Holland & Knight

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Tracy R. Slavens, Esq. 305 789 7642 tracy.slavens@hklaw.com

February 8, 2019

VIA HAND DELIVERY

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

Re: Sunset Land Associates LLC/SH Owner LLC – Response and Opposition to Beach Towing's Motions Seeking Dismissal of Petition for Administrative Appeal to Board of Adjustment (ZBA18-0079)

Dear Mr. Mooney:

On behalf of SH Owner LLC and Sunset Land Associates LLC (collectively "Appellants"), we submit this response in opposition, to Beach Towing Services, Inc.'s ("Beach Towing"): (1) Motion to Dismiss for Lack of Jurisdiction received on January 25, 2019 ("Motion No. 1"): (2) Motion to Strike received on February 1, 2019 ("Motion No. 2"); and (3) Motion to Strike Affidavits and Motion to Dismiss for Lack of Jurisdiction received on February 4, 2019 ("Motion No. 3") (all collectively the "Motions").

INTRODUCTION

On July 25, 2018, and pursuant to Agenda Item R9E, the City Commission directed the City Attorney to file an *amicus curiae* brief in a litigation matter styled *Sunset Land Associates, LLC v. Beach Towing Services, Inc., et al.* pending in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, 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. Ultimately, on August 30, 2018, the Planning Director issued its Determination of legal nonconforming status for 1349 Dade, and on August 31, 2018, the Determination was published on the City of Miami Beach ("City") website.

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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.

Pursuant to Section 118-9(b)(1) of the City Code, an appeal of an administrative determination shall be made on or before thirty (30) days from the date the administrative determination is posted on the City's website. As such, the deadline to file an appeal of the Determination was September 30, 2018. Appellants—who have standing to file the Appeal as affected persons with ownership interests in properties located within 375 feet of 1349 Dade²—filed their appeal on September 26, 2018. See Composite Exhibit "A." Significantly, the Appeal makes clear that Appellants are the legal title owners of the Appellants' Property, and that the legal or equitable owner of 1349 Dade is Vincent J. Festa TRS, Trust Agreement.

Now, in an obvious effort to divert the Board's attention from the substantive issues raised in the Appeal, Beach Towing has filed the Motions to challenge the Board's jurisdiction to address the merits of the Appeal. In particular, Beach Towing asserts that Appellants did not timely submit required documents in connection with the Appeal and that certain representations contained within the Appeal were inaccurate. However, the evidence—including numerous correspondence exchanged between the City Attorney's office and Appellants and their counsel—unequivocally establishes that Appellants complied with the City Attorney's instructions, submitted all necessary documents and forms required by section 118-9(b)(2) of the City Code and Article II of the Board of Adjustment By-Laws and Rules of Order,³ accurately represented the facts to the Board, and timely filed their petition for administrative appeal to the Board well-before the deadline to appeal.

Importantly, on October 17, 2018, following a review for sufficiency and jurisdiction, the Office of the City Attorney accepted the appeal and issued written confirmation of receipt of the Appeal (the "CAO Letter"). See Exhibit "C." The CAO Letter further specified that the deadline for physical submittal of the complete Appeal file was October 29, 2018. Appellants submitted their physical Appeal on October 19, 2019, and an updated disclosure of interest was submitted on October 26, 2019—three (3) days prior to the stated deadline. See Exhibits "D" and "E," respectively. Indeed, the updated disclosure of ownership relates back to the original filing date of September 26, 2018, as it did not add a new party to the Appeal, raise new issues, or materially impact or alter the allegations or arguments addressed in the initial filing. Significantly, the supplemental filing did not prejudice any of the parties to the Appeal or Beach Towing. Rather, Appellants' filing represented a good-faith attempt to update and clarify the appellate record given that ownership changes occurred subsequent to the initial (timely) submittal on September 26, 2018. Accordingly, for the reasons detailed below, each of Beach Towing's Motions must be denied.

ARGUMENT

I. THE APPEAL WAS TIMELY FILED THEREFORE MOTION NO. 1 MUST BE DENIED.

Beach Towing asserts in Motion No. 1, that Appellants did not timely file their Appeal, and thus the Appeal must be dismissed for lack of jurisdiction. This assertion is without merit. The

² Specifically, Appellants own properties located at 1752, 1738, 1730 and 1724 Bay Road, and 1759, 1747, 1743, and 1733 Purdy Avenue, in Miami Beach, Florida (collectively, the "Appellants' Property"), and thus they are affected persons pursuant to section 118-9(b)(2)(B)(iii) of the City Code.

³ See Exhibit "B."

record clearly demonstrates that Appellants timely filed their Appeal and complied with the applicable statute of limitations. In response and opposition to Motion No. 1, Appellants state as follows:

- 1. The City created an administrative remedy when it enacted Section 118-9 of the Code. It is well established that remedial statutes are to be construed broadly in favor of creating access to the remedy created by legislature. *See Amos v. Conkling*, 99 Fla. 206, 126 So. 283 (1930). Motion No. 1 does violence to this rule of construction.
- 2. The Determination was issued by the Planning Director on August 30, 2018, and was published on the City's website on August 31, 2018.
- 3. Section 118-9(b)(1)(b), Board of Adjustment—Administrative appeal procedures of the City Code, provides that:

The board of adjustment shall have the exclusive authority to hear and decide all administrative appeals when it is alleged that there is error in any written planning order, requirement, decision, or determination made by the planning director or his designee in the enforcement of these land development regulations. The planning director's decision shall be published within 30 days on the city's website for at least 30 days. An eligible party, as defined in this code, shall have 30 days, from posting on the web page to appeal the administrative determination.

(Emphasis added).

4. Article II, Section 1, Application Form, of the Board By-Laws and Rules of Order provides, in relevant part, that:

Every application for action by the Board shall be made on the appropriate form...All information called for by the form shall be furnished by the applicant in the manner therein prescribed before the deadline date. Every application form shall include, but not be limited to, disclosure forms for corporations, trust, and partnerships...

5. Article II, Section 2, Filing Period, of the Board By-Laws and Rules of Order provides, in relevant part, that:

[A]n appeal from an administrative decision shall be filed within thirty (30) days from the date of the ... ruling, decision or determination of the Building Official or other administrative official.

- 6. On September 7, 2018, the Appellants met with Planning Department staff in connection with the Appeal, at which time Board of Adjustment File No. ZBA18-0079 was opened, and an administrative appeal checklist was generated. *See* Exhibit "F."
- 7. On September 26, 2018—twenty six (26) days from the date the Determination was posted on the City's website—Appellants, with instructions and guidance provided by the Office

of the City Attorney and Planning Department staff, filed their Appeal via the City's Citizens Access Portal (CAP) online system. At that time, Appellants submitted the appropriate application and disclosure forms in compliance with Article II, Sections 1 and 2 of the Board By-Laws and Rules of Order. Courtesy copies were also sent via email to the Office of the City Attorney and Planning Department staff. *See* Composite Exhibit "A."

8. Section 118-9(b)(2)(C), Application requirements, of the City Code, provides that:

The following shall be required for all applications for administrative appeals:

- (i) The petition to the board shall be in writing; and
- (ii) Shall be submitted by or on behalf of an eligible party; and
- (iii) Shall set forth the factual, technical, architectural, historic and legal bases for the appeal; and
- (iv) The party filing the appeal shall be responsible for providing all plans and exhibits, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.
- 9. Article II, Section 3, Minimum Requirements for a Valid Application, of the Board By-Laws and Rules of Order provides, in relevant part, that:

A. Application for a variance:

- 1. A completed application and completed ownership form, bearing the notarized signature of the owner of the property; if necessity, on authorization for the applicant, if not the legal owner, permission to represent the owner; and, completed and notarized disclosure of interest forms.
- 2. Original hardship letter and fourteen copies.
- 3. Fourteen copies of registered survey of the subject property, which shall be current or brought up-to-date; at least one original shall be signed, sealed and dated.
- 6. A filing fee must accompany each application, except applications filed by the Department on behalf of the City, funding for which is provided through the departmental budget.
- B. Applications for appeals from alleged errors in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance:

- 1. Letter describing the error in the decision, interpretation, order or requirement made by an administrative official charged with the enforcement of the Zoning Ordinance, and the relief requested.
- 2. Same as Article II, Section 3 A. 1, 3, and 6. Additional information, including applicable plans, may be required, at the discretion of staff.
- 3. Items 1 through 3, above, must all be submitted before the Clerk may deem the application is complete.
- 10. Here, the Appeal complied with the requirements set forth in Sections 8 and 9 referenced above, as it was filed by an eligible party,⁴ and included a completed application and ownership form,⁵ completed and notarized disclosure of interest forms that were current and correct as of the Appeal filing date of September 26, 2018, a legal description of the property subject to appeal, a hardship letter (also referred to as the letter of intent), and supporting documentation, all of which are required by section 118-9(b)(2) of the City Code and Article II of the Board of Adjustment By-Laws and Rules of Order. *See* Composite Exhibit "A"; *see also* Exhibit "B."
- 11. Planning Department staff and the Office of the City Attorney reviewed the Appeal for completeness and jurisdiction, and on October 17, 2018, the CAO Letter, providing written confirmation of receipt of the Appeal, was issued. The CAO Letter further provided that:

Within ten (10) business days of the date of this letter (i.e. by October 29, 2018), you are required to submit (if you have not done so already) a completed application for a land development board hearing; provide the City with copies of any documents you intend to rely on in your appeal; pay all required fees so that your appeal may be considered; and provide the City with all other documents required by the Planning Department. Please contact Rogelio Madan, Chief of Community Planning and Sustainability, at rogeliomadan@miamibeachfl.gov, and Steven Williams, Principal Planner, at stevenwilliams2@miamibeachfl.gov, regarding the Planning Department's requirements for your appeal to be heard. If this deadline is not met, your appeal will be dismissed.

(Emphasis added). See Exhibit "C."

12. That same day, on October 17, 2018, Planning Department staff provided written confirmation to the Appellants that the application had been reviewed and that the online CAP submittal was deemed complete. *See* Exhibit "G."

⁴ The Appellants are affected persons pursuant to Section 118-9(b)(2)(B)(iii) since Appellants' Property is within 375 feet of the property located at 1349 Dade from which Beach Towing operates and which property is the subject of this administrative appeal.

⁵ The City's Code, which is the law enacted by the City Commission and supersedes any other regulations adopted by a land use board, does not require an applicant to file a petition for administrative appeal with the Board. *See* Section 118-9(b)(2)(C).

- 13. On October 19, 2018, Planning Department staff provided written confirmation that physical submittal was received in satisfaction of the CAO Letter. *See* Exhibit "H."
- 14. On October 25, 2018, the Appellants, via electronic CAP submittal, supplemented the record by providing updated disclosure of ownership information as a result of minor corporate structural changes in the Appellants' ownership. Physical submittal of the updated disclosure of ownership was made on October 26, 2018—three (3) days prior to the physical submittal deadline prescribed in the CAO Letter. *See* Exhibit "E."
- 15. On October 30, 2018, Planning Department staff provided further written confirmation to the Appellants that all appeal submittal requirements had been satisfied. *See* Exhibit "I."
- 16. Nevertheless, the updated disclosure of interest relates back to the original filing date of September 26, 2018. Rule 1.190(c), Florida Rules of Civil Procedure, provides that under certain circumstances an amendment should be considered to relate back to a prior filing. For amended pleadings to relate back to the original timely-filed pleadings, the claim must arise out of the same conduct, transaction, or occurrence. See Flores v. Riscomp Indus., Inc., 35 So. 3d 146 (Fla. 3d DCA 2010) (holding that to survive a motion to dismiss after the statute of limitations has passed, an amended complaint must relate back to the original pleading made before the expiration of the statute of limitations). Furthermore, it is well settled that the rule is to be construed liberally. Schachner v. Sandler, 616 So.2d 166, 167-168 (Fla. 4th DCA 1993) (citing Handley v. Anclote Manor Found., 253 So. 2d 501, 502 (Fla. 4th DCA 1971), cert. denied, 262 So. 2d 445 (Fla. 1972)).
- 17. In the spirit of explaining the rule's liberality, the Florida Supreme Court in *Cabot v. Clearwater Constr. Co.*, 89 So. 2d 662 (Fla. 1956), admonished litigants by stating:

Now the objective of all pleading is merely to provide a method for setting out the opposing contentions of the parties. No longer are we concerned with the "tricks and technicalities of the trade." The trial of a lawsuit should be a sincere effort to arrive at the truth. It is no longer a game of chess in which the technique of the maneuver captures the prize.

Id. at 664. (Emphasis added). Furthermore, as long as the initial complaint gives the defendant fair notice of the general factual scenario or factual underpinning of the claim, amendments stating new legal theories can relate back. *Kopel v. Kopel*, 229 So. 3d 812 (Fla. 2017); *Fabbiano v. Demings*, 91 So. 3d 893, 895 (Fla. 5th DCA 2012); *Flores*, 35 So. 3d at 148; *Kiehl v. Brown*, 546 So. 2d 18, 19 (Fla. 3d DCA 1989); *see also Palm Beach County Sch. Bd. v. Doe*, 210 So. 3d 41, 44 (Fla. 2017) ("[E]ntirely new and separate causes of action will not relate back.").

