all times, and shall use every means to obtain and keep the confidence of the public. All public contact shall be in a courteous and orderly manner.

## **29. COMPLAINTS AND DISPUTES**

It is the sole responsibility of Permittee to address customer service issues in a polite, courteous, and respectful manner, regardless of the comportment of the complainant. Clearly, verbal or physical abuse is unacceptable and police assistance should be sought if a particular conflict escalates.

Any complaints received by the City concerning a violation by Permittee of Article V, Division 2, Sections 106-211 through 106-255 of the City Code, or these Administrative Rules and Regulations (including, without limitation, misconduct, excessive charges, poor business practices, damage to vehicles, etc.), shall be referred to the City's Chief of Police or to the City's Parking Director for investigation (depending on which City department originated the tow). The respective department shall use reasonable efforts to notify Permittee (whether verbally or in writing) of any such complaints (including the specific nature thereof) within five (5) business days from receipt of the complaint. The Permittee shall provide written explanation and information with respect to the particular complaint, within five (5) business days from notice by the City. Permittee's response shall include identification of any proposed resolution(s) and corrective measure(s) to be taken.

A written disposition of the complaint will be forwarded to the Permittee (and complainant) upon completion of the City's investigation. The City Manager reserves the right, in his sole discretion, to require Permittee to refund all or any portion of the towing fees to a complainant, as liquidated damages, should the City rule in favor of the complainant.

If there have been three (3) or more substantiated complaints filed with the City within a ninety (90) day period during the Permit term, the City Manager may suspend the Permit for a period of up to thirty (30) days, with no reduction in the Permit fee.

### **30. "HOW'S MY DRIVING?" PROGRAM**

Permittee shall be required to establish and continuously operate a tow truck driver safety improvement program, through an independent third party source that will establish a telephone contact and e-mail contact for receipt of complaints regarding unsafe tow truck operator driving throughout the City, which will be addressed by the Permittee to the satisfaction of the City Manager. Each vehicle will prominently display contact information for the public to report issues relating to the tow truck operator's driving. Upon request of the City Manager, Permittee shall provide a report from the independent third party source identifying any and all complaints lodged against the Permittee; investigations conducted by the Permittee; and corrective actions taken by the Permittee to the satisfaction of the City Manager. Prior to implementation, the aforestated Program shall be reviewed and approved by the City Manager, which approval shall not be unreasonably withheld. Any changes to the approved Program shall also be subject to the prior written approval of the City Manager.

### **31. CUSTOMER SERVICE/INFORMATION ITEMS AND MATERIALS**

It is the City's intent to ensure the highest levels of customer service are provide to its residents, visitors, and tourists. To this end, all of Permittee's employees, agents contractors, or servants that may have contact with customers with the general public must attend and participate in the City's Towing and Customer Contact Training. This training will specifically address customer relations training, including diffusing situations, demeanor/body language, and conflict resolution. All of Permittee's

employees, agents, contractors or servants that have contact with customers or with the general public will be required to attend this training twice annually (every six months) throughout the term of the Permit. Permittee will further develop and issue informational materials providing answers to frequently asked questions, such as rates, directions/location of storage lots, and contact information.

### **32. CITIZENS BILL OF RIGHTS FOR TOWING**

Permittee shall establish and continually operate and maintain a bilingual informational campaign, advising a vehicle owner who has been towed of his/her rights and important related information, including tow rates, methods of payment, and complaint contact information. Prior to implementation, the aforesaid campaign shall be reviewed and approved by the City Manager, which approval shall not be unreasonably withheld. Any changes to the approved campaign shall also require the prior written approval of the City Manager. Following approval of the Towing Bill of Rights by the City Manager, Permittee shall post notice on all of its service vehicles, identifying to the availability of a copy of the full Citizen's Bill of Rights to the general public, as well as advising the public of the "no drop fee" provision in Section 24. The notice on the vehicle shall be displayed in a prominent place on the vehicle and clearly visible and legible, in letters at least two (2") inches high.

### **33. NON-DISCRIMINATION POLICY**

In connection with the performance of work/services under this Permit, Permittee shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Permittee shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Permittee shall take affirmative action to ensure that employees are treated during their employment without regard to their race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Permittee must complete and submit the City's Disability Non-Discrimination Affidavit (Affidavit). In the event Permittee fails to execute the City's Affidavit, or is found to be in non-compliance with the provisions of the Affidavit, the City may impose such sanctions as it may determine to be appropriate, including but not limited to, withholding assignment of tows to Permittee under the Permit until compliance, and/or cancellation, termination, or suspension of the Permit. In the event the City cancels or terminates the Permit pursuant to this Section, Permittee shall not be relieved of liability to the City for damages sustained by the City by virtue of Permittee's breach.

#### **34. ASSIGNMENT**

Permittees shall not assign, transfer, convey, sublet or otherwise dispose of this Permit, or of any or all of its rights, title or interest therein, or its or its power to execute

such permit, to any person, company or corporation without the prior written consent of the City Commission.

### **35. CHANGES IN RULES AND REGULATIONS**

Any amendment to these Administrative Rules and Regulations shall be subject to the prior written recommendation of the City Manager and, thereafter, approval of the City Commission. Any changes in the schedule of Maximum Allowable Rates shall also be subject to the prior recommendation of the City Manager and, City Commission approval; provided however, that any change in the Maximum Allowable Rates requested by Permittee shall only be considered by the City on/or about October 1<sup>st</sup> of each year during the Permit term.

### **36. CITY CODE AND ADMINISTRATIVE RULES AND REGULATIONS INCORPORATED BY REFERENCE INTO PERMIT**

The Permit shall incorporate by reference (as if fully set forth therein) Article V, Division 2, Sections 106-211 through 106-255 of the Miami Beach City Code, and these Administrative Rules and Regulations, as same (respectively) may be hereinafter amended from time to time, and compliance therewith shall be binding upon Permittee and required as a condition of the Permit.

# EXHIBIT A

## AUTOMATED VEHICLE LOCATOR (AVL) &

## GLOBAL POSITIONING SYSTEM (GPS)

## MINIMUM REQUIREMENTS

### MINIMUM REQUIREMENTS – AVL/GPS SYSTEM

This system is envisioned to be a turn-key solution which includes the following:

- GPS based location and communication devices for use in transportation vehicles.
- Near Real-time Communication from vehicle devices to the tracking server.
- Web based user interface for system administration, map based viewing of vehicle location, and ability to generate ad-hoc reports of collected data.
- Automated monthly reports of vehicle locations and events.
- All acquired data shall be stored on a secure server; the retention period shall be equal to the permit term plus one year with the ability to change the retention period.

### System Specifications

#### **1. GPS Location and Communication Devices**

- 1.1. The GPS Locations and Communications vehicle devices shall operate in field conditions experienced in the daily operation of tow trucks.
- 1.2. The GPS Location and Communication devices shall be enclosed in a water resistant, salt resistant, shock and vibration resistant enclosures.
- 1.3. The GPS Location and Communication devices operating temperature should be in a range from -40F to 140F and operating humidity up to 95%.
- 1.4. The System shall allow the tracking of multiple vehicles identified by a vehicle identification number.
- 1.5. The System shall locate the vehicle's position with sufficient accuracy to determine the average speed and location within the Road Right of Way.
- 1.6. The System shall locate the position of the vehicle in five second intervals.
- 1.7. The System shall start to track locations and transmission of the data when the vehicle ignition is on.

#### **2. Near Real-Time Communication**

- 2.1. The Communication between the GPS Location and Communication devices shall be in near real-time in 30 second intervals.

#### **3. Web Based System Administration, Monitoring, Mapping and Reporting System**

- 3.1. This System shall be Internet browser based.
- 3.2. No application software shall be installed on any personal computer (PC) and/or Server
- 3.3. Access to the System shall be restricted to assigned users.
- 3.4. The System shall overlay vehicle locations on a map showing city streets and county roads.



- 3.5. The System's Map tools should include zoom-in, zoom-out, panning zoom to vehicle, and identify.
- 3.6. The System shall provide historical auto-play feature with active bread crumb trail display.
- 3.7. The System shall display the vehicles with symbols according to their group and status. Status shall be but not limited to:
  - Alerts.
- 3.8. The System shall provide alerts via e-mail or text message to multiple authorized recipients for selected triggers and alerts.
- 3.9. The System shall allow creating, updating and deleting Trigger, Alert and Speed Rules based on Vehicle IDs or Groups, Areas (Geo-Fences). Speed rules shall be established based on posted speeds per street segment.
- 3.10. The System shall provide vehicle location summary report. Reports should be customized as per user's request including queries for any non-standard input value at no extra charge. Reports shall be based on a single or a group of vehicles using their vehicle identification number. Reports shall be generated on a daily, weekly, and monthly basis by vehicle and vehicle group and will include miles driven and dates.

#### **4. Data Storage**

- 4.1. All data collected on city runs shall be made available to the city within five (5) business days of request.
- 4.2. The AVL System shall store the data on a secure server with minimum retention of one (1) year after the end of the permit term.

## **EXHIBIT B**

### **CERTIFICATIONS PURSUANT TO SECTION 11(E)(1)**

## EXHIBIT B-1

### *Beach Towing Service Inc.*

Central Dispatch 305-534-2128

Fax: 305-534-6328

Saul Frances Parking Director

City of Miami Beach

1755 Meridian Avenue, 2nd Floor

Miami Beach, Florida 33139

Dear Mr. Frances:

Beach Towing Services Inc. hereby certifies that it is in and has been in compliance with section 11(E)(1) of the Administrative Rules and Regulations for the Police and Parking Towing Permits (Dated November 14th, 2012) since on or about October 31st, 2013.

Thank You.

Regards,

  
Michael A. Festa

President

Since 1971

Offering:

Transport / Towing

Storage

Private Parking Systems

Auto Salvage

Serving:

Miami Beach

Bal Harbor

Bay Harbor Islands

Surfside

North Bay Village

North Miami

Sunny Isles

Hialeah

Hallandale

Aventura

Hollywood

Miami

Storage Facilities

Located at:

1949 Dade Boulevard  
Miami Beach, FL

1743 Purdy Avenue  
Miami Beach, FL

8370 NW 7th Avenue  
Miami, FL

Mailing Address:

1349 Dade Boulevard  
Miami Beach, FL  
33139

## EXHIBIT B-2

TREMONT TOWING INC.  
1747 Bay Rd. Miami Beach Fl. 33139  
Tel 305-672-2395 Fax 305-672-2669  
TremontTowingInc@gmail.com  
www.TremontTowing.com



JUNE 22, 2015

Mr. Saul Frances, Parking Director, City Of Miami Beach  
1755 Meridian Ave. 2<sup>nd</sup> Floor Miami Beach Florida 33139

Dear Mr. Frances,

Tremont Towing, Inc., hereby certifies that it is and has been in compliance with Section 11(E)(1) of the Administrative Rules and Regulations for the Police and Parking Towing Permits (Dated November 14, 2012) since on or about October 31, 2013.

Thank you.

Warm regards,

A handwritten signature in black ink, appearing to read "Keith Menin", written over a horizontal line.

Keith Menin

PRESIDENT

# EXHIBIT C

## TOWING COMPANIES AGREED-UPON PROCEDURES

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### System Utilized by Towing Companies:

The below agreed-upon procedures have been developed to satisfy the City Commission's request for verifying cost of operations incurred by the towing companies. The City agreed that the cost allocation methodology, proposed by the companies would be allocated on statistical data based upon the number of public tows as compared to private tows as they relate to tows with the City of Miami Beach. Other factors for allocating expenses are as follows:

- General expenses are to be allocated on the cost allocation method based upon the statistical data mentioned above.
- City Administrative fee expenses are to be allocated 100% against public tows.
- Security fees expenses required by the towing agreement will be allocated 100% to public tows after taking into consideration any other contracts requiring security.
- Professional fees for governmental affairs consulting will be separated out and allocated to public tows.
- Additional cost of insurance coverage required by the City over the County's minimum coverage requirements will be allocated 100% to public tows.
- Signage costs will be 100% allocated to private tows.
- Operational costs for storage lots and office will be allocated between public and private tows.
- Revenues will be split out across the board by category of revenue.

The agreed-upon allocations of expenses listed within this document are not all inclusive and are subject to change depending on the variation of facts and circumstances. The objective is to always be reasonable and assure that costs are exclusive to either the public or private tows and are accounted for appropriately. Additionally, that all allocations are being done in the most reasonable method to ensure the most appropriate allocations of expenses. Any new allocations should be revisited with City staff and the towing companies' accounting and legal representatives.

### Agreed-upon procedures will include the following:

1. Review contracts with other municipalities to determine if there are any other specific requirements which directly affect any allocation of costs to the City.
2. Inquire from the towing company's representatives and obtain and review documentation on the nature of the allocations used between Private and Public Tows. Inquire about and document any major changes made during the period.
  - a. Review the methodology used by the towing companies.
  - b. Tie total costs and revenues to company's supplied general ledger and filed tax returns. The City agrees that any and all documents and items made available by the towing companies to the City pursuant hereto, including, but not limited to, general ledgers and filed tax returns, shall be for inspection and review purposes only, and shall not be copied, photographed or duplicated in any manner whatsoever in whole or in part. The City further agrees that the inspection and review of any documents made available by the towing companies to the City shall at all times be in the presence of the towing companies' representatives. The inspection and review notwithstanding, the City agrees that the subject documents and items are being disclosed solely for the limited purposes stated herein and shall remain confidential and the exclusive property of the towing companies and shall not become a public record in whole or

in part. The towing companies agree to make their representatives available for purposes of the inspection during all business days and hours (excluding legal holidays).

- c. Determine if the statistical data supports the allocation percentage used for public and private tows. Trace the number of public and private tows to supporting documentation maintained by the towing companies.
  - d. Test the calculation of the allocated expenses used.
3. Verify that general expenses used are those expenses relating to both public and private tows and that cannot be separated. Recalculate the resulting allocated costs for general expenses between the public and private tows.
4. City Administration fees, once determined that they only represent those fees required by the City of Miami Beach Rules and Regulations for the Police and Parking Towing Permits and/or any other rule or regulation or ordinance, and do not relate to private tows, will be allocated 100% towards public tows.
5. Determine any costs of security services required by the City contract. Verify these costs to actual source documentation. Allocate the total costs for this service to public tows after taking into account any other contracts requiring security.
6. Verify the cost of insurance paid by the towing company. Determine if the City's required insurance coverage exceeds the requirements set by Miami-Dade County. Obtain a quote for any excessive insurance premium cost over the minimum coverage needed. This cost will be allocated to the public tows.
7. Analyze any professional fees for governmental affairs consulting used in the performance to the contracts. Verify actual costs against supporting documentation. Any valid costs will be allocated 100% to public tows.
8. Separate signage costs for private lots and allocate fully to private tows.
9. Determine the operational cost associated with the company's storage lots and office space. Verify and determine adequacy of allocation used between public and private tows.
10. Review all other miscellaneous costs presented and determine how they should be classified between public and private tows.
11. Perform analysis all costs and revenue components to arrive at an average cost and revenue of public tows:
  - a. Schedule out all direct costs and allocated cost as determined in above steps to arrive at total cost for public and private tows. Expenditures including and not limited to: Licenses and taxes expense, rent expense, legal and accounting costs, salaries and wages expenses, telephone expense, and any other expenses that include some expenditures which are exclusive to certain facet of the business (private or public) are to be allocated as follows:
    - i. Companywide expenses - % of City tows to the total tows
    - ii. City of Miami Beach exclusive - 100%
    - iii. Other expenditures exclusive to other Municipalities or exclusive to non-public tows - 0%
  - b. Determine total revenues for public tows. Verify that the towing company has separated out revenues by categories especially by those listed on the individual towing invoices as follows:
    - i. Hook-up

- ii. mileage
  - iii. labor
  - iv. dollies/ flatbed
  - v. storage
  - vi. administrative charges
  - vii. administrative fees to City
  - viii. after hours
  - ix. taxes
- c. Derive the average cost and revenues for each public tows by dividing total associated costs into the number of total private tows. Compare this average cost against the rates approved by the City for presentation to City management.

Draft: 9-9-14

**CITY OF MIAMI BEACH  
POLICE DEPARTMENT AND PARKING DEPARTMENT  
TOWING PERMIT (FROM MARCH 1, 2018, TO FEBRUARY 28, 2019)**

**PERMIT ISSUED TO:**

BEACH TOWING SERVICES, INC.

**PERMITTEE'S REPRESENTATIVES/TITLE:**

MICHAEL A. FESTA, PRESIDENT


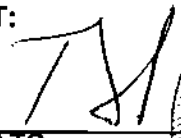
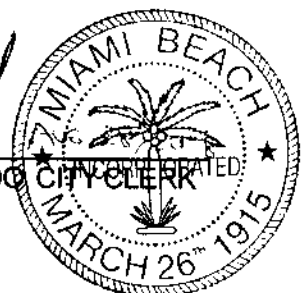
**PERMITTEE'S ADDRESS:**

1349 DADE BOULEVARD, MIAMI BEACH, FL, 33139

**PERMIT TERM:**THIS TOWING PERMIT COMMENCES ON MARCH 1, 2018 AND EXPIRES ON  
FEBRUARY 28, 2019

ALL REQUIREMENTS, PROVISIONS, FEES, AND TERMS OUTLINED IN THE ADMINISTRATIVE RULES AND REGULATIONS FOR POLICE TOWING PERMIT, AS AMENDED (SEE ATTACHMENT 1, INCORPORATED HERETO), ARE HEREBY IN FORCE AND EFFECT AS OF THE DATE OF APPROVAL OF SAME BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AND PERMITTEE, AS EVIDENCED BY ITS EXECUTION OF THIS PERMIT BELOW, HEREBY AGREES TO COMPLY WITH ANY AND ALL SUCH RULES AND REGULATIONS, AS SAME MAY BE AMENDED FROM TIME TO TIME DURING THE PERMIT TERM.

IN WITNESS WHEREOF THE CITY HAS CAUSED THIS PERMIT TO BE SIGNED BY ITS MAYOR AND CITY CLERK, AND THE PERMITTEE HAS CAUSED THIS PERMIT TO BE SIGNED IN ITS NAME, BY ITS DULY AUTHORIZED REPRESENTATIVE.