Here, the updated disclosure of interest information is entirely related to the Appeal application form and the Appellants' ownership interests submitted before the expiration of the statute of limitations. The updated information in the disclosure of ownership does not alter or change the

⁶ "When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading." Fla. R. Civ. P. 1.190(c).

cause of action, or the real parties in interest. As encouraged by the Florida Supreme Court, the submittal of updated disclosures was a sincere effort by the Appellants to ensure that the record reflects the latest ownership information, as changes in ownership occurred after the original submittal date. As such, the updated disclosure form relates back to the original timely-filed Appeal. See Palm Beach County v. Savage Const. Corp., 627 So. 2d 1332 (Fla. 4th DCA 1993) (finding that County's amended complaint, naming actual surety on payment and performance bond upon which county sought payment, "related back" to county's original filing, which incorrectly named different insurer as surety; reference to one insurer could reasonably be found to be simply misnomer for other, as county made several inquiries before determining that second insurer was proper defendant, single attorney represented both companies, and both companies received service of process through same individuals at same location. West's F.S.A. RCP Rule 1.190(c)); see also Griffin v. Workman, 73 So.2d 844 (Fla.1954); Classical & Innovative Designs, Inc. v. Max S. Const., Inc., 208 So. 3d 763 (Fla. Dist. Ct. App. 2016) (holding that an amendment may be allowed to correct a mistake in the name of a claimant or defendant or to add matter of description of the person of the defendant); Estate of Eisen v. Philip Morris USA, Inc., 126 So. 3d 323 (Fla. Dist. Ct. App. 2013) (holding that addition of a party is permitted if it can be said that the new and former parties have an identity of interest so as not to prejudice the opponent by the addition).

- 18. Courts have generally applied the relation-back doctrine in similar circumstances. "Where there is no doubt regarding the identity of the party intended to be named, it is not unfair or unjust to permit a plaintiff to correct its pleading particularly because the defendant suffers no prejudice." Arch Specialty Ins. Co. v. Kubicki Draper, LLP, 137 So.3d 487, 491 (Fla. 4th DCA 2014). In St. John's Hosp. and Health Ctr. v. Toomey, the Court held that where the text of the amended complaint and original complaint were identical except for correction of plaintiff's name from St. John's Hospital and Health Center to St. Johns' Hospital and Health Center Foundation (two separate entities), the defendant estate had knowledge of the claim which was attached to the complaint, and the estate was not prejudiced by the amendment, the error was merely a correctable misnomer). 610 So. 2d 62 (Fla. 3d DCA 1992); see also, e.g., Galuppi v. Viele, 232 So. 2d 408, 410 (Fla. 4th DCA), cert. denied, 238 So. 2d 109 (Fla. 1970); Louis v. South Broward Hosp. Dist., 353 So. 2d 562, 563 (Fla. 4th DCA 1977), dismissed, 359 So. 2d 1217 (Fla. 1978); See also Sexton v. Panning Lumber Co., 260 So. 2d 898 (Fla. 4th DCA 1972), cert. denied, 271 So. 2d 764 (Fla. 1972); Thomas v. Taylor Creek Marina of Fort Pierce, Inc., 520 So.2d 708 (Fla. 4th DCA 1988); Francese v. Tamarac Hosp. Corp., 504 So. 2d 546 (Fla. 4th DCA 1987).
- 19. The copious evidence and supporting case law establish that the Appeal was properly filed within the 30-day time period from the date the Determination was posted on the City's website, and the updated disclosure form—which is wholly immaterial to the underlying arguments of the Appeal, and nothing more than a good-faith attempt to preserve the file with the most up-to-date information—relates back to the original timely-filed Appeal. By contrast, had Appellants failed to provide the updated disclosure form, they would not have complied with their obligations to accurately represent material facts to the Board. In addition, Beach Towing was in no way prejudiced by Appellants' supplemental filing.

Accordingly, for the reasons set forth above, the Board has jurisdiction to hear and rule on the Appeal, and thus the Motion to Dismiss for Lack of Jurisdiction should be DENIED.

II. THE CITY MUST FOLLOW ITS CODE THEREFORE MOTION NO. 2 MUST BE DENIED

Beach Towing's Motion No. 2—a motion to strike requesting that Appellants be precluded during the pendency of this Appeal from asserting that the City should apply Section 106-266(B)(4)d of the City Code to any application for a towing permit renewal filed by Beach Towing—must similarly be denied. In their pleadings, Appellants have simply asked the City to enforce its Code. *See* Appellants' rebuttal dated December 20, 2019, included as Exhibit "J" hereto. Specifically, section 106-259 of the City Code requires that "[e]very person engaged in towing or removing vehicles for profit must obtain an occupational license issued by the city." In addition, section 118-9(b)(5) requires a stay of all work, including the issuance of a business tax receipt ("BTR") during the pendency of an appeal of a Director's determination to the Board of Adjustment. In light of this Appeal and because a BTR must be denied if a BTR application violates a zoning ordinance, Appellants maintain their position that the City should not consider a renewal of the towing permit until these appellate proceedings are final. Accordingly, Motion No. 2 must be denied.

III. APPELLANTS' DOCUMENTS FILED IN SUPPORT OF THEIR APPEAL COMPLIED WITH INSTRUCTIONS PROVIDED BY THE CITY ATTORNEY'S OFFICE THEREFORE MOTION NO. 3 MUST BE DENIED

Motion No. 3— Beach Towing's Motion to Strike Affidavits and Motion to Dismiss for Lack of Jurisdiction—represents yet another frivolous attempt by Beach Towing to steer the Board's attention away from the substantive issues raised in the Appeal. Significantly, however, Beach Towing's position is inaccurate, disingenuous, and serves to improperly deny the Appellants a meaningful opportunity to a point of entry into the City's administrative process in violation of the City's Code clear intent. Accordingly, for the following reasons, Motion No. 3 must be denied:

- 1. As stated in Section I above, as a remedial act, Section 118-9 of the Code should be constructed liberally in favor of granting access to the remedy. Motion No. 3 frustrates the legislative intent of the City Code.
- 2. Section 118-9(b)(2)(B), Eligible parties, of the City Code provides, in relevant part, that:

Parties eligible to file an application for an administrative appeal are limited to the following:

- (i) Original applicant/property owner.
- (ii) The city manager on behalf of the city administration, except for administrative appeals pursuant to sections 118-260, "Special review procedure," 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-609,

"Completion of work" and 142-108, "Provisions for the demolition of single-family homes located outside of historic districts".

(iii) An affected person, which for purposes of this section shall mean a person owning property within 375 feet of the site or application which is the subject of the administrative appeal, except for administrative appeals pursuant to sections 118-260, "Special review procedure" 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-609, "Completion of work," and 118-260, "Special review procedure."

(Emphasis added).

- 3. The legislative intent of the City Code is to provide affected persons a clear point of entry to administrative review. The premise of the policy behind the requirement of clear point of entry into administrative process is to ensure that affected parties are not prejudiced by administrative action without being afforded an opportunity to pursue an available and adequate remedy. See Florida League of Cities, Inc. v. Administration Com'n, App. 1 Dist., 586 So. 2d 397 (1991).
- 4. An application form is not a requirement for administrative appeal petitions to the Board of Adjustment. Section 118-9(b)(2)(C), Application requirements, of the City Code, provides that:

The following shall be required for all applications for administrative appeals:

- (i) The petition to the board shall be in writing; and
- (ii) Shall be submitted by or on behalf of an eligible party; and
- (iii) Shall set forth the factual, technical, architectural, historic and legal bases for the appeal; and
- (iv) The party filing the appeal shall be responsible for providing all plans and exhibits, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.
- 5. Article II, Section 1, Application Form, of the Board By-Laws and Rules of Order, in relevant part, provides that "[e]very application for action by the Board shall be made on the appropriate form...[a]ll information called for by the form shall be furnished by the applicant in the manner therein prescribed..."
- 6. The Board's By-Laws and Rules of Order conflict with the regulations set forth in the City's Code. Section 114-2(b), Interpretation, Purpose and Conflict, in relevant part provides that "[i]n interpreting and applying the provisions of the land development regulations, they **shall be held to be the minimum requirements** for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare." (Emphasis added).

- 7. As explained by staff from the City Attorney's Office, the City utilizes one standardized Land Use Board Application form for all land use and zoning related requests, regardless of the type of request or applicant, or even in what capacity the applicant is filing such a request. Similarly, there is only one standardized affidavit form that does not contemplate the possibility that the applicant may be an affected person other than the owner of the property subject to the application. These forms are evidently drafted with the most common scenario in mind—*i.e.* where the applicant is the owner of the property subject to the application. *See* Exhibit "K."
- 8. Here, with guidance and instruction from staff from the City Attorney's office, Appellants complied with the requisite protocols for completing the application and supporting affidavits as *affected persons* who own property within 375 feet of 1349 Dade—the property subject to the appeal—rather than as *owners* of the subject property. See Planning Department's staff's written instructions regarding the application form included as Exhibit "L."
- 9. In the application that is the subject of Motion No. 3, Appellants, as instructed by Planning Department staff, properly identified: (1) 1349 Dade as the "Property Information"; (2) Vincent J. Festa TRS, Festa Trust Agreement as the "Property Owner"; and (3) Appellants as the "Applicant." And in reliance on the staff's instructions, Appellants signed the application thereby attesting to the accuracy of the information contained therein. Had Appellants not provided their signatures, the application would have been deemed incomplete. In addition, the hardship letter, and all subsequent correspondence from Appellants in connection with the Appeal, explicitly state that the Appellants are legal title owners of the Appellants' Property and are filing this Appeal as affected persons owning property within 375 feet of 1349 Dade. See Composite Exhibit "A."
- 10. It is apparent from the Appeal application form, the hardship letter and supporting documentation that Appellants, as affected persons, are asserting and certifying ownership *only* as to the Appellants' Property, which is paramount in establishing their standing to appeal. Beach Towing's suggestion that Appellants intentionally misrepresented their status as owners of 1349 Dade—notwithstanding years of evidence to the contrary in filings submitted to both the City and the Circuit Court—simply defies logic and should be recognized for what it is—a red herring without any merit.
- 11. It must also be noted that both Article II of the Board's By-Laws and Rules of Order and the application form call for the notarized signature of the *owner of the property* without further direction. This creates an ambiguity as, under these circumstances, the owner of the property could be interpreted to mean the owner of the property subject to the Appeal or the owner of the affected property that is within 375 feet of the property subject to the Appeal.

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⁷ The undersigned counsel, as an attorney and registered lobbyist with the City, verifies the accuracy of her conversations with Planning Department staff members and/or personnel from the Office of the City Attorney with respect to the process and submission of this Appeal, including the completion and execution of the subject application form. Indeed, undersigned counsel spoke with Planning Department staff members and/or personnel from the Office of the City Attorney on February 7, 2019, who confirmed the substance of these conversations. In the event the Board seeks further corroboration of the discussions held between undersigned counsel and Planning Department staff members and/or personnel from the Office of the City Attorney, undersigned counsel is prepared to provide testimony at a hearing before the Board, if requested.

- 12. Strict interpretation of the application form and Board's By-Laws and Rules of Order, contradict the Code's clear intent which allows persons or entities other than the owner of the property subject to the appeal (*i.e.*, owners of property located within 375 feet of said property), to file an application for an administrative appeal. This interpretation would also run counter to the numerous appellate filings, including the application form, whereby Appellants have repeatedly represented themselves as affected persons owning neighboring property and not as owners of the property subject to the appeal.
- 13. The clear point of entry requirement enables affected parties to have a meaningful opportunity to request and obtain review. See L.R. v. Dep't of State, Div. of Archives, History & Records Mgmt., 488 So. 2d 122, 124 (Fla. 3d DCA 1986); see also Florida League, 586 So. 2d at 413, (noting that simply providing point of entry into administrative process is not enough if point of entry is so remote from agency action as to be ineffectual as vehicle for affording party whose substantial interests are or will be affected by agency action a prompt opportunity to challenge disputed issues of material fact in a formal hearing). A literal reading of the language in the application form, including the affidavits, would preclude all affected persons from any meaningful opportunity to challenge issues of material fact and pursue an available and adequate remedy. Following this flawed logic, then no person, in any given circumstances, other than a property owner, would be afforded a point of entry to the administrative process.⁸
- 14. Accordingly, to provide the Appellants with a meaningful opportunity to point of entry into the administrative review process, the Appeal must be read and analyzed as a whole. Doing so will leave no question that the Appellants' certified ownership as to the Appellants' Property, complied with the applicable requirements of the City Code and Board's By-Laws and Rules of Order, and submitted a complete appeal in a timely manner.
- 15. Proper completion and execution of the application form, compliance with all administrative appeal requirements, and timely submittal of the Appeal are unequivocally confirmed by the CAO Letter and staff's acceptance of the Appeal. Exhibits "C," "G," and "H."

Accordingly, for the reasons set forth above, the Board has jurisdiction to hear and rule on the Appeal and the Motion to Strike Affidavits and Motion to Dismiss for Lack of Jurisdiction should be DENIED.

⁸ If the Board were to determine that the application form and Board's By-Laws and Rules of Order are subject to strict interpretation, then Appellants have exhausted the available administrative remedies and the underlying issues of the Appeal is subject to the court's jurisdiction.

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February 8, 2019 Page 12

Thank you in advance for your considerate attention to this omnibus response. 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: David Buckner, Esq.