**PERMITTEE:**  
\_\_\_\_\_  
MICHAEL A. FESTA, PRESIDENT**CITY:**  
\_\_\_\_\_  
DAN GELBER, MAYOR**ATTEST:**  
\_\_\_\_\_  
SECRETARY  
\_\_\_\_\_  
PRINT NAME**ATTEST:**  
\_\_\_\_\_  
APPROVED TO GRANADO  
FORM & LANGUAGE  
& FOR EXECUTION  
\_\_\_\_\_  
City Attorney

Date

as 7/18/18



**CITY OF MIAMI BEACH**  
**ADMINISTRATIVE RULES AND REGULATIONS**  
**FOR**  
**POLICE AND PARKING TOWING PERMITS**  
**REVISED ON DECEMBER 13, 2017**

**ATTACHMENT 1**

# **CITY OF MIAMI BEACH ADMINISTRATIVE RULES AND REGULATIONS FOR POLICE AND PARKING TOWING PERMITS**

## **Introduction**

Pursuant to Section 106-212 of the City Code, and subject to City Commission approval, the City Manager shall promulgate rules and regulations as may be necessary to govern the discharge of towing or storage of vehicles identified by the City of Miami Beach Police Department (hereinafter, "MBPD" or the Police Department) as requiring removal from the public right of ways. Each applicant issued a permit by the City to tow or store vehicles, in accordance with Article V (entitled, "Police Vehicle Towing"), Division 2, Sections 106-211 through 106-255 of the City Code, shall comply at all times with the administrative rules and regulations hereinafter set forth, and as same may be amended from time to time (the "Administrative Rules and Regulations"). An applicant issued a permit to tow or store vehicles (hereinafter, the "Permit") pursuant to the aforestated Code section shall hereinafter be referred to as a "Permittee".

A Permittee's failure to comply may result in suspension or revocation of a Permit by the City Manager.

### **1. QUALIFICATIONS OF APPLICANT**

Prior to the issuance of a Permit, an applicant shall be required to evidence, to the reasonable satisfaction of the City Manager, that it has the necessary facilities, equipment, skills, personnel, and financial responsibility to furnish the services required under the Permit in a satisfactory manner. An applicant shall be required to evidence a record of satisfactory past performance, and, in support thereof, may be required to submit references and provide such other documentation, upon request by the City Manager. Failure to qualify with any or all of the following requirements shall be

sufficient justification for the City Manager to reject an application for a Permit (including rejection for renewal of a Permit).

## **2. COMPETENCY OF APPLICANTS**

Permit applications shall only be considered from firms with proven experience in the towing business which have an established and satisfactory record of performance, and have available the required equipment, facilities, storage space, and personnel sufficient to ensure that they can properly execute the work/services required. The City Manager or his designee reserves the right to inspect an applicant's existing or proposed facilities and storage space following submission of a Permit application.

To receive consideration, an applicant must identify a facility (which serves as its base of operations) and storage space located within the city limits of the City of Miami Beach.

Applicants must have all necessary licenses and permits, as required to operate and provide the required work/services including, without limitation, all applicable licenses and permits required by the City, Miami-Dade County, and the State of Florida.

By City's issuance of the Permit, and acceptance of the Permit by applicant/Permittee, applicant/Permittee thereby represents and warrants to the City that it has made itself familiar with all applicable Federal, State, Miami-Dade County, and City laws, ordinances, and rules and regulations that may, in any way, affect and/or apply to the work/services to be provided (and applicant/Permittee shall continue to make itself aware and familiar with any subsequent updates in any such laws). Ignorance of the law on the part of the applicant/Permittee will in no way relieve it from any responsibility and/or liability under the Permit.

By submission of an application, the applicant shall declare, represent and certify to the City that the only person or persons interested in the Permit is/are the principal or principals named therein; that no person or persons (other than therein mentioned) has/have any interest in the Permit; that the Permit is issued by the City without connection to any person(s), company(ies) or party(ies) making the application; and that it is in all respects fair, in good faith, and without collusion or fraud.

### **3. PERMIT FEE/MONTHLY BILLING**

Permittee shall pay to the City a monthly Permit fee, in the amount of \$30.00, for each vehicle towed. The monthly Permit fee shall be reduced to \$25.00 for each vehicle towed that receives a Miami Beach Resident Discount pursuant to Section 22.M herein.

The City shall bill Permittee, by the 10th of each month, for all tows occurring in the previous month. A late charge of \$50.00, plus the greater of (i) eighteen percent (18%) interest per annum, or ii) the maximum rate allowable under Florida law, shall be assessed on all payments received after the 20th day of the billing month.

Payments to the City shall be by check and remitted to the City of Miami Beach Finance Department (Revenue Section). Checks shall be clearly marked "Police Tow" or "Parking Department Tow."

### **4. INDEMNIFICATION/HOLD HARMLESS AND INSURANCE REQUIREMENTS**

Permittee shall be responsible for any work and services, and every part thereof, undertaken pursuant to the Permit. For purposes of this Section 4, the term "Permittee" shall include, without limitation, all Permittee's officers, directors, employees, agents, contractors, and servants, as well as any facilities, equipment, and property of every description, used in connection with the performance of the work and/or services required under the Permit. Permittee shall specifically and distinctly assume, and by

the City's issuance of the Permit does so expressly assume, all risks of damage or injury to property or persons used or employed on, or used or retained by, Permittee in connection with work/services under the Permit, and of all injury or damage to any person or property, wherever located, resulting from any action or operation under the Permit, or in connection with the work and/or services thereunder.

As separate and additional consideration for the City's issuance of the Permit, Permittee shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City of Miami Beach, Florida, its officers, employees, agents, contractors, and servants, from and against any and all claims, liabilities, demands, causes of action, costs and expenses (including reasonable attorneys' fees at trial and all levels of appeal) of whatsoever kind or nature arising out of error, omission, negligent act or willful misconduct of Permittee, its officers, directors, employees, agents, contractors, and servants ("Claims"), whether directly or indirectly, from the provision of work and/or services pursuant to the Permit; provided, however, that there is expressly excluded from the foregoing obligations any Claims to the extent resulting from the gross negligence or willful misconduct of the City. The indemnification provisions of this Section 4 shall survive expiration or termination of the Permit.

In addition to, and separate from, Permit's obligation to indemnify and hold the City harmless (as set forth in the preceding paragraphs), Permittee shall maintain the following insurance coverage in full force and effect at all times throughout the Permit term:

- a. Commercial General Liability insurance in amounts prescribed by the City Manager or his designee, and as necessary to protect the Permittee and the interests of the City against all risks of injury to persons (including

death) or damage to property, wherever located, resulting from any action or operation under the Permit or in connection with the work/services thereto.

- b. Automobile Liability Insurance, including Property Damage, covering all owned, non-owned or hired automobiles and equipment used in connection with the work/services;
- c. Workers' Compensation and Employer's Liability Insurance, as required to meet the statutory requirements of the State of Florida; and
- d. Any other additional coverage(s) as may reasonably be required from time to time by the City Manager or his designee.

Permittee shall be the named insured under all such policies. The City of Miami Beach, Florida, shall be named as an additional insured on all required liability policies. Permittee shall also be responsible for requiring that any required policy endorsements state that the City will not be liable for the payment of any premiums or assessments.

All liability insurance coverage and policies required herein shall contain a provision acknowledging and agreeing to the indemnification and hold harmless requirements (and language) set forth in this Section 4.

All required policies shall provide full coverage from the first dollar of exposure. No deductibles will be allowed unless approved, in writing, by the City's Risk Manager (prior to issuance of the policy).

No change or cancellation in insurance shall be made without thirty (30) days prior written notice to the City's Risk Manager.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and these companies must have a rating of at least B+:VI or better, per Best's Key Rating Guide, latest edition.

Original signed certificates of insurance, evidencing the required coverage and endorsements, shall be approved by the City Manager or his designee and filed with the City's Risk Manager prior to commencement of the Permit term, and/or prior to commencement of any work and/or services under the Permit (whichever is earlier).

It is understood and agreed that all policies of insurance required hereunder shall be primary to any insurance or self-insurance the City of Miami Beach.

Permittee will also be solely responsible for securing and maintaining policies for any and all of its subcontractors, to the extent and in accordance with the same insurance requirements as applies to Permittee pursuant to this Section 4.

Notwithstanding compliance by Permittee and its subcontractors with the insurance requirements in this Section 4, Permittee shall be ultimately responsible and liable for any negligent acts, errors or omissions of its subcontractor(s) (and of persons employed by such subcontractor(s)), to the extent that Permittee would be responsible (for the negligent acts, errors and omissions of persons employed and/or retained by Permittee) under the requirements of this Section 4.

Should Permittee fail to provide proof of coverage for any insurance (and/or other term or condition) required in this Section 4, within seven (7) days of receipt of written notice from the City Manager or his designee, the City reserves any and all right to immediately terminate the Permit.

## **5. STORAGE AREA(S) AND ON PREMISES FACILITY(IES)**

Permittee shall have available outside storage for a minimum of thirty-one (31) vehicles and no more than a maximum of one hundred (100) vehicles. Said storage area will be enclosed in accordance with applicable zoning requirements. At a minimum, Permittee shall surround the storage area with a chain-link fence or solid-wall type fence at least six (6') feet high. The storage area shall be sufficiently illuminated to reveal persons and vehicles at a distance of at least 150 feet during evening hours. Permittee shall use such security measures as necessary to prevent theft, vandalism, stripping and dismantling of parts from vehicles in all storage areas.

Permittee shall provide a completely enclosed inside storage area (solid walls, roof, and access door) for at least five (5) vehicles. Said area will be secured against entry by unauthorized persons.

All vehicle keys shall be secured separately.

In the event Permittee's storage areas are filled to capacity, the Permittee shall not be relieved of its responsibility with regard to storage of vehicles pursuant to the Permit, and shall be required to make alternate arrangements for storage (as required to comply with the terms of the Permit). Any storage area proposed to be utilized by Permittee, which was not identified in its Permit application, must obtain the prior written approval of the City Manager or his designee prior to commencement of such use.

Permittee's storage area must be located within the city limits of Miami Beach and shall only be used by Permittee to store vehicles towed within the city limits of Miami Beach. Vehicles shall be stored for a minimum of one (1) day, after which they may be removed to a storage area outside the city limits of Miami Beach, but within Miami-Dade County, Florida.



Any vehicle with a "police hold," shall not be stored outside the city limits of Miami Beach.

Permittee may not charge an additional towing fee for removal of a vehicle for storage outside the city limits of Miami Beach. An owner (or other authorized individual) claiming a vehicle stored outside the city limits of Miami Beach shall be given the option, without charge, of either free transportation to the vehicle, or having the vehicle returned to the Permittee's Miami Beach storage area.

No storage charges shall be assessed for any vehicle which, pursuant to authorization of the City Manager or his designee, is stored at a City facility.

In addition to the storage area(s), the Permittee shall have a permanent on-premises office, which shall be staffed on a 24-hour basis by at least one (1) employee.

Permittee shall also provide on-premises security in the form of one or more of the following: night dispatcher or watchman; security guard service; security dog; or security cameras.

Notwithstanding the preceding paragraph, Permittee shall be required to hire City off-duty police officers on the premises on holidays and during all major events in the City. "Holidays" are herein defined as any City of Miami Beach recognized/observed legal holiday. Major events are herein defined as those events identified in the City's Major Event Planning (MEP), as same may be amended from time to time. In the event that the MBPD is unable to fulfill the off-duty requirement, Permittee may satisfy the requirement by hiring off-duty police officers from other jurisdictions (i.e. Miami-Dade, City of Miami, etc.).

Permittee must post a City-approved sign at its on-premises facility indicating charges (as shall have been approved by the City). This sign must include a statement

about the accepted methods of payment and the number and kinds of identification required. At a minimum, the sign must be in one inch (1") lettering, with contrasting background, permanently and prominently posted in the area where the charges are paid to Permittee.

All areas accessible to the public must be well lighted, with provisions to accommodate seating for members of the public retrieving vehicles. Permittee shall be prohibited from utilizing or maintaining any sort of public announcement (PA) system from its premises, so as to eliminate and/or reduce amplified and other noise to the surrounding neighborhood that occurs after 11:00 p.m.

Additional Conditions for Permittee's Storage Area(s) and On Premises Facility(ies):

1. Storage and/or parking of vehicles must be fully screened from view, as seen from any right-of-way or adjoining property, when viewed from five feet six inches (5'6") above grade, with an opaque wood fence, masonry wall, or other opaque screening device not less than six feet (6') in height.
2. Parking spaces, backup areas, and drives shall be appropriately dimensioned for the type of vehicles being parked or stored.
3. The City shall retain the right to modify the Permit and the conditions of operation should there be complaints about loud, excessive, unnecessary, or unusual late night noise that occurs after 11:00 p.m.
4. The Permittee shall be responsible for maintaining the immediate areas adjacent to its on-premises facility and storage area including, without limitation, the adjacent sidewalks, curbs, and gutters, in a clean and sanitary manner, free of refuse, at all times during hours of operation.

5. Permittee shall be required to satisfy the landscaping requirements of Section 126-6 (2) of the City Code.
6. A plan for a recurring maintenance schedule that includes, but is not limited to, cleaning Permittee's on-premises storage area, clipping of hedge material, removing and replacement of dead plant material, fertilization and irrigation, shall be submitted to the City Manager or his designee, within thirty (30) days of the commencement of the Permit term, for the Manager or his designee's review and approval, which shall not be unreasonably withheld, conditioned, or delayed.
7. The lighting in Permittee's on-site facility and storage area must satisfy the City Code and the Florida Building Codes. The light from light poles shall be contained on-site. Any light poles shall not exceed fifteen feet (15') in height, measured from grade.
8. Permittee shall be responsible for operating its on-premises facility and storage area in an orderly, clean and quiet manner so that neighboring residents are not disturbed during the hours of operation. At a minimum, this shall include removing all trash from the lot not less than twice daily. The sounding of car alarms, automobile horns, playing of radios or any kind of audio system (including by the valet attendants), and screeching of tires shall be prohibited. A sign addressing City Code provisions regarding car alarms, and a sign prohibiting the screeching of tires and sounding of horns, shall be posted on-site so they are plainly visible by, and legible to, users of the facility.
9. Violation of Section 46-152 of the City Code, as same may be amended (the City's Noise Ordinance) may be deemed a violation of the terms of the Permit.

Accordingly, in the event of such violation, the City Manager reserves any and all right to suspend or terminate the Permit.

#### **6. TOWS WITH POLICE HOLD**

Vehicles impounded with a "police hold", shall be stored at Permittee's storage area (within the City limits) for a period of up to five (5) working days, excluding Saturday, Sunday and Holidays; at no charge for the first five (5) working days, or until the police hold is released, whichever occurs first.

If, after expiration of the five (5) working days, the vehicle requires a police hold for a longer period of time, the City Manager or his designee may direct Permittee, in writing, to remove the vehicle to a City facility, without charge to the City. In the alternative, the City's notice may request that Permittee continue to store the vehicle at Permittee's storage facility. If the City's notice elects to have the vehicle remain at Permittee's storage facility, the City shall be responsible for any storage charges incurred after aforesaid initial five (5) working days.

If the Permittee does not receive such written notification from the City, within the time period provided above, the Permittee may release the vehicle to the registered owner or lien holder; provided however, that the Permittee shall provide the City Manager or his designee with written notice of Permittee's intent to release, prior to the actual release date.

If the City's notice authorizes Permittee to remove the vehicle from Permittee's storage facility, but the vehicle has already been released to the owner or lien holder, the owner or lien holder (and not the City) will be responsible for any tow and storage charges for the number of days the vehicle was stored at Permittee's storage facility.

The towing and storage rates charged to an owner/lien holder shall not exceed the rates that would be charged to the City.

All police holds must include the following information:

1. name and agency of the law enforcement agency;
2. date and time the hold is placed on the vehicle;
3. a general description of the vehicle, including color, make, model, body style and year, VIN, registration plate with state and year, and validation sticker number with state and year;
4. the specific reason for placing the hold;
5. the condition of the vehicle;
6. the location where the vehicle is being held; and
7. the name, address, and phone number of the storage facility where the vehicle is stored.

In cases where a vehicle has a police hold pursuant to a violation of Article IX, Sections 106-391, through 106-395 (the City's Vehicle Impoundment Ordinance of the City Code). Permittee shall reduce removal, towing, and storage charges as (and if) ordered by the City's Special Master.

After the initial five (5) working days of storage, all vehicles impounded for a violation of the Vehicle Impoundment Ordinance shall also be removed by Permittee to a City storage facility without charge to the City.

The Permittee shall not divulge any information with respect to a towed vehicle when such vehicle has a police hold. Anyone wishing to obtain information on a vehicle with a police hold shall be referred to the MBPD.

## **7. STORAGE PROCEDURES FOR VEHICLES**

The Permittee shall provide storage for impounded vehicles in its outside storage area unless specific written instructions are given for inside storage by the impounding MBPD officer or City Parking Enforcement Specialist.

If required by the City for proper processing for investigative purposes, the Permittee shall move an impounded vehicle to an area designated by the City Manager or his designee, within the City limits, prior to storage, at no additional charge to the City. When the City orders a vehicle involved in a criminal investigation to be towed to a location only other than Permittee's storage facility, that vehicle may only be released from such location to the owner and/or lien holder, and then only upon prior written approval by an MBPD supervisor. If so approved, the City shall be responsible for the initial tow charges. Notwithstanding the preceding, and in the event the vehicle was not claimed by the owner or lien holder at the location where the investigation took place, the City shall not be held responsible for, nor required to, assure that further arrangements have been made (or pay) for towing and storage following completion of the vehicle processing. Permittee shall return any such vehicle to the Permittee's storage area (and the City shall only be responsible for the cost of the initial tow).

## **8. LOCATION CHANGES OF IMPOUNDED VEHICLES**

Permittee shall not change the type of storage (inside and/or outside) or storage location without the prior written approval of the City Manager or his designee.

## **9. ATTENDANT ON DUTY**

The Permittee shall make available, on a 24-hour, 7-days a week basis, attendants for immediate response to calls for service from the City. Permittee shall

also have adequate personnel available to staff its on-premises facility, on a 24-hour, 7-days a week basis, for the purpose of dispatching calls and releasing towed vehicles.

#### **10. VEHICLE LOADING**

All vehicle loading shall only be conducted on Permittee's premises (off-street and interior to storage lot). The use of a forklift or similar device shall be strictly prohibited on any City right-of-way.

#### **11. EQUIPMENT**

Permittee shall operate and maintain any and all equipment, as required to satisfactorily perform the work/services required under the Permit. All equipment shall be maintained in a state of readiness for response. In the event that Permittee utilizes any equipment not owned by it, the City shall require that Permittee demonstrate, to the City Manager's satisfaction, that it has the primary use and control of such equipment throughout the Permit term (whether by providing proof of an equipment lease, or other legally binding contract evidencing use and control of any required equipment). Any equipment not owned by Permittee must be made available to Permittee on a first priority basis.