Bradley Colmer, Esq. Dan Marinberg, Esq.

EXHIBIT "A"

Madrid, Vanessa (MIA - X27453)

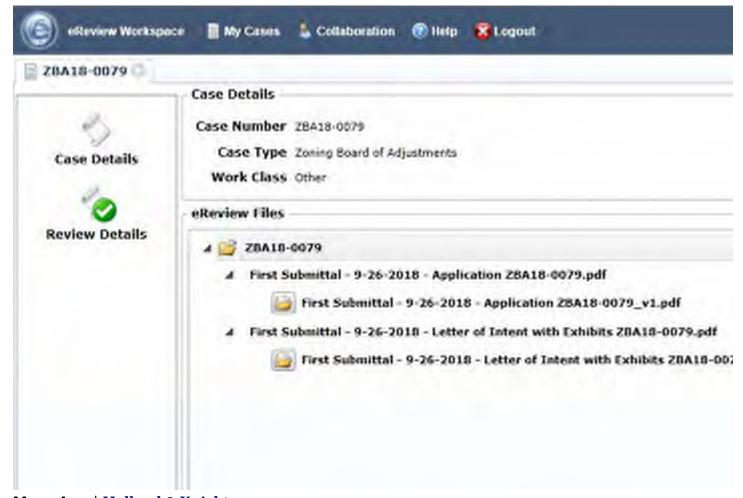
From: Arce, Mercy S (MIA - X22178)

Sent: Wednesday, September 26, 2018 2:55 PM

To:Williams, Steven - Planning; Slavens, Tracy R (MIA - X27642)Cc:Madan, Rogelio; Kallergis, Nick; Madrid, Vanessa (MIA - X27453)Subject:Zoning Board of Adjustments ZBA18-0079 - First Submittal

Good afternoon Steven,

The application and letter of intent with exhibits for ZBA18-0079 has been uploaded.



Mercy Arce | Holland & Knight

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MIAMIBEACH

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, Florida 33139; Tel: 305.673.7550; Web: www.miamibeachfl.gov/planning

LAND USE BOARD HEARING APPLICATION

The following application is submitted for review and consideration of the project described herein by the land use board selected below. A separate application must be completed for each board reviewing the proposed project.

Application Information					
FILE NUMBER					4. May 1.

	d of Adjustment		· ·	n Review Booi	d
	n of the Land Development Reg	gulations	☐ Design review app	proval	
Appeal of an administra		·	☐ Variance Historic Preservation Board		
☐ Conditional use permit	onning Board		☐ Certificate of Appropriateness for design		
☐ Lot split approval			☐ Certificate of Appropriateness for demolition		
	Development Regulations or zo	ning map			
☐ Amendment to the Comp	rehensive Plan or future land u	ise map	☐ Variance		
□ Other:					
	Please ottach Legol Desc	ription os	"Exhibit A"		
ADDRESS OF PROPERTY					
1349 Dade Blvd	<u>d., Miami Beach,</u>	Florid	a. 33139		
FOLIO NUMBER(S)				······································	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1
02-3233-012-0	0680				
Property Owner Inform	notion				
PROPERTY OWNER NAME		****			
Vincent J. Festa TRS, Festa Trust Agreement					
ADDRESS CITY STATE ZIPCODE			ZIPCODE		
8660 4 Villa La Jolla Drive		La Jolla CA 92		92037	
BUSINESS PHONE	CELL PHONE	EMAIL AD	DRESS	<u></u>	
-					
Applicant Information	if different thon owner)				
APPLICANT NAME		_			
Sunset Land A	ssociates and SI	H Own	er LLC		
ADDRESS		CITY		STATE	ZIPCODE
1691 Michi	gan Ave,Suite 510	Mia	ami Beach	FL	33139
BUSINESS PHONE	CELL PHONE	EMAIL AD	DRESS	<u>}</u>	
305-749-0921			al.com		
Summary of Request					
PROVIDE A BRIEF SCOPE OF REQUEST					
ļ	Adjustment pursuant to S	Section 44	R-Q(h)(1) Aftha Ci	ty Code in cor	naction with
	determination issued on				
Florida.	actoniumation tooded on		-, -0 15, 75, 16 16 1		200011,
· · - · · - · ·					

Project Information					
Is there an existing building(s) on the site?			☐ Yes	□No	
Does the project include interior or exterior demolition?			☐ Yes	□ No	
Provide the total floor area o					SQ. FT.
	of the new construction (inclu	ding required p	parking and all us	sable area),	SQ. FT.
Party responsible for p	roject design				
NAME		1	☐ Contractor	☐ Landscape Arch	itect
N/A		☐ Engineer	□ Tenant	□ Other	······································
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		
Authorized Represental	tive(s) Information (if app	olicable)			
NAME			☐ Contact		
Tracy Slavens		☐ Agent	☐ Other		
ADDRESS		CITY		STATE	ZIPCODE
701 Brickell Ave		Miami		FL	33131
BUSINESS PHONE	CELL PHONE	EMAIL ADDRI	ESS		
305-789-7642		tracy.slav	/ens@hkla\	v.com	
NAME		國 Attorney	□ Contact		
Vanessa Madrid		☐ Agent	☐ Other		
ADDRESS		CITY		STATE	ZIPCODE
701 Brickell Ave		Miami		FL	33131
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		
305-789-7453		vanessa.	madrid@hl	daw.com	
NAME		☐ Attorney	☐ Contact		
		☐ Agent	☐ Other		
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDRI	ESS	<u>'</u>	
	1	1			

Please note the following information:

- A separate disclosure of interest form must be submitted with this application if the applicant or owner is a corporation, partnership, limited partnership or trustee.
- All applicable affidavits must be completed and the property owner must complete and sign the "Power of Attorney" partion of the affidavit if they will not be present at the hearing, or if other persons are speaking on their behalf.
- To request this material in alternate format, sign language interpreter (five-day notice is required), information on access
 for persons with disabilities, and accommodation to review any document or participate in any City sponsored
 proceedings, call 305.604.2489 and select (1) for English or (2) for Spanish, then option 6; TTY users may call via
 711 (Florida Relay Service).

Please read the following and acknowledge below:

- * Applications for any board hearing(s) will not be accepted without payment of the required fees. All checks are to be made payable to the "City of Miami Beach".
- All disclosures must be submitted in CMB Application format and be consistent with CM8 Code Sub-part A Section 2-482(c):
 - (c) If the labbyist represents a corporation, partnership ar trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.
- Public records notice All documentation submitted for this application is considered a public record subject to Chapter
 1.19 of the Florida Statutes and shall be disclosed upon request.
- In accordance with the requirements of Section 2-482 of the code of the City of Miami Beach, any individual or group that will be compensated to speak ar refrain from speaking in favor or against an application being presented before any of the City's land use boards, shall fully disclose, prior to the public hearing, that they have been, or will be compensated. Such parties include: architects, engineers, landscape architects, contractors, or other persons responsible for project design, as well as authorized representatives attorneys or agents and contact persons who are representing or appearing an behalf of a third party; such individuals must register with the City Clerk prior to the hearing.
- in accordance with Section 118-31. Disclasure Requirement. Each person or entity requesting approval, relief or other action from the Planning 8aard, Design Review 8aard, Historic Preservation 8oard or the Board of Adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided ar committed, directly or an its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional service rendered or to be rendered. The disclosure shall: (I) be in writing, (II) indicate to whom the consideration has been provided or committed, (III) generally describe the nature of the consideration, and (IV) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board. Upon determination by the applicable board that the forgoing disclasure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then (I) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and (II) no application form said person or entity for the subject property shall be reviewed ar considered by the applicable board(s) until expiration of a period of ane year after the nullification of the application or order. It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements af this section.
- When the applicable baard reaches a decision a final order will be issued stating the board's decision and any conditions imposed therein. The final order will be recorded with the Miami-Dade Clerk of Courts. The original board order shall remain on file with the City of Miomi Beach Planning Department. Under no circumstances will a building permit be issued by the City of Miami Beach without a capy of the recorded final order being included and made a part of the plans submitted for a building permit.

The aforementioned is acknowledged by:	Owner af the subject property Authorized representative
	SIGNATURE
	Bradley Colmer, Manager, Sunset Land Associates LLC
	9 11 2018
	DATE SIGNED

- Applications for any board hearing(s) will not be accepted without payment of the required fees. All checks are to be made payable to the "City of Miami Beach".
- All disclosures must be submitted in CMB Application format and be consistent with CMB Code Sub-part A Section 2-482(c):
 - (c) If the lobbyist represents a corporation, partnership or trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.
- Public records notice All documentation submitted for this application is considered a public record subject to Chapter
 119 of the Florida Statutes and shall be disclosed upon request.
- In accordance with the requirements of Section 2-482 of the code of the City of Miami Beach, any individual or group that will be compensated to speak or refrain from speaking in favor or against an application being presented before any of the City's land use boards, shall fully disclose, prior to the public hearing, that they have been, or will be compensated. Such parties include: architects, engineers, landscape architects, contractors, or other persons responsible for project design, as well as outhorized representatives attorneys or ogents and contact persons who are representing or appearing on behalf of a third party; such individuals must register with the City Clerk prior to the hearing.
- In accordance with Section 11B-31. Disclosure Requirement. Each person or entity requesting approval, relief or other action from the Planning Board, Design Review Board, Historic Preservation Board or the Board of Adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided or committed, directly or on its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional service rendered or to be rendered. The disclosure shall: (I) be in writing, (II) indicate to whom the consideration has been provided or committed, (III) generally describe the nature of the consideration, and (IV) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board. Upon determination by the applicable board that the forgoing disclosure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then (I) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and (II) no application form said person or entity for the subject property shall be reviewed or considered by the applicable board(s) until expiration of a period of one year after the nullification of the application or order. It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements of this section.
- When the applicable board reaches a decision a final order will be issued stating the board's decision and any conditions imposed therein. The final order will be recorded with the Miami-Dade Clerk of Courts. The original board order shall remain on file with the City of Miami Beach Planning Department. Under no circumstances will a building permit be issued by the City of Miami Beach without a copy of the recorded final order being included and made a part of the plans submitted for a building permit.

The aforementioned is acknowledged by:	☐ Owner of the subject property ■ Authorized representative
	SIGNATURE
	Bradley Colmer, Manager, SH Owner LLC
	9 11 2018 PATE SIGNED

OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF	
COUNTY OF	
I halas first duly super dans	
the property that is the subject of this application. (2) This application of application, including sketches, data, and other supplementary materials, a and belief. (3) I acknowledge and agree that, before this application in development board, the application must be camplete and all information so I also hereby authorize the City of Miami Beach to enter my property for Hearing on my property, as required by law. (5) I am responsible for remove	ire true and carrect to the best of my knowledge may be publicly naticed and heard by a land ubmitted in suppart thereof must be accurate. (4) the sale purpose of posting a Notice of Public
	SIGNATURE
Swarp to and subscribed before me this day of	20 The foregoing instrument was
acknowledged before me by	who has produced as
Swarn to and subscribed before me this day af, acknowledged before me by, identification and/or is personally knawn to me and who did/did not take a	n oath.
NOTARY SEAL OR STAMP	
	NOTARY PUBLIC
My Commission Expires:	
My Commission Expires.	PRINT NAME
·	
ALTERNATE OWNER AFFIDAVIT FOR CORPORATION, PARTNER	SHIP OR LIMITED LIABILITY COMPANY
STATE OF Florida	
COUNTY OF Miami-Dade	
I, Bradley Colmer being first duly sworn, downward Manager (print title) of Sunset Land Associates LLC authorized to file this application on behalf of such entity. (3) This application application, including sketches, data, and other supplementary materials, are and belief. (4) The corporate entity named herein is the awner of the praper acknowledge and agree that, before this application may be publicly noticed application must be complete and all information submitted in support thereof the City of Miami Beach to enter my property for the sole purpose of posting required by law. (7) I am responsible for remove this notice after the date of the sole purpose.	in and all information submitted in support of this retrue and correct to the best of my knowledge erty that is the subject of this application. (5) I d and heard by a land development board, the of must be accurate. (6) I also hereby authorized a Notice of Public Hearing on my property, as
(3)	SIGNATURE
Sworn to and subscribed before me this 12 day of September acknowledged before me by Brodley Colmer, identification and/or is personally known to me and who did/did not take an	who has produced ACDC as a cath.
NOTARY SEAL OR STAMP	Contract of the Contract of th
My Commission Expires: Jan 21, 2021	EDU/MOTARY PUBLIC Notary Public, State of Florida Commission# GG 61259 My comm. expires Jan 21, 2021

OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF			
COUNTY OF			
the property that is the subject of this application, including sketches, data, and other and belief. (3) I acknowledge and agree the development board, the application must be as I also hereby authorize the City of Miami Beating on my property, as required by law. (5)	cation. (2) This application or supplementary materials at, before this application omplete and all information ach to enter my property	n and all informations, are true and corre n may be publicly n submitted in suppo for the sole purpose	ct to the best of my knowledge noticed and heord by a land rt thereof must be accurate. (4) of posting a Notice of Public
			SIGNATURE
Sworn to and subscribed before me this acknowledged before me by identification and/or is personally known to me	day of and who did/did not tak	, 20 , who has produ e an oath	The foregoing instrument was ced as
NOTARY SEAL OR STAMP		-	NOTARY PUBLIC
My Commission Expires:	-		PRINT NAME
COUNTY OF Miami-Dade I, Bradley Colmer authorized to file this application on beholf of stapplication, including sketches, data, and other acknowledge and agree that, before this application must be complete and all information the City of Miami Beach to enter my property for required by law. (7) I am responsible for remove	SH Owner LLC uch entity. (3) This applica is supplementary materials rein is the owner of the pro- cation may be publicly not on submitted in support the or the sole purpose of post	(print name of tion and oll informat), are true and correct operty that is the sulficed and heard by a preof must be occurating a Natice of Publice.	corporate entity). (2) I am ion submitted in support of this to the best of my knowledge piect of this application. (5) I land development board, the te. (6) I also hereby authorize
Sworn to and subscribed before me this 12 acknowledged before me by 3 radic fidentification and/or is personally known to me	day of Septamb	, 20 18 , who hos produce an oath	SIGNATURE The foregoing instrument wos ed os
My Commission Expires: Dan 21,2021	_		Notary Public, State of Florida Commission# GG 61259 My commission# Lin 21, 2021

PRINT NAME

POWER OF ATTORNEY AFFIDAVIT

STATE OF Florida		
COUNTY OF Miami-Dade		
	resentative before the Board of Adjustment y property for the sole purpose of posting a libble for remove this notice offer the date of the	ation. (2) 1 hereby authorize Board. (3) 1 olso hereby Notice of Public Hearing on my
PRINT NAME (and Title, if applicable)	- Commenter of the Comm	SIGNATURE
Sworn to and subscribed before me this 12 ocknowledged before me by 13 radic y identification and/or is personally known to me	day of September, 2018 who has prode and who did/did not take an oath.	The foregoing instrument was uced <u>FC DC</u> as
NOTARY SEAL OR STAMP	<u> </u>	NOTARY PUBLIC
My Commission Expires: Dan 21, 200	EDUARDO LOPEZ Notary Public, State of Florida Commission# GG 61259 My comm. expires Jan. 21, 2021	ada Copez PRINT NAME
	CONTRACT FOR PURCHASE	
If the opplicant is not the owner of the property or not such contract is contingent on this applinctuding any and all principal officers, stocorporations, portnerships, limited liability com the identity of the individuals(s) (natural persoclause or contract terms involve additional individuals and/or corporate entities, list all individuals and/or corporate	lication, the opplicant shall list the names of skholders, beneficiaries or partners. If any spanies, trusts, or other corporate entities, the ens) having the ultimote ownership interest in viduols, corporotions, portnerships, limited liab	the contract purchasers below, of the contact purchasers ore applicant shall further disclose the entity. If any contingency
NAME	· · · · · · · · · · · · · · · · · · ·	DATE OF CONTRACT
NAME, ADDRESS AND	OFFICE 5	% OF STOCK
· <u>A</u>		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this opplication if

POWER OF ATTORNEY AFFIDAVIT

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NATURE
os
PUBLIC
T NAME
rs below, asers are r disclose
ntingency s, ar other
s, ar other

In the event of any changes of awnership ar changes in controcts for purchase, subsequent to the date that this application if

filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclasure of interest.

DISCLOSURE OF INTEREST CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY

If the praperty that is the subject of the application is owned ar leased by a carparation, partnership or limited liability campany, list ALL of the awners, shareholders, partners, managers and/or members, and the percentage of ownership held by each. If the owners cansist of one or more carparations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

Sunset Land Associates LLC	
NAME OF CORPORATE ENTITY	
NAME AND ADDRESS	% OF OWNERSHIP
Please see attached.	
	-
	·
	·
	:
NAME OF CORPORATE ENTITY	
NAME OF CORPORATE ENTITY	**.
NAME AND ADDRESS	% OF OWNERSHIP
	•
	•
	·····

If there are additional carparate awners, list such awners, including carparate name and the name, address and percentage of awnership of each additional awner, an a separate page.

DISCLOSURE OF INTEREST TRUSTEE

If the property that is the subject of the application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other carporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

	TRUST NAME	
	NAME AND ADDRESS	% INTEREST
		Annual
		· .
· · · · · · · · · · · · · · · · · · ·		in the second
er en		
. · · ·		
····	mesture and the second	

filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

DISCLOSURE OF INTEREST CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY

If the property that is the subject of the application is owned or leased by a corporation, partnership or limited liability company, list ALL of the owners, shareholders, partners, managers and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entitles, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

SH O	wner LLC	
	NAME OF CORPORATE ENTITY	
	NAME AND ADDRESS	% OF OWNERSHIP
Please	see attached.	
Ticasc	300 attaories.	
•		
· · · · · · · · · · · · · · · · · · ·		
		e factories States
'		
	NAME OF CORPORATE ENTITY	
	NAME AND ADDRESS	% OF OWNERSHIP

If there are additional corporate owners, list such owners, including corporate name and the name, address and percentage of ownership of each additional owner, on a separate page.

DISCLOSURE OF INTEREST TRUSTEE

If the property that is the subject of the opplication is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, portnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

	TRUST NAME	
٠.	NAME AND ADDRESS	% INTEREST
· .		
٠.,		ELLEGATION WANTED TO THE PARTY OF THE PARTY
٠.		

COMPENSATED LOBBYIST

Pursuant ta Section 2-482 af the Miami Beach City Cade, all labbyists shall, befare engaging in any labbying activities, register with the City Clerk. Please list belaw any and all persons or entities retained by the applicant to labby City staff ar any af the City's land development baards in support af this application.

NAME	ADDRESS	PHONE
Tracy Slavens	701 Brickell Ave, Miami FL 33131	305-786-7642
Vanessa Madrid	701 Brickell Ave, Miami FL 33131	305-789-7453
Additional names can be placed an a se	eparate page attached ta this application.	
DEVELOPMENT BOARD OF THE C SUCH BOARD AND BY ANY OTH SHALL COMPLY WITH THE CODE C	OGES AND AGREES THAT (I) AN APPROVAL G ITY SHALL BE SUBJECT TO ANY AND ALL COND HER BOARD HAVING JURISDICTION, AND (2) A OF THE CITY OF MIAMI BEACH AND ALL OTHER AP	PHICANT'S PROJECT
AND FEDERAL LAWS.		
and the second s	APPLICANT AFFIDAVIT	
Flouido	MIL BIONIVI SHIPMANI	
STATE OF Florida	•	
COUNTY OF Miami Dade		
ar representative of the applicant. (2) Th	being first duly sworn, depose and certify as followis application and all information submitted in support of materials, are true and correct to the best of my knowledge BY Support Auspli	his application, including
		SIGNATURE
Sworn to and subscribed befare me this acknowledged before me by 13/2 identification and/ar is personally known	s 12 day of <u>September</u> , 20 19. The total day <u>Colmest</u> , who has produced in the me and who did/did not take an auth.	foregoing instrument was
NOTARY SEAL OR STAMP	The state of the s	NOTARY PUBLIC
My Commission Expires: Von 21	EDUARDO LOPEZ Notary Públic, State of Florida Commission# GG 61250 My comm. expires lan 21 0004	L COPCE

PHONE

305-786-7642

COMPENSATED LOBBYIST

Pursuant to Section 2-482 of the Miami Beach City Code, all labbyists shall, before engaging in any labbying activities, register with the City Clerk. Please list below any and all persons ar entities retained by the applicant to lobby City staff ar any of the City's land development boards in support of this application.

NAME

ADDRESS

Tracy Slavens	701 Brickell Ave, Miami FL 33131	305-786-7642
Vanessa Madrid	701 Brickell Ave, Miami FL 33131	305-789-7453
Additional names can be placed an a	separate page attached to this application.	
DEVELOPMENT BOARD OF THE	EDGES AND AGREES THAT (1) AN APPROVAL G CITY SHALL BE SUBJECT TO ANY AND ALL CONT THER BOARD HAVING JURISDICTION, AND (2) A OF THE CITY OF MIAMI BEACH AND ALL OTHER AP	DITIONS IMPOSED BY PPLICANT'S PROJECT
	APPLICANT AFFIDAVIT	
STATE OF Florida		
COUNTY OF Miami Dade		
ar representative of the applicant. (2) 1	being first duly swarn, depase and certify as fallaving application and all information submitted in support of the materials, are true and carrect to the best of my knowledges.	his application, including a and belief.
		SIGNATURE
Swarn to and subscribed before me the acknowledged before me by 13 identification and/or is personally known	nis 17 day of September, 20 18. The radicy Colmer, who has produced we take an oath.	foregoing instrument was
NOTARY SEAL OR STAMP		NOTARY PUBLIC
My Cammissian Expires: Dam 2	Notary Public, State of Florida, and S Commissions 90 61259 My comm. expires Jan. 21, 2021	CP 2 PRINT NAME

SUPPLEMENTARY DISCLOSURE OF INTEREST

Interests in Sunset Land Associates, LLC.

Percentage of Interest.

Sunset Harbor Holdings, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 100%

Interests in SH Owner, LLC.

Percentage of Interest

Sunset Harbor Holdings, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 100%

Interests in Sunset Harbor Holdings, LLC.

Percentage of Interest

Deco Capital Investments, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 10%

RWNIH-REP Sunset Harbor, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miaml Beach, FL 33139

90%

Interests in Deco Capital Investments, LLC.

Percentage of Interest

	•
Brad Colmer c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.65%
Dan Marinberg c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	9.90%
M-1752 Deco Investor, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	4.98%
Michael Beattie c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	4.42%
Frederic Khalil c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	10.00%
David Neithardt Beaumont c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	6.86%
Douglas Silverman c/o Deco Capital Group	13.53%

Noelle Villaneuva 1.60% c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

1691 Michigan Ave., Suite 510

Miami Beach, FL 33139

Bons Marinberg c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.94%
Deco Capital Group, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	3.58%
Ralph Bekkevold c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	16.95%
Joseph Furst c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	1.69%
Max and Roger Leifer c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	6.76%
Christopher Roe c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.56%
Gloria Canasi c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	9.59%

Interests in RWNIH-REP Sunset Harbor LLC.

Percentage of Interest

95.9588%

RWNIH-REP, LLC	
c/o Deco Capital Group	
1691 Michigan Ave., Suite 510	
Miami Beach, FL 33139	

Ari Shalam-REP, LLC	0.4822%
c/o Deco Capital Group	-11022
1691 Michigan Ave., Suite 510	
Miami Beach, FL 33139	
· ·	

Joshua Shapiro 0.0698% c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

Barry Kringstein c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

1691 Michigan Ave., Suite 510

Miami Beach, FL 33139

3.4892%

Interests in RWNIH-REP LLC.

Percentage of Interest

Marc Rowan and family c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	94.7036%
Ken Glassman c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	1.2176%
Mary Harada c/o Deco Capital Group	0.1259%

Ari Shalam c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	0.0122%
Barry Kringstein c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	0.0224%
Limited/Non-Controlling Investors (no involvement with development) c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	3.9183%

EXHIBIT A

Legal Description for 1349 Dade Boulevard

Legal Description for 1349 Dade Boulevard:	and the second s
Lots 11 and 12, Block 16A, of ISLAND VIEW S as recorded in Plat Book 6 at Page 115 of the	
	in the second se
of the control of the	·



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On: 9/13/2018

Property Information		
Folio:	02-3233-012-0680	
Property Address:	1349 DADE BLVD Miami Beach, FL 33139-1420	
Owner Mailing Address	VINCENT J FESTA TRS FESTA TRUST AGREEMENT 8660 4 VILLA LA JOLLA DRIVE LA JOLLA, CA 92037 USA	
Primary Land Use	2719 AUTOMOTIVE OR MARINE AUTOMOTIVE OR MARINE	
Beds / Baths / Half	0/0/0	
Floors	1	
Living Units	0	
Actual Area	Sq.Ft	
Living Area	Sq.Ft	
Adjusted Area	2,603 Sq.Ft	
Lot Size	17,936 Sq.Ft	
Year Built	1956	

Assessment Information			
Year	2018	2017	2016
Land Value	\$4,484,000	\$4,214,960	\$3,802,432
Building Value	\$120,418	\$120,617	\$130,408
XF Value	\$15,180	\$15,263	\$0
Market Value	\$4,619,598	\$4,350,840	\$3,932,840
Assessed Value	\$3,335,643	\$3,032,403	\$2,756,730

Benefits Information				
Туре	2018	2017	2016	
Assessment Reduction	\$1,283,955	\$1,318,437	\$1,176,110	
	Type Assessment	Type 2018 Assessment \$1,283,955	Type 2018 2017 Assessment \$1,283,955 \$1,318,437	

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description		
ISLAND VIEW SUB PB 6-115		
LOTS 11 & 12 BLK 16 A		
LOT SIZE 17936 SQUARE FEET		
OR 16703-4330 1194 4		



Taxable Value Information				
	2018	2017	2016	
County				
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$3,335,643	\$3,032,403	\$2,756,730	
School Board				
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$4,619,598	\$4,350,840	\$3,932,840	
City				
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$3,335,643	\$3,032,403	\$2,756,730	
Regional				
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$3,335,643	\$3,032,403	\$2,756,730	

Sales Information				
Previous Sale	Price	OR Book- Page	Qualification Description	
04/25/2017	\$100	30690- 2784	Corrective, tax or QCD; min consideration	
11/01/1994	\$0	16703- 4330	Sales which are disqualified as a result of examination of the deed	
10/01/1975	\$150,000	00000- 00000	Sales which are qualified	

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at http://www.miamidade.gov/info/disclaimer.asp

Holland & Knight

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 | T 305,374,8500 | F 305,789,7799 Holland & Knight LLP | www.hklew.com

Tracy R. Slavens, Esq. 305 789 7642 tracy.slavens@hklaw.com

September 26, 2018

YIA HAND DELIVERY

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

Re: Sunset Land Associates LLC / SH Owner LLC - Petition for Administrative Appeal to Board of Adjustment (ZBA18-0079)

Dear Mr. Mooney:

This shall constitute our Letter of Intent on behalf of SH Owner LLC and Sunset Land Associates LLC (together, the "Appellants"), in support of their petition for an administrative appeal to the Board of Adjustment pursuant to Section 118-9(b)(1) of the City Code in connection with the Planning Director's determination issued on August 30, 2018, published on August 31, 2018, and attached hereto Exhibit "A" (the "Determination"). 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 Services, Inc. ("Beach Towing") operates and which property is the subject of this administrative appeal. The Appellants have prepared a radius map to demonstrate its proximity to 1349 Dade. See Exhibit "B." As such, the Appellants are affected persons in accordance with 118-9(b)(2)(iii) of the City Code.