At a minimum, Permittee shall maintain and have available during the Permit term the following type(s) of equipment:

##### **A. WRECKERS (TOW TRUCKS)**

All wreckers will be registered and shall have appropriate licenses to operate as wreckers. Permittee's towing license number shall be displayed on the front of the vehicle in letters at least three (3") inches high. Permittee's company name shall be displayed on the driver and passenger side of the vehicle in letters at least three (3") inches high. The company's address and

telephone number shall be displayed on the driver and passenger side of the vehicle in letters at least one (1") inch high.

All wreckers shall display a current decal issued by the City. Permittee shall maintain mobile equipment between its trucks and base stations.

**B. MINIMUM RATINGS FOR WRECKERS**

Wreckers shall meet the following minimum ratings:

- (1) Class "A" Wrecker:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 10,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 56 inches
  - (c) Dual rear wheels
  - (d) Commercially manufactured boom with a minimum capacity of 8,000 pounds
  - (e) Hydraulically operated winch(es) with a minimum total winching capacity of 8,000 pounds
  - (f) One hundred (100') feet of 3/8 inch steel core cable per winch
  - (g) Wheel life with a retracted rating of not less than 3,500 pounds and an extended rating of not less than 2,000 pounds
  - (h) Tow sling with a safe lift rating of 3,500 pounds
  - (i) Two (2) 3/8 inch high test safety chains
  - (j) Dolly equipped
  - (k) One (1) motorcycle sling



- (l) Four-way lug wrench
- (m) One (1) pair of jumper cables
- (2) Class "A" Slide Back Car Carrier:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 10,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 102 inches
  - (c) Dual rear wheels
  - (d) Seventeen (17') feet or longer hydraulically operated slide back or tilt bed
  - (e) Hydraulically operated winch(es) with a minimum total winching capacity of 8,000 pounds
  - (f) Sixty five (65') feet of 3/8 inch steel core cable
  - (g) Two (2) tie down chains, each ten (10') feet in length
  - (h) Four-way lug wrench
  - (l) One (1) pair of jumper cables
- (3) Class "B" Wrecker:
  - (a) Commercially manufactured unit, with a rated capacity of not less than 18,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 84 inches
  - (c) Commercially manufactured hydraulic boom(s) with a minimum total capacity of 16,000 pounds
  - (d) Hydraulically operated winch(es) with a minimum total winching capacity of 16,000 pounds
  - (e) Two hundred (200) feet of ½ inch steel core cable per winch

- (f) Under reach with a retracted rating of not less than 6,000 pounds and an extended rating of not less than 4,000 pounds
  - (g) Tow sling with a safe lift rating of 8,500 pounds
  - (h) Two (2) 5/16 inch alloy safety chains
  - (i) Tow bar equipped
  - (j) Two (2) snatch blocks, minimum 8,000 pound capacity each
  - (k) Two (2) scotch blocks
  - (l) Brake lock
  - (m) Six (6') to eight (8') feet of extra towing chain with hooks, minimum 4,000 pound capacity chain with hooks, minimum 4,000 pound capacity
  - (n) Four-way lug wrench
  - (o) One (1) pair of jumper cables
- (4) Class "B" Slide Back Car Carrier:
- (a) Commercially manufactured unit, with a rated capacity of not less than 20,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 138 inches
  - (c) Dual rear wheels
  - (d) Twenty one (21') feet or longer hydraulically operated slide back or tilt bed
  - (e) Hydraulically operated winch with a minimum winching capacity of 8,000 pounds
  - (f) One hundred (100') feet of 3/8 inch steel core cable

- (g) Two (2) tie down chains, each ten (10') feet in length
  - (h) One (1) snatch block, minimum 8,000 pound capacity
  - (i) Four-way lug wrench
  - (j) One (1) pair of jumper cables
  - (k) Commercial Non-restricted license plate
- (5) Class "C" Wrecker:
- (a) Commercially manufactured unit, with a rated capacity of not less than 36,000 pounds, GVW
  - (b) Cab to axle dimension of not less than 144 inches
  - (c) Commercially manufactured boom(s) with a minimum total capacity of 50,000 pounds
  - (d) Winch(es) with a minimum total winching capacity of 50,000 pounds
  - (e) Two hundred (200') feet of 5/8 inch steel core cable per winch
  - (f) Under reach with a retracted rating of not less than 25,000 pounds and an extended rating of not less than 12,000 pounds
  - (g) Rear support jacks or outriggers
  - (h) Tow sling with a safe lift rating of 12,000 pounds
  - (i) Two (2) ½ inch alloy safety chains
  - (j) Tow bar equipped
  - (k) External air hookup and hoses to supply air to disabled vehicles

- (l) Two (2) snatch blocks, minimum 24,000 pound capacity each
- (m) Two (2) scotch blocks
- (n) Spring brake - air lock
- (o) Six (6') to eight (8') feet of extra towing chain with hooks, minimum 4,000 pound capacity
- \* Where two (2) Class "C" wreckers are required, at least one (1) shall be under reach equipped.

**C. ADDITIONAL EQUIPMENT REQUIRED ON EACH VEHICLE**

- (1) Two-way radio
- (2) Proper safety lights
- (3) Amber rotation dome light
- (4) Two (2) flood lights to rear
- (5) Sand (50 pounds minimum)
- (6) Heavy duty sweeping broom (24" wide)
- (7) Two (2) safety cones (day-glow orange, 3 feet high)
- (8) One set of three (3) reflectors
- (9) Six (6) thirty minute flares
- (10) Flat shovel
- (11) Ax
- (12) Fire extinguisher 5 lb. dry chemical underwriter approved
- (13) First aid kit - minimum 16 units

#### **D. COMMUNICATIONS SYSTEM**

Permittee shall provide its own two-way radio communications system, or alternate communications system, as may be approved by the City Manager or his designee (upon written request by Permittee and prior to implementation of such alternate system). The communications system shall be between the Permittee's base station and service trucks utilized in providing work/services under the Permit. In addition, Permittee shall provide the City's Parking Department with a radio to communicate with Permittee.

#### **E. TECHNOLOGICAL IMPROVEMENTS**

(1) Permittee shall, at its sole cost and expense, procure, install, and implement a GPS tracking system on all of its vehicles that provide towing services to the City pursuant to the Permit, which will be accessible to the City for monitoring purposes only, in accordance with the following procedures:

(a) Permittee shall implement the use of a GPS tracking system that meets the City's minimum specifications and standards, incorporated herein by reference and attached as Exhibit "A" hereto (the approved GPS tracking system);

(b) Prior to the commencement of work/services under the Permit, Permittee shall have the approved GPS tracking system installed and operational in all vehicles that provide towing services to the City pursuant to the Permit, and shall certify to the City, in writing, substantially in the form attached as composite Exhibit "B" hereto, that it is compliant with this requirement. Permittee shall also be required to provide additional certifications as may be requested, from time to time, by the City Manager

or his designee. Non-compliance with this requirement may be grounds for suspension or revocation of the Permit;

(c) Notwithstanding anything to the contrary contained herein, the City specifically acknowledges and agrees that Permittee may deactivate the GPS tracking system on any vehicle that is not in the process of providing towing services to the City pursuant to the Permit; provided, however, that Permittee shall maintain the GPS tracking system active at all times on no less than two of its vehicles and/or on the number of vehicles sufficient to respond to the City's requests for tows within (20) minutes of receipt of the request.

## **12. EMPLOYEES OF PERMITTEE**

Permittee shall be solely responsible for selecting, training and employing (or otherwise retaining) such personnel as is necessary for Permittee to satisfy the requirements of the Permit and to satisfactorily perform the work and services required under the Permit.

a. Permittee shall perform driver's license screening on all employees with driving responsibilities and a copy of each employee's driver's license shall be kept on file by Permittee and made available upon request of the City Manager or his designee.

b. Permittee shall be required to provide all employees with uniforms, which shall be subject to the prior written approval by the City Manager or his designee.

c. Permittee shall perform drug test screening on all employees and provide pass/fail results to the City Manager or his designee, upon request.

Any and all employees and/or other individuals retained by Permittee, shall not, for any purposes, be considered to be employees of the City of Miami Beach, and

Permittee shall be solely responsible for their supervision and daily direction and control.

It is the intent of the City and Permittee, and Permittee acknowledges, that the Permittee is legally considered to be an independent contractor and that neither it, nor its officers, directors, employees, agents, contractors or servants, shall, under any circumstances, be considered officers, directors, employees, contractors, agents or servants of the City, and that the City shall at no time be legally responsible or liable for any negligent acts, errors, omissions, or misconduct on the part of Permittee, or any of its officers, directors, employees, contractors, agents or servants. Additionally, toward that end, Permittee agrees to have no markings on either vehicles, buildings, or correspondence that indicates or tends to indicate any official relationship between the Permittee and the City of Miami Beach.

### **13. REQUESTS FOR TOW SERVICE**

All requests for service by the City shall be made through the MBPD or by a City Parking Enforcement Specialist. The dispatching unit of the MBPD or the City's Parking Department will assign tows to Permittees on a rotating basis, alternating every tow.

The City reserves the right to cancel a request for Permittee's services on a particular tow, at any time, up to the time of hook-up of the vehicle. Permittee acknowledges and agrees that the mere response to a City service call, without other action, shall not constitute a service for which charges are applicable.

Except in situations where a vehicle has a "police hold," if the registered owner of the vehicle (or other legally authorized person in control of the vehicle) arrives at the scene of the tow prior to the towing or removal of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and the vehicle owner (or legally

authorized individual in control of the vehicle) shall be allowed to remove the vehicle, without interference (See also Section 23 herein).

In those situations where the immediate removal of a legally parked vehicle is necessary in the interest of public safety including, without limitation, due to a fire, storm, flood, other emergency, or a crime scene, upon prior authorization of a commanding officer or supervisor of the MBPD, the Permittee shall remove the vehicle to the nearest public parking area (where parking is available), at no cost to the City (or to the owner of the vehicle).

If, at the option of the MBPD officer or Parking Enforcement Specialist at the scene of a tow, the vehicle requires special weather protection, it will be so noted on the vehicle storage receipt, and the Permittee shall be required to cover the vehicle completely with a weatherproof material and, accordingly, shall be allowed to charge the sum of fifty cents (\$.50) per day for this service.

If a request for a tow involves the removal of a vehicle or boat which is located underwater, the Permittee shall provide underwater divers to handle the hook-up of such vehicle or boat. Underwater recovery salvage divers must be SCUBA certified. For every diver, duty time shall be computed from the time of arrival at the scene to the time the vehicle or boat is rigged and hoisted to dry land.

#### **14. DELAYS**

Permittee shall respond to requests for tows within twenty (20) minutes of receipt of the request. In the event that Permittee cannot respond within twenty (20) minutes, it shall notify the requesting City party of the estimated time of delay and the reasons thereof, and the City shall have the option, at its sole discretion, to cancel the request



and contact another Permittee, without cost and/or other liability to the Permittee to which the initial request for tow was directed.

#### **15. REMOVAL OF HAZARDS**

Upon arrival at the scene of a tow, Permittee's tow truck operator shall promptly remove any hazards or debris from the public right of way prior to proceeding to impound the vehicle.

#### **16. IMPROPER TOWS**

An MBPD supervisor or Parking Enforcement supervisor may request Permittee's tow truck operator to release a vehicle that has been engaged (but not removed from the scene of the tow) should the impoundment of the vehicle be deemed improper by said supervisor. The release of the vehicle shall be authorized in writing by such supervisor by signing in the indicated section of the tow slip. The supervisor's decision shall be final and the tow truck operator shall proceed and comply with the release. The City shall be responsible for payment of the towing fees for an improper tow.

Any vehicle released pursuant to an improper tow under this Section 15 shall be towed to any location the owner or driver requests within the limits of Miami-Dade County, at mileage rates in accordance with the published rates. In instances where a vehicle has been improperly towed and such vehicle belongs to a disabled operator, Permittee shall deliver said vehicle to the original scene of the tow or to such other location within the City (as directed by the City) and the City shall pay the towing fees.

#### **17. IMPOUND REPORTS/OWNER NOTIFICATION**

When the City requests a vehicle to be towed, an inventory and written record of all personal property found in the vehicle before the vehicle is removed by Permittee will

be prepared. The MBPD officer or Parking Enforcement Specialist on the scene of the tow will be responsible for obtaining the information required for the vehicle storage receipt. Permittee shall not remove a vehicle from the scene of a tow without a copy of a vehicle storage receipt.

Permittee shall be solely responsible for ensuring that an impounded vehicle remains in the same condition and retains the same equipment at the time of release that it had at the time it was impounded. The Permittee shall also be solely responsible for any article(s) of value left in the vehicle and listed on the vehicle storage receipt. The Permittee shall replace any equipment and/or article(s) of value upon verification of the loss by the City Manager or his designee.

Permittee shall be responsible for notifying the registered owner of the vehicle, or lien holder, via certified mail, return receipt requested, of the whereabouts of the vehicle within twenty four (24) hours of impoundment. If, at the time of impounding, the name and address of the registered owner or lien holder is not readily available, Permittee shall notify the City Manager or his authorized designee, in writing, and the City shall use reasonable efforts to provide this information to Permittee within five (5) working days from the first date of storage of the vehicle. Upon receipt of the name and address of the registered vehicle owner or lien holder, Permittee shall notify the party(ies) of the whereabouts of the vehicle, certified mail return receipt requested. The notice(s) shall be sent within seven (7) days from the first date of storage (or within seven (7) days from Permittee's receipt of the information from the City). Telephone notice shall also be given whenever possible.

Notwithstanding the preceding paragraph, if the state of registration is unknown, the Permittee shall utilize best efforts in notifying the registered owner or lien holder of

the whereabouts of the impounded vehicle, within a reasonable period of time from the first date of storage. At a minimum, "best efforts" means that Permittee has performed the following due diligence to establish the state of registration:

1. Check of vehicle for any type of tag, tag record, temporary tag, or regular tag;
2. Check of law enforcement report for tag number or an out-of-state address indicated from drivers license information (if the vehicle was towed at the request of a law enforcement officer);
3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle at beginning of tow (if private tow);
4. Check of vehicle for inspection sticker or other stickers and decals that may indicate a state of possible registration; and
5. Check of the interior of the vehicle for any papers that may be in the glove box, trunk, or other areas for a state of registration.

The Permittee shall maintain a separate log of vehicles in which the owner or lien holder cannot be determined, which log shall be kept at Permittee's principal place of business, and which shall list the date and time of the tow, location towed from, total towing and storage charges, and best efforts made to notify the owner or lien holder.

#### **18. VIEWING OF IMPOUNDED VEHICLES**

Permittee shall allow the registered owner of an impounded vehicle, or the registered owner's authorized representative (including, without limitation, an insurance representative), upon producing proper identification, to view and inspect the vehicle within a reasonable time upon his/her arrival at Permittee's storage facility, and before payment of any charges. The vehicle owner (or authorized representative) shall be

permitted to remove any personal possessions from the vehicle that are not affixed to the vehicle (including telephones, tapes, tools, etc.) and the Permittee shall reasonably assist the owner (or authorized representative) in doing so. The vehicle owner (or authorized representative) shall acknowledge receipt of all personal property on a form provided by Permittee.

#### **19. VEHICLE RELEASES**

Permittee shall release an impounded vehicle to the registered vehicle owner (or authorized representative) upon payment of the appropriate fee(s), and no later than thirty (30) minutes from receipt of such payment. The Permittee shall release any vehicle except a vehicle that has been marked as a "police hold".

A person or persons who make application for the release of a vehicle shall be required to produce proof that he/she (or they) are either the registered owner of the vehicle or, in cases where release is not to the owner(s), that he/she or they have been designated as the owner's legally authorized representative. For a registered owner(s) sufficient proof may be demonstrated by presentation of the vehicle title or registration and photo identification. For legally authorized representatives of the owner(s), proof of agency shall be required which may include, without limitation, a written permission fully executed by the authorized owner(s), a duly executed power of attorney, such other written documentation evidencing that the person claiming release of the vehicle is authorized to do so by the owner(s). A photo ID will also be required. A photocopy of the documentation and of the photo ID used for the vehicle release shall be attached to the copy of the vehicle storage receipt (such copies shall be clearly legible/identifiable).

Notwithstanding the preceding, or any other term or condition of the Permit, Permittee shall be solely responsible for whatever means and methods, as it deems

necessary to ensure and ascertain that a vehicle has been released to the registered owner(s) or a duly authorized representative of the owner(s) and the City shall have no liability, whether to Permittee, the vehicle owner(s), or any other third parties, as a result of an improper or erroneous release of a vehicle by Permittee.

All vehicles that have not been claimed shall be disposed of according to applicable law(s). Permittee will be required, within three (3) days after a sale or, if a title is surrendered for payment, to submit a detailed listing of the vehicle identification number, tow receipt number, police case number (if applicable), year, make, model of vehicle, monies received, and the purchaser's name, address and local telephone number.

In the event that a vehicle is "junked," Permittee shall provide the City with a copy of the certificate of destruction (as required by State law). This copy shall be attached to the copy of the vehicle storage receipt. In the release section of the vehicle storage receipt, information shall be recorded as to the name, address, and local telephone number of the person or company that takes possession.

In cases where the registered owner(s) of the vehicle relinquishes all claims to the vehicle and transfers ownership of the vehicle to Permittee, Permittee shall not charge a fee for services rendered.

Permittee shall notify the City Manager or his designee of all abandoned/unclaimed vehicles prior to such vehicles being slated for auction. All vehicles slated for auction must first be approved in writing by the City Manager or his designee. The City shall have the right to bid on such vehicles, and may obtain title upon payment of towing and storage charges, provided there are no other bidders. The City Manager

shall designate an MBPD representative to track the vehicle auctions and make the appropriate bidding on behalf of the City.

## **20. EMERGENCY TOWING OF CITY VEHICLES**

Permittee shall provide emergency towing services for City vehicles at no charge to the City. Each Permittee shall provide such services for one month at a time, on a rotating basis. This service is designed to remove and secure vehicles owned by the City which become disabled. Such emergency service is limited to Miami-Dade and Broward Counties.