The Appellants hereby appeal the Planning Director's Determination of legal non-conforming status for 1349 Dade because it fails to adequately address whether the towing operation at 1349 Dade is in compliance with Article IX the City Code.

1. Background and establishment of towing use

It is undisputed that the towing use was established on 1349 Dade before the City Code was amended in 1989 pursuant to Ordinance No. 89-2665 (the "Ordinance"). According to the Determination, an Occupational License (RL-86098263) for towing services at 1349 Dade was

issued on or before September 23, 1986. At the time, while 1349 Dade was ostensibly being operated as an automobile service station with accessory vehicle storage, based on an application to the City for a conditional use permit to operate a gasoline filling station, and was zoned C-6 (Intensive Commercial District), the owner of 1349 Dade testified that he never sold gas to customers at that location and never intended to do so. See Exhibits "C" and "D", respectively. The C-6 district allowed any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses. The following uses were permitted in C-5 Districts under Section 6-12 B 20 of the zoning regulations in effect at the time the occupational license for towing services at 1349 Dade was issued (the "Pre-1989 Code"):

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.

See Exhibit "E".

The Determination notes that towing services are consistent with the above permitted uses and the application of the C-5 District regulations by applicable City staff in 1986. However, 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. See Exhibit "F".

II. 1349 Dade was not a main permitted use at the time it was established

The Determination states that the towing use constitutes a legally established use and is therefore a non-conforming use. However, the towing use is not legally non-conforming in accordance with Section 118-390(d)(3) of the City Code. This section of the City Code sets forth the criteria for determining whether a use was "legally established" as "an existing use which conformed to the code at the time it was established." Towing, towing use, and towing services were not listed as permitted uses under the C-5 or C-6 district regulations of the Pre-1989 Code. As noted above, the Planning Director confirmed that the words "towing," towing use," or "towing services" did not appear in the Pre-1989 Code and that if a use was not specifically enumerated under the Pre-1989 Code, then a conditional use permit would be required for that use to be a main permitted use. See Exhibit "F". Indeed, the Pre-1989 Code for C-6 districts specifically delineates that conditional uses in that district include "[u]ses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district." In other words, to use the Planning Director's word, non-listed but "consistent" uses like towing were allowed in C-6, but only with a conditional use permit (which Beach Towing did not have). This means that a towing use in the C-6 District would have required a conditional use permit approval to be "legally established" as a main use.

A Business Tax Receipt (formerly known as an "Occupational License," and hereinafter referred to as a "BTR") is not conclusive evidence that a use is legally established. BTRs are

regulated by the City's Finance Department, not the Planning Department. Under the City Code, a BTR may be denied for failure of a business to comply with zoning regulations, but compliance with zoning regulations is not an enumerated requirement for approval of a BTR application. See Sections 1062-371 – 372 of the City Code. BTRs state on their face that they "do[] not waive or supersede other City laws, do[] not constitute City approval of a particular business activity and do[] not excuse the licensee from all other laws applicable to the licensee's business." See Exhibit "G."

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.

Because Beach Towing did not have a conditional use permit for the towing use, the towing use may have been issued a BTR as an accessory use to the main service station or vehicle storage uses on 1349 Dade, but that does not mean that it was legally established. As noted by the Planning Director, "towing" and "storage" are separate and independent uses and it is not unusual for a property owner or business to obtain multiple BTRs. See Exhibit "F." If a use is deemed to be accessory to a main use, it may obtain a BTR, which appears to have been the case for the 1349 Dade Occupational License. However, as uses on a property evolve, additional review by the Planning Department may not occur for a renewal of a BTR, and it may not be apparent to the administrator of the BTRs that an accessory use has become a main use over time, which is precisely the case with Beach Towing. 1349 Dade 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 (these tanks were never reinstalled), and, in 1984, Beach Towing had towing operations and a storage yard but was neither operating as a gas station nor auto repair garage. Thus, by 1984, the towing operation had effectively, but not lawfully, become the primary use at 1349 Dade. Therefore, a BTR originally obtained for an accessory use that evolved into a main use, cannot be determinative of the legal establishment of said main use.

Given that Beach Towing does not have a conditional use permit granted by the City, the towing use was not "legally established" as a main use on 1349 Dade. Based on the foregoing, the conclusion in the Determination that the towing use is a legal non-conforming use is incorrect.

111. 1349 Dade as a non-conforming use of land

The Determination states that the towing use on 1349 Dade constitutes a nonconforming use. A nonconforming use "means a use which exists lawfully prior to the effective date of these land development regulations and is maintained at the time of and after the effective date of these land development regulations, although it does not conform to the use restrictions of these land development regulations." See Section 114-1 of the City Code. In addition, pursuant to Section 118-391 of the City Code, a nonconforming use "is the main use and not accessory to the main use" and, more specifically:

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.

Towing is an open lot use of land. The building at 1349 Dade is a building where administrative tasks related to the towing use are conducted, and is, therefore, accessory to the main use. The characteristics of the building or structure do not affect the towing use on 1349 Dade.

In contrast, a nonconforming building or structure, as defined in the City Code, means a building or structure, or portion thereof, which was designed, erected or structurally altered prior to the effective date of the current land development regulations in such a manner that characteristics of the building or structure, other than its use, do not comply with the restrictions of these land development regulations. See Section 114-1. Section 118-393 of the City Code regulates nonconforming uses of buildings where said use inside the structure is the main use. Therefore, this section of the City Code does not apply to this analysis.

The Determination concluded that the towing use on 1349 Dade is a use that was permitted when established on or before September 23, 1986 but is no longer permitted as a result of the adoption of the Ordinance, which changed the zoning of 1349 Dade to CD-2. In addition, the Determination finds that, pursuant to Section 118-390(d)(3) of the City Code, the existing towing use, which conformed to the City Code at the time it was established, is a legally established nonconforming use. In this case, even if Beach Towing's towing use on 1349 Dade was "legally established," and as noted above it was not, towing is characterized as the main use of the land and the office building is accessory to the main use. Thus, in accordance with Section 118-391 relating to non-conforming 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.

¹ The term 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. Additionally, Beach Towing's expert confirmed that the towing use was a nonconforming use of land. See Exhibit "H".

The Determination is inconsistent with the City's zoning regulations and their underlying intent in its application of Section 118-391 of the City Code, which governs nonconforming uses of land. Section 118-391(a) requires a nonconforming use to discontinue no later than two years from the effective date of the current land development regulations. Instead, this use has continued for 29 years since the language of this section was adopted. If the City had complied with Section 118-391, as it was required to do, the towing use on 1349 Dade should have discontinued two years after the adoption of the Ordinance. The sunsetting of such non-conforming uses is consistent with the intent of Article IX, which is to "encourage nonconformities to ultimately be brought into compliance with the current regulations." Moreover, Section 118-391(b) provides that a use approved as a conditional use shall be considered a conforming use as long as the conditions of the approval are met. This subsection (b) does not apply to 1349 Dade because the towing use was not approved as a conditional use and. Failing to properly apply Section 118-391 renders the Determination inaccurate.

IV. Inconsistent conclusions reached in the Determination

The conclusions reached by the Planning Director in the Determination are inconsistent. Towing is not a main permitted use or a conditional use in the CD-2 district as set forth in the City Code. See Sections 142-302 and 142-303. Nor was towing a permitted use in the C-5 or C-6 district of the Pre-1989 Code. See Exhibit "E." All other permitted uses in the C-5 and C-6 districts as set forth in the Pre-1989 Code are permitted today in the CD-2 district as main permitted uses or conditional uses. If the towing use were permitted in the Pre-1989 Code, it would still be permitted today under the CD-2 district regulations. Towing is not a permitted use in the CD-2 zoning district because it was not compatible with the uses permitted in commercial districts in the Pre-1989 Code nor with the commercial character of CD-2 envisioned at the time the Ordinance was adopted. Instead, towing is only permitted today in the I-1 district (Light Industrial District) and even then only by conditional use. Again, even if the towing use was a legally established nonconforming use, such use, as a nonconforming use of land, would have ceased being legally established two years after adoption of the City Code.

This Determination will result in a negative impact on the Appellants as well as all of the affected persons in the vicinity of 1349 Dade, which includes residential uses, neighborhood-serving commercial uses, and a public park. The towing use is intense, intrusive, and is no longer compatible with the changed character of the surrounding CD-2 properties in the Sunset Harbour neighborhood. The CD-2 district is identified as a medium intensity commercial district that provides for commercial activities, services, offices and related activities which serve the entire City pursuant to the purpose identified by Section 142-301 of the City Code. This is not a district intended for industrial uses because these uses are too intense and are inherently incompatible with the commercial and mixed-use character of the CD-2 district. Regardless of whether the towing use on 1349 Dade is a legally non-conforming use, its ongoing existence violates the City Code and should be discontinued in accordance with the City's Code.

V. The towing use on 1349 Dade must be discontinued

Based on the above, 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.

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.

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. Slayens, Esq.

Enclosures

CC: David Buckner, Esq. Bradley Colmer, Esq. Dan Marinberg, Esq.

EXHIBIT "A"



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")

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 localed 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 Bouleyard 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"

RM-3 20TH ST GU 19TH CI GU CD-2

LEGAL DESCRIPTION:

Lots 11 and 12, Block 16A of ISLAND VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 115 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1349 Dade Boulevard, Miami Beach FL 33139

FOLIO NO. 02-3233-012-0680

ORDER: 180909

DATE: September 12, 2018



SCALE: 1"= 150"



The Zoning Specialists Group, Inc.

7729 NW 146th Street
Miami Lakes FL 33016
Ph: (305) 828-1210
www.thezoningspecialistsgroup.com

I HEREBY CERTIFY: That all the properties shown herein are lying within a 375-foot radius from all boundary lines of the subject property.

BY:

JOSE E LOPEZ P.S.M.

NOTE: NOT VALID UNLESS SEALED WITH THE SIGNING SURVEYOR'S SEAL

Professional Surveyor & Mapper No. 3086, State of Florida.

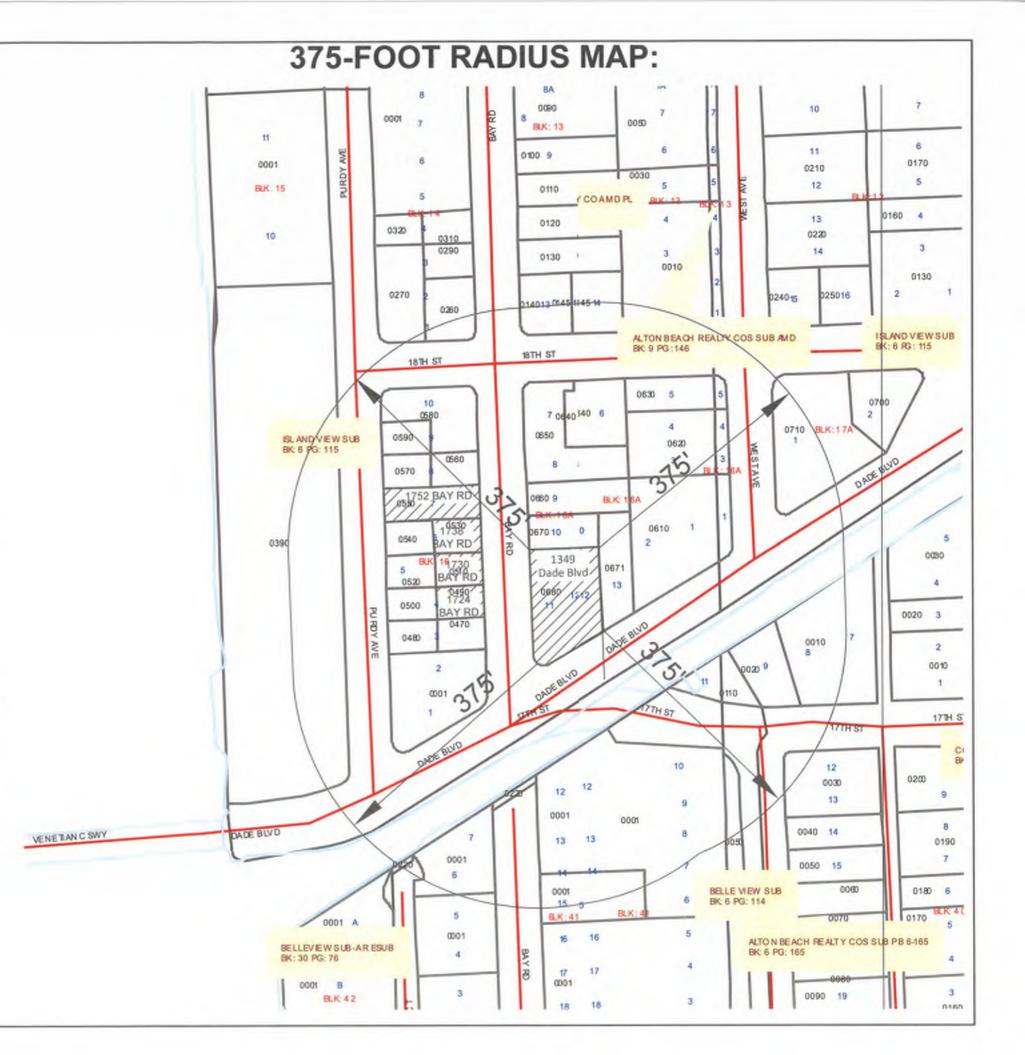


EXHIBIT "C"

ROLL CALL MIAMI BEACH CITY COMMISSION

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MEYERSON	/		
WEINSTEIN			
WIKLER	V		
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MOTION LOST	_		MISSION ETING
		JUN	4 1980

CITY OF MIAMI BEACH

G. CENTESSION REPORTABILITY NO. 7245 "I TRAFFIG STREET AND RECOMMENDATION FOR ADDITIONAL FOR ISLAND AT CAS STATION LOCATED AS \$15-7157 STREET

AUSTRATION REUCHMESSPATION: WHAT PURP ISLAND BE RELOCATED TO ALLOW A MINISHM OF 30 FEET FOR CAR STORAGE ON BOTH SIDES OF PUMP. (DEPERRED FACH 11/1/78)

Mr. J.D. Wilkerson, representing the applicant, appeared.

City Engloses reported that the spallcant has agreed to comply with the recommendations commined in the traffic study made at the Coanfesion's request. A motion to defer failed of passage.

HOUS - SEE REPURTS - Page 3

P. P.C. ADDITIONAL PUMP ISLAND AT 875-71st STREET GAS STATION Commission approved the request for the conditional use of an additional pump island, subject to the following conditions: 1) relocation of island to provide a minimum of 30 feet of storage on both sides of the island; 2) the identification of a traffic circulation pattern through the use of mignage and/or markings on pavement surfaces; 3) relocation of the vacuum pump to the northwest property line 54 feet from the right-of-way on Bay Drive; 4) installation of side yards landscaping to act as an affective buffer as set forth in Commission Nemorandum No. 7073.

City Manager directed to meet with the Chairman of the Planning Board in an effort to develop a format in the grenting of conditional uses which would serve to sufficiently inform the Coumission of all steps taken by applicants in their efforts to conform with necessary requirements. 6 1978

C. PLANNING BOARD RECOMMENDATIONS TO APPROVE REQUESTED CONDITIONAL USE, SUBJECT TO CERTAIN CONDITIONS, RE: APPLICATION TO REMODEL AND EXPAND AN EXISTING FILLING STATION AT 1840 ALTOW ROAD (LOTS 5 AND 6. BLOCK 12, ISLAND VIEW SUB.) (DEFERRED FROM 12/6/78)

Planning Board's recommendation to grant conditional use approved. "

City Manager and City Attorney requested to develop recommendations for changes in procedures now followed by ... ch: Planning Board in considering requests for conditional uses.

CONDITIONAL USE Conditional use granted subject to the following: 1) a permanent structure shall be installed covering the two pump islands in earth-tone colors in accordance with the site plan; 2) the placement of a "No Left Turn" or "Right Turn Only" sign within the property line at the southeast corner of the lot; 3) placement of exit and entrance arrows within the property line; (4) preservation of the existing Bunyan Tree and appropriate landscaping; (5) hose bibs shall be located within 25' of all landscaped areas; 5) air pump shall be located on one or more pump islands. DEC 2 0 1978

B. COMMISSION MEMORANDUM NO. 8205 PLANNING BOARD RECOMMENDATION REGARDING CON-DITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION ACCEPT THE PLANNING BOARD'S RECOMMENDATION FOR APPROVAL AND SCHEDULE A PUBLIC REARING ON THE MATYER, IF THE COMMISSION SO DESIRES.

G B. COMMISSION MEMORANDUM NO. 8205 PLANNING BOARD RECOMMENDATION REGARDING CON-DITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION ACCEPT THE PLANNING BOARD'S RECOMMENDATION FOR APPROVAL AND SCHEDULE A PUBLIC HEARING ON THE MATTER, IF THE COMMISSION SO DESIRES. (DEFERRED FROM S/7/80)

3:00 P.M. - PUBLIC HEARING

C. COMMISSION MEMORANDUM NO. 8205 PLANNING BOARD RECOMMENDATION REGARDING CON-DITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

> ADMINISTRATION RECOMMENDATION: CONMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO OPERATE A FILLING STATION AT 1349 DADE BOULE-VARD WITH THE STIPULATION THAT THE EIGHT CON-DITIONS DELINEATED IN COMMISSION NEMORANDUM NO. 8205 ARE MET.

NOTICE OF PUBLIC HEARING.

Not reached - deferred to 5/21/30.

Public hearing scheduled for June 4, 1980, at 3:00 p.m. MAY 2 1 1960

Hearing held and concluded.

Planning Board's recommendation to grant conditional use request for remodeling and expansion of an existing filling station approved subject to 8 conditions as set forth in Conmission Memorandum No. 8205, with further amendment of Condition No. 1 that "storage area shall be decreased in size and a masonry wall of sufficient height to completely screen the storage area from all adjacent streets, but in no case less than 6 feet, shall be constructed".

JUN 4 1980

City of Miami Beach

FLORIDA 33139



"VACATIONLAND U.S. A."

OFFICE OF THE CITY MANAGER HAROLD T. TOAL CITY MANAGER

CITY HALL 1700 CONVENTION CENTER DRIVE TELEPHONE: 673-7010

COMMISSION MEMORANDUM NO

DATE: May 7, 1980

TO:

Mayor Murray Meyerson and Members of the City Commission

FROM:

Harold T.

City Manager

SUBJECT:

CONDITIONAL USE APPLICATION - FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD

Pursuant to the request for approval of the conditional use for the operation of a filling station at 1349 Dade Boulevard, the Planning Board considered the application at a meeting on April 24, 1980.

The applicant proposes to install 4 gasoline pumps on 2 existing "islands". No other improvements were indicated on the site plan which was submitted with the application. The station is located in a C-6 (Intensive Commercial) zoning district. Filling stations are permitted in this district as a conditional use. A full description of this application is provided in the attached Planning Division report.

Upon closure of the Planning Board Public Hearing and after extensive discussion of the Planning Division report and recommendations, the Planning Board recommended approval of the request. The following motion was passed.

"The Planning Board recommends approval of the conditional use application to operate a filling station at 1349 Dade Boulevard with the stipulation that the following conditions be met!

- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public view.
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- 3. Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A Landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- The triangular metal sign shall be removed and a new sign shall be erected which is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.

COMMISSION MEETING

JUN 4 3960

CITY OF MIAMI BEACH

COMMISSION MEMO NO. 8205 PAGE 2 MAY 7, 1980

- No vehicles waiting for gasoline shall be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to form.
- The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Road when only one "island" is in operation".
- An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve this request for a filling station as a conditional use. The Planning Board and Planning Division have recommended approval with the aforementioned eight conditions. The Commission may elect to hold a public hearing, however, it is not mandatory that one be held.

HTT/RGD/rb

attachments

COMMISSION MEETING

JUN 4 1980

City of Miami Beach

FLORIDA 3 3 1 3 9



"VACATIONLAND U.S.A." -

PLANNING BOARD

1700 CONVENTION CENTER DRIVE TELEPHONE: 673-7560

May 1, 1980

The Mayor and Members of City Commission 1700 Convention Center Drive Miami Beach, Florida 33139

Dear Commissioners:

SUBJECT: PLANNING BOARD RECOMMENDATION: CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD

At the Planning Board meeting of April 24, 1980, the Board unanimously passed the following motion:

"The Planning Board recommends approval of the Conditional Use application for the operation of a filling station at 1349 Dade Boulevard with the stipulation that the following conditions are met:

- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- 3. Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- The triangular metal sign shall be removed and a new sign shall be erected which is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.
- No vehicles waiting for gasoline shall be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to

MEMBERS

VICE-CHAIRMAN, EDWARD NEWMAN

CHAIRMAN, PHIL BROOKS Aaron Euster, Nat Fechtner, Ted Kipnis, Harry Mildner, Robert M. Beilly, Abe Resnick, Leon Sirkin, Molly Stein, Leonard Zilbert

> COMMISSION MEETING

JUN 4 1930

- The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Boad when only one "island" is in operation.
- An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

Sincerely,

Phil Brooks Chairman

PB/rb

cc: City Manager City Attorney City Clerk

> COMMISSION SETING

JUN A 1990

PLANNING DIVISION ORPORT

CONDITIONAL USE REQUEST

BEACH GARAGE - 1349 DADE BOULEVARD

REQUEST

The applicant, Vincent Festa, owner of Beach Garage, requests that the Planning Board approve a conditional use application for the operation of a filling station at the site currently occupied by Beach Garage, a service station located at 1349 Dade Boulevard.

ZONING AND LOCATION

The existing service station is located within a C-5 District. The purpose of this District is to accommodate intensive commercial uses such as: sales, storage, repair, processing, wholesaling, and trucking activities. Filling stations are compatible with these uses and are therefore, permitted as a conditional use as long as the location is appropriate and no undue negative effects are caused.

Beach Garage is located on the northeast corner of the intersection of Dade Boulevard and North Bay Road. The orientation of the building is southwest, that is, it faces the intersection.

To the East of the service station is Newman Funeral Home; to the south across Dade Boulevard and Collins Canal are multiple family residential units; to the west across North Bay Road is a service station, American Typographies, a vehicle storage yard, and an animal hospital; and to the north is a newly renovated commercial structure. The multiple family residential units to the south of Beach Garage are located in an RM-125 zoning district which is designed to accommodate high-rise, high density, tourist lodging, and entertainment uses. All other uses surrounding the service station area are located in the C-6 District.

PAST USE

The filling station was built in 1956 and was operated as a full service filling station until 1975 at which time Cities Service Oil Company sold the filling station to the applicant. According to the applicant, the pumps were removed not because the sale of gasoline was not desired but because Beach Garage was denied, by contract with Cities Service Oil Company, the purchase of gasoline and petroleum products from other sources for a period of five (5) years; and Cities Service Oil Company would not sell gasoline and petroleum products to Beach Garage. Beach Garage has fulfilled its contractual agreement with Cities Service Oil Company and has made arrangements with Shell Oil Company to purchase the gasoline allocation previously received by the filling station at 1150 Collins Avenue.

EXISTING USE

Vehicle Maintenance and Storage

The garage and yard are currently used for repair and storage of vehicles. There is a fenced-in area on the north side of the site which is used to store vehicles involved in accidents, however, wrecked vehicles are also stored outside of the area. All vehicles are in full public view; none is concealed by a masonry wall as required by ordinance.

Current operating hours for vehicle maintenance generally are 8:00 a.m. to 6:00 p.m. weekdays. The station tends to close earlier on Saturdays. Towing services are available.

2. Access and Traffic Circulation

The service station has four (4) driveways. Two (2) are on Dade Boulevard and two (2) are on North Bay Road. One (1) of the driveways on Dade Boulevard is very close to the intersection, and entry and exit of vehicles is hazardous because of the significant number of vehicles using Dade Boulevard. Access to and from the station is safer on North Bay Road because less vehicles use this road.

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COMMISSION

CITY OF MIAMI BEACH

Landscaping

The property is bounded on the east and north by shade trees and has three areas along the front property line which are sparsely landscaped. The grass area on North Bay Road is totally within the City right-of-way and the one on Dads Boulevard is wholly on the site. The existing landscaping does very little to enhance the site, and maintenance of the site appears to be negligible.

4. Signs

One free-standing sign is located in the landscaped area at the intersection of Dade Boulevard and North Bay Road. Maintenance of the sign and lettering on the overhangs has not been sufficient to keep them in an acceptable condition.

PROPOSED USE

The applicant proposes to install gasoline pumps upon two (2) existing concrete "islands". Fuel will be stored in existing underground storage tanks. No additions or alterations to the site, other than the pumps, will be necessary to reactivate the site as a full-service filling station.

In addition to selling gasoline and petroleum products, the applicant will continue to service, repair, and store vehicles.

PLANNING DIVISION DISCUSSION AND ANALYSIS

The location of the station, although suitable in 1956, is less desirable in 1980 because utilization of the station will be higher by virtue of an absolute increase in the number of vehicles on adjacent highways.