Permittee may receive requests for emergency towing of City vehicles from the City Manager or his designee, who will provide Permittee with the following information:

1. location of the vehicle, with the nearest street address;
2. make, year, model and tag number of the City vehicle, together with all information available as to the condition of the vehicle; and
3. name of the City employee operating the vehicle.

The Permittee shall tow and return a disabled City vehicle to the Mechanical Maintenance Garage at 140 MacArthur Causeway. Disabled MBPD vehicles may, at the instruction of the police officer operating the vehicle, be towed to the Miami Beach Police Station at 1100 Washington Avenue (instead of the Mechanical Maintenance Garage).

## **21. ABANDONED VEHICLES**

Permittee shall remove abandoned vehicles on public streets, highways, right of ways, and other City or publicly owned property, upon request of the City Manager or his designee. For purposes of this section, the term "vehicle" shall include, without limitation, automobiles, trucks, truck bodies, and house trailers (including vehicles which

may be partly or entirely dismantled, or consist of only a major portion of the body or framework).

An MBPD officer or a City Parking Enforcement Specialist shall issue and affix stickers on abandoned vehicles. After a minimum of two (2) days, if the vehicle is not removed, it may be towed at the request of the City. However, vehicles parked where parking is prohibited, or so as to be a hazard or obstruction to traffic, may be towed immediately.

Notwithstanding the preceding paragraph, vehicles properly parked in one of the City's Residential Parking Permit Districts and displaying a valid Residential Parking Decal shall not be regarded as abandoned.

Permittee shall notify, by certified letter return receipt requested, the registered vehicle owner or lien holder, advising of the vehicle location, and that the vehicle must be claimed within thirty-five (35) days (including full payment of towing, storage, and any other charges).

Abandoned vehicles may be stored at Permittee's storage facility or at a salvage company.

Permittee shall pay the City twenty dollars (\$20.00) per tow for every abandoned vehicle that Permittee tows.

Permittee shall assume and be solely responsible for, and shall fully defend, indemnify and hold the City, its officers, employees, agents, contractors, and servants, harmless from and against all claims and demands by any and all parties whatsoever for violation of Section 713.78(5), Florida State Statutes (as same may be amended from time to time). The Permittee shall pay all judgments obtained by reason of a violation of Section 713.78, Florida Statutes, as specified in suit or suits against the

City, including all legal costs, court expenses and attorney fees, and other like expenses. Permittee shall have the right to join in the defense of such suits.

## **22. MAXIMUM ALLOWABLE RATES**

The City Commission shall establish the maximum rates for towing, removal, and storage services provided under the Permit. The Permittee shall not charge in excess of the following maximum allowable rates established by the City (as same may be amended from time to time):

A. The first eight (8) hours of storage shall be without charge. Thereafter the following storage rates shall apply per day:

- |     |   |         |
|-----|---|---------|
| (1) | Inside-Interior   |         |
| (a) | Motorcycles or Scooters                                     | \$12.00 |
| (b) | Any vehicle less than 20 feet in length and 8 feet in width | \$30.00 |
| (c) | Any vehicle over 20 feet in length                          | \$40.00 |
| (2) | Outside-Exterior  |         |
| (a) | Motorcycles or Scooters                                     | \$10.00 |
| (b) | Any vehicle less than 20 feet in length and 8 feet in width | \$30.00 |
| (c) | Any vehicle over 20 feet in length                          | \$30.00 |
| (3) | Boat and Trailer (Owner's Unit)                             |         |
| (a) | Unit under 20 feet in length                                | \$20.00 |
| (b) | Unit 21 feet to 35 feet in length                           | \$35.00 |
| (c) | Unit over 35 feet in length                                 | \$45.00 |

B. Tow Rate Class "A" Tow Truck and



Class "A" Car Carrier, including:

1. First 30 minutes at the scene \$140.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Wheel lift equipment
5. Use of Dolly

C. Class "B" Tow Truck including:

1. First 30 minutes at the scene \$145.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Under reach equipment

D. Class "C" Tow Truck including:

1. First 30 minutes at the scene \$175.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Removal of air dams, shafts, or axles
5. Air hookup
6. Under reach equipment

E. Tow Rate Class "D" Tow Truck, including:

1. First 30 minutes at the scene \$200.00
2. Unlocking door
3. Dropping/hooking up linkage
4. Removal of air dams, shafts, or axles
5. Air hookup

6. Under reach equipment
- F. Tow Rate Class "B" or "C" Car Carrier \$125.00
- including:
1. First 30 minutes at the scene
  2. Unlocking door
  3. Dropping/hooking up linkage
- G. Use of Contractor's Boat Trailer, any length,  
including storage, per day:
1. Trailer up to 18 feet in length \$ 50.00
  2. Trailer 18 to 30 feet in length \$ 75.00
  3. Trailer over 30 feet in length \$150.00
- H. Special and additional charges
1. Extra labor or extra waiting time \$16.50 per hour  
after the first 30 minutes at the scene and prorated  
after the 1st hour in 15 minute increments.
  2. Mileage charges: \$6.00 per mile, maximum of \$42  
per tow
  3. Administrative fee: \$35.00 maximum per tow
  4. Dollies or Flatbed Services: \$40.00

5. Labor to Engage/Tow:

This is not an automatic fee and may only be imposed when access to enter the vehicle is required to properly engage/tow vehicle.

\$30.00

6. After Hour Fee:

An After Hours Fee may be assessed for tows retrieved between the hours of 8:00 PM and 8:00 AM. \$30.00

I. Road Service. Jump start, delivery of gas, door opening, tire change when there is no tow.....\$ 20.00.

J. Cost of any waiting time or extra labor (i.e., "retrieving", special handling) accomplished within thirty (30) minutes of arrival at the scene of a tow shall be included in the base tow rate. If, and only if, such waiting time or extra labor consumes more than thirty (30) minutes, an extra waiting time or extra labor charge, per fifteen (15) minutes or any fraction thereof, may be assessed (commencing thirty (30) minutes after arrival at the scene). Any extra waiting time or extra labor charge authorization should be made by the MBPD officer or Parking Enforcement Specialist on the scene, whenever possible, and shall be so indicated in writing on the vehicle storage receipt.

K. A maximum administrative charge, not exceeding \$30.00 (and not as an automatic "add-on", but only when required to comply with Florida Statutes), may be imposed by Permittee for administrative services such as processing of paperwork, clerical work, or title research. "Administrative charges" are defined as costs associated with verification of a vehicle identification number; search of vehicle for ownership information; preparation of paperwork required by Florida Statutes; preparation and

mailing of the notification letter(s); and preparation of vehicle for auction (including notification to owner or lien holder). Administrative charges shall not be imposed on vehicles with a "police hold" until or unless the hold is removed. Storage for City (confiscated) vehicles with "police holds" is free of charge to the City.

L. Indexing Provision:

The City Manager or his designee may initiate an administrative review of the Maximum Allowable Rates whenever the cumulative change in the Consumer Price Index (CPI – All Urban consumers – US City average – All items – Base Period 1982–84 = 100 ) (CPI), between the current CPI and the date of the CPI used to establish the last rate adjustment, is greater than five percent (5%). Upon reaching this threshold and, further, following a survey conducted by the City of maximum allowable towing rates for similar services in surrounding communities, and/or an analysis to review the current cost of providing such services, the City Manager or his authorized designees shall prepare a recommendation as to whether there should be an adjustment to the Maximum Allowable Rates; which recommendation shall be subject to final approval by the Mayor and City Commission.

M. Miami Beach Resident Discount

The rate adjustments to the Maximum Allowable Rates set forth in Section 22 hereof shall not apply to City of Miami Beach residents (such exemption(s) for City of Miami Beach residents shall hereinafter be referred to as the "Miami Beach Resident Discount"). In order to be eligible for the Miami Beach Resident Discount, residents must provide proof of residency within the City of Miami Beach, and their driver's license information must match the registration information of the vehicle being towed. Permittee shall maintain a log documenting discounts given to City residents pursuant

to the Miami Beach Resident Discount, which log shall be available for inspection and copying by the City Manager or his designee, upon request. Permittee shall prominently post a sign displaying the Maximum Allowable Rates for both City and non-City residents within the area(s) on its premises designated for the vehicle owner or his agent to transact business.

### **23. RESPONSIBILITY FOR PAYMENT**

The vehicle owner (or legally authorized representative) of the vehicle shall be responsible for payment of charges imposed by the Permittee, due upon vehicle release.

The City shall not be responsible for any charges imposed for towing and storage, or for securing payments due upon vehicle release.

Permittee shall accept the following as acceptable forms of payment: cash, travelers checks, personal bank checks drawn on a bank in Miami-Dade, Broward, or Monroe Counties, or credit cards. Permittee may require two (2) forms of identification, one of which shall be a picture identification.

Permittee shall install and continuously operate and maintain in good working order at least one (1) automatic teller machine (ATM) on its premises.

### **24. WAIVER OF "DROP FEES"**

Drop fees occur when a vehicle owner (or other legally authorized person in control of the vehicle) arrives on the scene of a tow, prior to removal of the vehicle from the scene, and the vehicle has been engaged (hooked) by the tow truck, but has not left the scene. Although Florida law and Section 106-261 of the City Code allows Permittee to assess a "drop fee" (of not more than 50% of the posted towing rates), and continuing throughout the Permit term, Permittee hereby agrees to voluntarily waive any

and all drop fees for registered vehicle owners or other legally authorized person in control of the vehicle arriving at the scene prior to the removal or towing of the vehicle. The provisions of this section shall not apply where a vehicle has a "police hold".