Use of the site as requested will likely create periodic traffic circulation problems due to waiting gasoline customers who will queue on Dade Boulevard and North Bay Road particularly when gas allocations become scarce. Periodic episodes of customer build-up will create more chronic circulation problems on Dade Boulevard than North Bay Road primarily because Dade Boulevard is more heavily traveled.

Problems could be mitigated by restricting access to the site from Dade Boulevard, particularly via the driveway closest to the intersection. The Planning Division has prepared a schematic design plan indicating the removal of this driveway.

Vehicles will still be able to enter the site from Dade Boulevard, however, provisions should be made to prevent vehicles from "stacking-up" on the roadway. If such a situation results, a temporary barricade erected in this driveway will prohibit the blockage of traffic on Dade Boulevard.

The closed driveway should be reserved for landscaping in order to improve the visual appearance of the site. The Planning Division design plan indicates that landscaping should be done in a unified manner. New concrete curbing will be needed to protect the plantings and emphasize that this driveway has been permanently closed. In addition to landscaping along Dade Boulevard, the grass area on North Bay Road should also be resodded and landscaped.

Primary use of the gasoline pumps on North Day Road would also minimize the congestion on Dade Boulevard. Customers would then stack up on North Bay Road which can easily accommodate more vehicles. The pumps facing Dade Boulevard could be closed unless a crisis situation occurs and all pumps are needed to effectively service customers. If such an event does occur, gas lines should be prohibited on Dade Boulevard unless police supervision is available.

Access to the site by North Bay Road could be improved by decreasing the size of the storage area. The chain link fence could be removed and a new masonry wall could be erected which is set back from the driveway. This improvement will not only improve access but will enhance the visual atmosphere of the station by screening wrecked vehicles from public view. No storage of vehicles should be allowed outside of the masonry wall.

Since the applicant's property is located on a busy roadway and is easily visible to residents and tourists entering the City via Venetian Causeway, the visual appearance of the site is an important consideration. The building could be repainted and new signs which conform to the ordinance could be installed. A new detached sign should be constructed in the landscaped area at the intersection of Dade Boulevard and North Bay Road. The sign cannot be greater than 30 square feet and the supporting pole and the height cannot exceed 25 feet above grade.

Police Department Comments

The Police Department submitted numerous valuable comments pertaining to the impact of the applicant's proposed use of the site on the traffic circulation system adjacent to the property. Four accidents unrelated to the applicant's property have occurred at or near the intersection of Dade Boulevard and North Bay Road during the period of January, 1979 - January, 1980.

At best, the traffic flow at and near this particular intersection is less than desirable due to the narrowness of the roadway when the lanes merge and the visual obstruction created by the bridge which was built over the Collins Canal at this point.

If the present fuel situation continues, traffic congestion will become a factor at this location and if the fuel situation becomes more critical than it is currently, this area will become one of the City's major traffic problem areas. The basic reason for this is that many customers would enter the gasoline station on the northeast corner of the intersection of Dade Boulevard and North Bay Road and a "line-up" area would occur on the north side of Dade Boulevard. This would definitely restrict the flow of traffic through the area and would result in delays and traffic flow build-up.

Code Enforcement Conments

The Code Enforcement Division has submitted photographs of Beach Garage which indicate numerous wrecked vehicles parked on the property, not only within the fenced-in area but all over the paved surface. This practice of haphazard vehicle storage creates a very unattractive situation and should be curtailed.

Public Works Department

The Public Norks Department has recommended that an enclosed area be provided for storage of garbage. The Planning Division design plan indicates an enclosed trash storage area in the northwest corner of the site adjacent to the masonry wall surrounding the storage area. The trash storage area should contain at least 57 square feet of floor space to afford easy access and removal of trash.

PLANNING DIVISION RECOMMENDATION

The Planning Division recommends approval of the conditional use application for the operation of a filling station at 1349 Dade Boulevard with the stipulation that the following conditions be met:

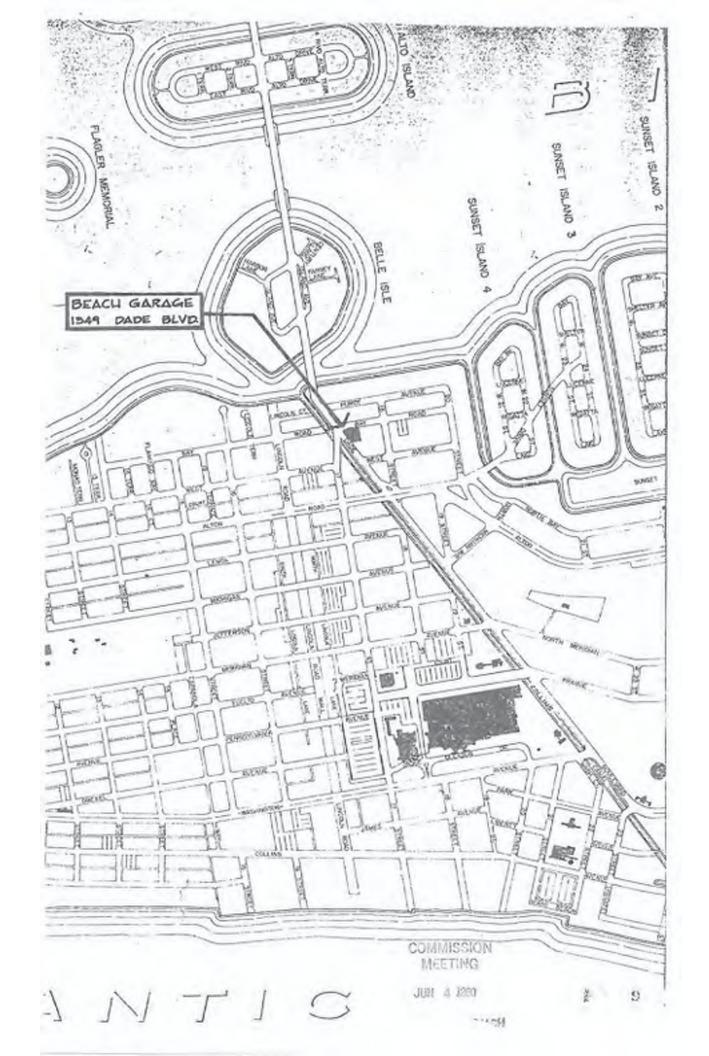
- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public view.
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- The triangular metal sign shall be removed and a new sign shall be erected which
 is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.
- 6. No vehicles waiting for gasoline shall be permitted to stack-up on Dade Boulevard.
 - The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Road when only one "island" is in operation.
 - An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

COMMISSION:

JUN 4 11901

RGD/CSC/rb 4/24/80

CITY OF LAND DEACH



City of meant beach



"VACATIONLAND U.S. A."

ELAINE MATTHEWS

1709 Convention Center Drive TELEPHONE: 673-7411

May 27, 1980

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Commission of the City of Miami Beach, Florida, will hold a public hearing on Wednesday, June 4, 1980, beginning at 3:00 P.M., in the Commission Chambers, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, to consider the Planning Board's recommendation to the City Commission for approval of the conditional use application to operate a filling station at 1349 Dade Boulevard, subject to certain recommendations of the Planning Board.

INQUIRIES concerning this item should be directed to
Robert G. David, Planning Division Director, telephone: 673-7550.
ALL INTERESTED PARTIES are invited to attend and will
be heard.

Elaine Matthews City Clerk City of Miami Beach

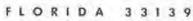
COMMISSION MEETING

JUN 4 1200

CITY OF MUMMI BEACH

AGENDA R-3-C-1

City of Miami Beach



"VACATIONLAND U.S.A." .



OFFICE OF THE CITY MANAGER HAROLD T. TOAL

CITY MANAGER

CITY HALL 1700 CONVENTION CENTER DRIVE TELEPHONE: 8/3-7010

ACTION SUMMARY

CITY COMMISSION MEETING

JUNE 4, 1980

COMMISSION CHAMBERS, 3RD FLOOR, CITY HALL 1700 CONVENTION CENTER DRIVE

MAYOR NURRAY HEYERSON
VICE-NAYOR ALEX DAOUD
COMMISSIONER MILDRED S. FALK
COMMISSIONER MICHAEL FRIEDMAN
COMMISSIONER MEL MENDELSON
COMMISSIONER LEONARD O. WEINSTEIN
COMMISSIONER DR. SIMON WIKLER

CALL TO ORDER - 9:45 A.M.

INVOCATION AND PLEDGE OF ALLEGIANCE

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

CONSENT AGENDA

C-1. LICENSES AND PERMITS

A. COMMISSION MEMORANDUM NO. 8244
APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 21
FROM LESTER PROBER TO JOSEPH GATT.

ADMINISTRATION RECOMMENDATION: APPROVE

B. COMMISSION MEMORANDUM NO. 8245 APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 37 FROM HARRIET LUREY AND BARBARA GLASS TO MIHAIL AND/ OR RAILLA SHPILMAN.

ADMINISTRATION RECOMMENDATION: APPROVE

C-2. COMPETITIVE BID REPORTS

A. COMMISSION NEMORANDUM NO. 8246
BID AWARD NO. 52-80, FUEL FACILITIES FOR PUBLIC MORKS RELOCATION, PB-76.
BID AMOUNT: \$148,797.00

ADMINISTRATION RECOMMENDATION: APPROVE BID AWARD NO. \$2-80 IN THE AMOUNT OF \$148,797, PLUS AN ADDITIONAL \$19,000 FOR PAVING, GRADING, SITE PREPARATION, UTILITY ADJUSTMENTS, INSPECTION, CONTRACT ADMINISTRATION, AND INSTALLATION OF CONCRETE SLABS AT BOTH THE FIRE STATION AND THE NURSERY COMPLEX. THUS A TOTAL OF \$167,797 TO BE APPROPRIATED FROM THE MARCH 14, 1972 RELOCATION OF PUBLIC WORKS BOND FUND.

CITY MANAGER HAROLD T. TOAL *CITY ATTORNEY JOHN A. RITTER CITY CLERK ELAINE MATTHEMS

ACTION

All present except for Commissioner Weinstein, who is out of town.

Rabbi Mayer Abramowitz

Reflected throughout Action Summary

Approved.

Approved.

Awarded, Pieco Mismi, Inc.

Appropriation of \$167,797 from 3/14/72 Public Works Relocation Bond Fund, approved.

*Gity Astorney Ritter in court; represented by Assistant City Attorney Lucia Allen in morning session. Present in afternoon session.

ACTION SUMMARY

JUNE 4, 1980

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ACTION

R-3. TIME CERTAIN ITEMS

11:00 A.M. - BOARD AND COMMITTEE REPORTS

A. REPORT FROM SIBNEY GOLDMAN, CHAIRMAN, MARINE AUTHORITY, REGARDING AN AMENDMENT TO MARINE ORDINANCE NO. 75-2050, ARTICLE VI, SECTION 7-68(4) MULTIPLE DWELLING HOUSEBARGE.

11:00 A.M. - TIME CERTAIN ITEM

B. DISCUSSION OF THE LEASING OF AIR RIGHTS OVER PARKING LOT BETWEEN 27TH AND 28TH STREETS ON COLLINS AVENUE TO PROVIDE FOR RENTAL HOUSING. (REQUESTED BY COMMISSIONER MILDRED FALK) (DEFERRED FROM 5/21/80)

 Report from S.Z.Bennett re. parking lots and possible utilization for housing.

3:00 P.M. - PUBLIC HEARING

C: COMMISSION MEMORANDUM NO. 8205
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION FOR THE OPERATION OF
A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION
APPROVE THE PLANNING BOARD'S RECOMMENDATION TO
APPROVE THE CONDITIONAL USE APPLICATION TO
OPERATE A FILLING STATION AT 1349 DADE BOULEVARD WITH THE STIPULATION THAT THE EIGHT CONDITIONS DELINEATED IN COMMISSION MEMORANDUM
NO. 8205 ARE MET.

NOTICE OF PUBLIC HEARING.

3:15 P.M. - PUBLIC HEARING

D. COMMISSION MEMORANDUM NO. 8206
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND
AN EXISTING FILLING STATION AT 1840 ALTON ROAD

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND A FILLING STATION AT 1840 ALTON ROAD WITH THE STIPULATION THAT THE TEN CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8206 ARE MET.

1. NOTICE OF PUBLIC HEARING.

Mr. Goldman appeared.

An ordinance amending Section 7-68 of the Code, so as to add the following: "No housebarge designed to contain more than one (1) dwelling unit shall be permitted to be moored or docked within any waterways of the City of Miami Beach" was passed on first reading.

Bearing and second reading scheduled for 6/18/80, at 2:00 p.m.

Commissioner Falk's motion that the City consider leasing air rights for construction of rental housing failed of passage.

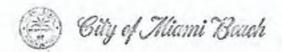
Report set forth that of sites surveyed, 27th St. only one suitable; further study being made.

Hearing held and concluded.

Planning Board's recommendation to grant conditional use request for remodeling and expansion of an existing filling station approved subject to 8 conditions as set forth in Conmission Memerandum No. 8205, with further amendment of Condition No. 1 that "storage area shall be decreased in size and a masonry wall of sufficient height to completely screen the storage area from all adjacent streets, but in no case less than 6 feet, shall be constructed".

Mearing continued to August 20, 1980, at 3:15 p.m., at the applicant's request.

Owner agreed to bear expenses of re-advertising.