## **25. REPORTS AND FILES**

The Permittee shall maintain the following records at its principal place of business within the City:

A. Permittee shall provide standardized, printed, sequentially numbered, City designed invoice forms listing the nature of the work performed by it for tows. An invoice shall be made for each and every vehicle towed.

Permittee shall keep on file for three (3) years from the expiration of the permit, copies of all paid invoices, together with vehicle storage receipts, and any and all impound logs (filed sequentially by MBPD case number or Parking Department sequentially numbered forms) during the Permit term. These records shall be subject to inspection by the City or its authorized representatives during regular business hours.

B. Standardized, printed, sequentially numbered vehicle storage receipts (yellow and goldenrod copies) for each and every vehicle towed by authority of the City, indicating reason for impoundment, vehicle description, date and time towed, location towed from and to, date and time released, proof of ownership notification, and all itemized charges.

Once the release occurs, the yellow copy is to be returned to the City with information including name, address, and telephone number of the individual to whom the vehicle was released (This information must appear legibly on both the yellow and goldenrod copies). The goldenrod copy will be retained by Permittee. These files will

be maintained sequentially according to the MBPD or Parking Department case number.

C. A log of all calls for service by the MBPD and/or Parking Department on a weekly basis.

D. An Impound/Notification Log indicating, at a minimum, date, time and method of notification to the registered owner of an impounded vehicle.

E. A log indicating vehicles to be auctioned, date of auction, name and address of owner and lien holder, and date contacted.

F. A log indicating vehicles sold at auction, date auction notice was published, proceeds of auction, and distribution of proceeds.

G. Permittee shall keep on file for three (3) years from the expiration of the permit, copies of all paid invoices, together with vehicle storage receipts, and any and all impound logs (filed sequentially by MBPD case number or Parking Department sequentially numbered forms) during the Permit term. These records shall be subject to inspection by the City or its authorized representatives during regular business hours.

All of Permittee's files, records, and logs shall be available for inspection by the City or its authorized representatives during regular business hours. Permittee shall make available adequate work space including, but not limited to, a table and chair, for City representatives inspecting records.

## **26. FORWARDING REPORTS TO POLICE DEPARTMENT, PARKING DEPARTMENT AND THE CITY MANAGER'S OFFICE**

The Permittee shall be solely responsible for forwarding to the following reports to the MBPD, Parking Department, and the City Manager's Office, by 3:00 P.M. of each Friday during the Permit term:

- A. Copies of all vehicle storage receipts for vehicles released the previous week, together with copy of completed numbered invoice for each vehicle.
- B. Original log of all calls for service by the on a weekly basis.
- C. Original log of all vehicles with police holds in the custody of Permittee.
- D. Original impound/notification Log for previous week.
- E. Original log completed prior to vehicle auctions.
- F. Copy of public notice of auction (10 days prior to auction).
- G. Original log completed immediately following auction.

All copies shall be legible. Originals shall be provided, upon request by the City Manager or his designee.

## **27. INSPECTIONS AND AUDITS**

Permittee agrees that all of its records, equipment, personnel, office and storage facilities will be subject to periodic inspection and audits by the City Manager or his authorized representative and, in the case of inspection checks, without the need for prior notice to Permittee.

The City and Permittee agree to the procedures, systems, and controls attached as Exhibit "C" hereto, for the purpose of the City conducting financial audits concerning Permittee's operations pursuant to the Permit.

## **28. ETHICS AND CONDUCT**

The Permittee shall conduct its business in an orderly, ethical, and business-like manner at all times, and shall use every means to obtain and keep the confidence of the public. All public contact shall be in a courteous and orderly manner.



## **29. COMPLAINTS AND DISPUTES**

It is the sole responsibility of Permittee to address customer service issues in a polite, courteous, and respectful manner, regardless of the comportment of the complainant. Clearly, verbal or physical abuse is unacceptable and police assistance should be sought if a particular conflict escalates.

Any complaints received by the City concerning a violation by Permittee of Article V, Division 2, Sections 106-211 through 106-255 of the City Code, or these Administrative Rules and Regulations (including, without limitation, misconduct, excessive charges, poor business practices, damage to vehicles, etc.), shall be referred to the City's Chief of Police or to the City's Parking Director for investigation (depending on which City department originated the tow). The respective department shall use reasonable efforts to notify Permittee (whether verbally or in writing) of any such complaints (including the specific nature thereof) within five (5) business days from receipt of the complaint. The Permittee shall provide written explanation and information with respect to the particular complaint, within five (5) business days from notice by the City. Permittee's response shall include identification of any proposed resolution(s) and corrective measure(s) to be taken.

A written disposition of the complaint will be forwarded to the Permittee (and complainant) upon completion of the City's investigation. The City Manager reserves the right, in his sole discretion, to require Permittee to refund all or any portion of the towing fees to a complainant, as liquidated damages, should the City rule in favor of the complainant.

If there have been three (3) or more substantiated complaints filed with the City within a ninety (90) day period during the Permit term, the City Manager may suspend the Permit for a period of up to thirty (30) days, with no reduction in the Permit fee.

**30. "HOW'S MY DRIVING?" PROGRAM**

Permittee shall be required to establish and continuously operate a tow truck driver safety improvement program, through an independent third party source that will establish a telephone contact and e-mail contact for receipt of complaints regarding unsafe tow truck operator driving throughout the City, which will be addressed by the Permittee to the satisfaction of the City Manager. Each vehicle will prominently display contact information for the public to report issues relating to the tow truck operator's driving. Upon request of the City Manager, Permittee shall provide a report from the independent third party source identifying any and all complaints lodged against the Permittee; investigations conducted by the Permittee; and corrective actions taken by the Permittee to the satisfaction of the City Manager. Prior to implementation, the aforesated Program shall be reviewed and approved by the City Manager, which approval shall not be unreasonably withheld. Any changes to the approved Program shall also be subject to the prior written approval of the City Manager.

**31. CUSTOMER SERVICE/INFORMATION ITEMS AND MATERIALS**

It is the City's intent to ensure the highest levels of customer service are provide to its residents, visitors, and tourists. To this end, all of Permittee's employees, agents contractors, or servants that may have contact with customers with the general public must attend and participate in the City's Towing and Customer Contact Training. This training will specifically address customer relations training, including diffusing situations, demeanor/body language, and conflict resolution. All of Permittee's

employees, agents, contractors or servants that have contact with customers or with the general public will be required to attend this training twice annually (every six months) throughout the term of the Permit. Permittee will further develop and issue informational materials providing answers to frequently asked questions, such as rates, directions/location of storage lots, and contact information.

### **32. CITIZENS BILL OF RIGHTS FOR TOWING**

Permittee shall establish and continually operate and maintain a bilingual informational campaign, advising a vehicle owner who has been towed of his/her rights and important related information, including tow rates, methods of payment, and complaint contact information. Prior to implementation, the aforesaid campaign shall be reviewed and approved by the City Manager, which approval shall not be unreasonably withheld. Any changes to the approved campaign shall also require the prior written approval of the City Manager. Following approval of the Towing Bill of Rights by the City Manager, Permittee shall post notice on all of its service vehicles, identifying the availability of a copy of the full Citizen's Bill of Rights to the general public, as well as advising the public of the "no drop fee" provision in Section 24. The notice on the vehicle shall be displayed in a prominent place on the vehicle and clearly visible and legible, in letters at least two (2") inches high.

### **33. NON-DISCRIMINATION POLICY**

In connection with the performance of work/services under this Permit, Permittee shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Permittee shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Permittee shall take affirmative action to ensure that employees are treated during their employment without regard to their race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Permittee must complete and submit the City's Disability Non-Discrimination Affidavit (Affidavit). In the event Permittee fails to execute the City's Affidavit, or is found to be in non-compliance with the provisions of the Affidavit, the City may impose such sanctions as it may determine to be appropriate, including but not limited to, withholding assignment of tows to Permittee under the Permit until compliance, and/or cancellation, termination, or suspension of the Permit. In the event the City cancels or terminates the Permit pursuant to this Section, Permittee shall not be relieved of liability to the City for damages sustained by the City by virtue of Permittee's breach.

#### **34. ASSIGNMENT**

Permittees shall not assign, transfer, convey, sublet or otherwise dispose of this Permit, or of any or all of its rights, title or interest therein, or its or its power to execute

such permit, to any person, company or corporation without the prior written consent of the City Commission.

### **35. CHANGES IN RULES AND REGULATIONS**

Any amendment to these Administrative Rules and Regulations shall be subject to the prior written recommendation of the City Manager and, thereafter, approval of the City Commission. Any changes in the schedule of Maximum Allowable Rates shall also be subject to the prior recommendation of the City Manager and, City Commission approval; provided however, that any change in the Maximum Allowable Rates requested by Permittee shall only be considered by the City on/or about October 1<sup>st</sup> of each year during the Permit term.

### **36. CITY CODE AND ADMINISTRATIVE RULES AND REGULATIONS INCORPORATED BY REFERENCE INTO PERMIT**

The Permit shall incorporate by reference (as if fully set forth therein) Article V, Division 2, Sections 106-211 through 106-255 of the Miami Beach City Code, and these Administrative Rules and Regulations, as same (respectively) may be hereinafter amended from time to time, and compliance therewith shall be binding upon Permittee and required as a condition of the Permit.