1	Approvals, Disapprovals s, or Similar Actions	
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MEYERSON: R-3C. Will you please call the Public Hearing, Miss Matthews? R-3C.

MATTHEWS: Mr. Mayor, notice was published in the Miami Beach Sun Reporter in issues of May 30th and 31st as well as being sent to various civic organizations that the Commission would at this time consider the FLANNING BOARD RECOMMENDATION FOR APPROVAL OF A CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD Subject to recommendations which were made by the Planning Board.

MEYERSON: Very well.

MATTHEWS: No response.

MEYERSON: No responses?

MATTHEWS: No, sir. No written response. There may be some present.

MEYERSON: Very well. The Chair will entertain a motion to open the public hearing.

FRIEDMAN: Move it. FALK: Second.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Aye".

GROUP: Aye

MEYERSON: Any opposed? None opposed. Public hearing is now open. We do not have any listed speakers on this item.

ARNOLD LEON: You don't have a quorum.

MEYERSON: Yes, Dr. Wikler is in the other room. Dr. Wikler are you there?

WIKLER: Yos.

MEYERSON: Yes, all right. Does anybody wish to be heard on Item R-3C? Item R-3C. Very well, the Chair will entertain a motion to close the public hearing.

FRIEDMAN: Move it. FALK: Second.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Ayo".

GROUP: Aye

MEYERSON; Any opposed? None opposed. The public hearing is new closed. I turn to the Administration.

BOB DAVID: Members of the Commission, this is a recommendation that came before the Planning Board for a request for the reinstitution of a gas service at an existing filling station that's located on the northeast corner of Dade Boulevard and North Bay Road. The area in which this gas station is located is zoned for a RM-...excuse me, a G-6 which is an intensive commercial district which parmits trucking, warehousing, paint and body shops, and similar types of heavy uses.

MMYERSON: Let me ask you a question before you begin, Mr. David. Is this the filling station which adjoins the fly-over?

DAVID: Yes. It is adjacent. it is one of the two that is right there. Yes, sir.

MEYERSON: Adjac at to the fly-over.

DAVID: There are two of them located at that intersection.

MEYERSON; All right. Go right ahead.

DAVID: The applicant is asking to reinstitute as I said the gas service which had prior... which had been a prior use there. He had discontinued that due to some problems that he

DAVID (Con't): had with the original owers of the station. In any case conducted a regular garage service independent of the gas operation.

MEYERSON: Now, as I understand the backup naterial the gas station has not been in operation for a period of five years. Is that correct?

DAVID: That is correct. And as a conditional use it is necessary to come back before this Board for its reconsideration. The Planning Board in reviewing the original submission made several recommendations in conjunction with the Planning Division. The two diagrams that you see here illustrate on this side the original plan that was submitted which is in effect the gas station as it presently is constituted. The diagram over to your left indicates the revisions and modifications that have been recommended by the Planning Board. And very simply I'll go through those with you briefly. First of all this gas station also provides for the storage of wrecked vehicles. We are recommending that the wrecked vehicles be enclosed in a particular area within the site by a masonry wall. That is concealed from public view. We are also recommending that any other vehicles that are stored on the site, wrecked or otherwise, be stored within that area. The present drives that Front on Dade Boulevard, there are two of them, is recommended that one of those two, the one further to the west be closed. (inaudible - not using microphone) There is presently a driveway located here and a second one is presently located here. Recommending that landscaping be incorporated along in front of the gas station so as to have only one entrance from Dade Boulevard leaving two remaining entrances or exits off of North Bay Road. intent of this of course is to reduce the traffic that may result from the Dade Boulevard side. It is also requested as a stipulation that in the event of any stacking of automobiles whether it be a gas crisis or otherwise, that the Dade Boulevard entrance be barricaded and all exits and entrances be from the North Bay Road approach to the site.

MEYERSON: You anticipate some difficulty in that regard?

DAVID: As far as further gas crisis?

MEYERSON: Yes.

DAVID: Well..

MEYERSON; No. I'm talking about congestion in the area.

DAVID: There possibly ... you know, if cars stack up on North Bay ... on Dade Boulevard that would be a problem, in fact, because of the lanes being restricted at that point because of the fly-over.

MEYERSON: This is a particularly dangerous area based on the automobile accidents. We've had some very serious accidents and I recall, Mr. David, that in 1974 and 1975 we had a great deal of difficulty with that Fly-over. There were talks about changing it and changing the engineering sketches and tearing it down because it is an abortion in my opinion and It was an abortion in the opinion of people who served on the Council at that time. Has anything changed?

DAVID: Well, Mr. Mayor, there has been some modification, in fact that dates back several years. But to, you know, make a confirming opinion on that we requested the Dade County Department of Traffic and Transportation to make an analysis of this and they felt that with the stipulations that we have, that it wouldn't result in any, you know, undue hardship in terms of traffic or existing circulation in the area.

MEYERSON; O.K.

DAVID: So we felt ... and we also requested our Police Department to make a review of that also and they found it to be generally acceptable with these conditions. Going on

MEYERSON: Mr. Mendelson.

MENDELSON: Sorry I missed the beginning. Are you going to block off the Dade Boulevard entrance completely?

DAVID: One of the two. There are two entrances and exits now on Dade Boulevard. We're making it so that there would be only an entrance and one entrance from Dade Boulevard.

MEYERSON: Do you remember during the gas crunch or the crisis?

DAVID: Yes, sir.

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MEYERSON; Do you remember how far it was backed up? They had an animal clinic along side, I believe. They just blocked their driveway and nobody in that garage came out and helped the situation whatsoever.

DAVID: Well..

MEYERSON: Is it the same owner? The same people there?

DAVID: Yes, it is. In fact the applicant is here if you'd like to address questions directly to him.

MEYERSON: Yes, because I remember reading about it in the paper and I remember passing by that garage many a time and they had the cars stacked up all the way down Alten Road.

DAVID: Well..

FRIEDMAN: That's the other one. There's another permit. Mr. Mendelson, there's another permit coming up that deals with the Alton Road one. This one's on the.... Dade Boulevard and North Bay Road.

MEYERSON: Oh, O.K. Right.

FRIEDMAN: That's the other one. That did back up.

DAVID: But there is...you know, there is a possibility that that could occur and in this event, one of the stipulations of this conditional use is that entrance be barricaded Now, under conditional use provisions, the City has the right to withdraw this conditional use if these conditions are not adhered to. So this is not like any normal use where it is generally permitted. This is something that the City has the right to act on if the conditions are not met.

HEYERSON: Sometimes, Mr. David, based on conditional uses the conditions are questionable. It's a matter of interpretation and once the Commission grants the approval then of course the Courts have to decide whether the conditions have been met. Is that not true?

DAVID: Well, I'll read the condition to you, Mr. Mayor.

HEYERSON: Yes, please do.

DAVID: This is how it is worded. "No vehicle waiting for gasoline should be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to form." That's the wording presently. Now you may wish to amend that in some way and I'm certain that, you know, it could possibly be improved.

MEYERSON: What are some of the other conditions involved?

DAVID: O.K. Two remaining conditions are that the applicant make primary use of the gas pumps that are located on the Bay...North Bay Road side as opposed to the front. That is again in an effort to draw traffic over to the North Bay Road area and finally that a proper enclosed trash storage area be provided on site.

MEYERSON: Mr. David, let me ask you a question. Did the Planning Board take into consideration that that particular location now is going to penerate a tremendous amount of traffic due to the fact that there are going to be 800 units on Purdy Avenue and perhaps even more than that on the Island View Hospital site?

DAVID: That was generally considered. Island View Hospital Site has not been considered but as far as the development of the Turchin property that was taken into consideration. In fact, when we asked for the reviews of this by Dade County we indicated that those developments would occur and that they should take those into consideration. Actually this is one street removed. It is close but it is one street removed from the main quarter that would service that development.

MEYERSON: The problem though, Mr. David, is that ...that Dade Boulevard is a very

MEYERSON (Con't): narrow strip and that anyone going to Purdy Avenue and those 800 units has to pass through that area. It's the only artery leading to the Purdy Avenue site, is down Dade Boulevard next to the fly-over. That concerns me. It also concerns me that there are what? 7 or 8 other conditions that have to be met. It seems to be an awful lot of conditions for conditional use. That's my thinking at the present time but go on. Go on with your presentation.

DAVID: Well, I think that completes the conditions that were imposed by the Board and the Division. I think the applicant is here and could possibly could give you further information.

HEYERSON: O.K.

DAVID: Please state your name.

MEYERSON: Very well, we'll hear from the applicant.

VINCENT J. FESTA: Yes, my name is Vincent J. Festa and I'm the owner of the property on 1349 Dade Boulevard. And all I'm trying to do is put four pumps back in the exact same spot that they were when we took them off. And I heard say something about a backup on Dade Boulevard. In that case this would be a help because if the backup becomes to the gas station which is adjacent to me on the Gulf station, there is where you're going to have a problem. You will not have any traffic going east and west because the traffic will back out. And that will be right in the street of Bay Road. And there's where you will have a problem. Mine is coming from Alton Road and it's before the problem occurs so what we would do if there is a line up they will come into my place so there is no line up on Bay Road and the existing Gulf station that's there. So I would assume that this would be a help ... a help to get rid of some of the traffic that's going to ... if there is a gas crunch as you're predicting.

MEYERSON: Mr. Pesta, are you the owner of the property or the lessee?

FESTA: No, I'm the owner, Your Honor.

MEYERSON: The owner, You operate it also as the lesses?

FESTA: Yes, I'm operating it now. It was closed for a while.

MEYERSON: I see.

FESTA: O.K. While I had a gas station down at 1150 Collins Avenue which I had to get out after 30 years because I couldn't get a license for towing. A wrecker license after 30 years of doing wrecking service there for everybody on the Beach, we finally came up with a reason why it couldn't get renewed. So consequently to pay the taxes on the property I couldn't just do it by gas alone. I had to move to a C-6. This area is C-6, it's for gasoline, it's for, like Mr. David mentioned, it's for everything that I need. I'm not going past any ... I'm C-6. I'm not doing anything that's against the law or in violation. All I'm asking is gas for my trucks and for the public. And...That's all I'd like. I'd like the four pumps put back exactly where they were.

MEYERSON: O.K. Mrs. Polk.

PALK: Sir, I've been hearing conversation that you have on your property derelicts that are stacked up. Is that true?

FRSTA:. No, they're not stacked up. They're behind a fence. What we did, Mrs. Falk, le we took them away from in front of your house... In front of building, Mr. Mendelson's building, et cetera, et cetera. We took it away from your building or your house so it doesn't deface your property and we put it in a C-6, one of the few properties...

FALK: Where? I understand it's on this lot.

FESTA: There's a fonce. Right there behind the fence.

FALK: Is it visible.

FESTA: It's behind a fence.

FALK: Sir, I asked you, are those wrecks visible from the street?

FESTA: From the street?

FALK: Yes.

FESTA: Yes, I would say they're...from the street. From Bay Road.

FALK: Well, I don't know whether that is a very good recommendation for people coming over the Venetian to see

FESTA: Can't see it from the Venetian.

FRIEDMAN: Point of information.

PALK: You're coming up and if they're right in there....

PESTA: They're not in there. If you'd look at this piece of property is 135×200 , and the last 30 to 40 feet of the 200 is where the cars are stored.

FALK: How long do you keep the cars in the lot, sir?

FESTA: How long do I keep the cars? The most I keep them is 45 days because they are derelicts. They are taken away from the streets.

FRIEDMAN: Point of information.

MEYERSON: Point of information, Mr. Friedman,

FRIEDMAN: Ms. Felk, if you'd refer to the agenda package you'll find that one of the conditions recommended by the Planning Department and the Planning Board is number one storage area shall be decreased in size and a masonry, it's a concrete type of wall so you can't see through it, at least 6 feet in height shall be constructed around the storage area to conceal the vehicles from public view. That's on page R-9... well, let me give you the right site. R-3, page 2, Commission Memorandum 8205. It's in your package.

FESTA: Right. O.K.

FALK: Mr. Meyerson, I'd like you to ask the Administration how they feel about this because in anticipation of giving out the towing contract, I assume this gentleman will want to bid on it.

PESTA: I already have the lowest bid.

FALK: There will be a question of that, whether the six foot high fence, Mr. Toul, whether in his opinion, in order to keep these cars from the view, our front door, I'd like to have some opinion on that.

MEYERSON: Very well. Mr. Cohen.

HAL COHEN: Relative to the towing business that Mrs. Falk refers to, we are going to require that all cars taken off the streets, towed out be behind an opaque fence of some type. What is being proposed here as I understand is a masonry fence which is the present ordinance. Probably we would relax that and allow other types of fences as long as they were opaque...

MEYERSON: One question, though, Mr. David you can answer this. I recognize that there'll be a six foot wall and probably that would be screened from the grading of the road on Dade Bouleyard. Can the derelict automobiles be seen from the fly-over? Because you're raised somewhat.

DAVIG: Well, they're in the back of the .. on the opposite side of the garage, so not having really made an acrial analysis, I would doubt that they could be seen, however because of the garage as well as the six foot wall.

MEYERSON: Coming from either direction?

DAVID: Yes, sir.

MEYERSON: Mr. Festa, you agree with that?

PESTA: Yes. I say they're not visible from Dade Boulevard.

MEYERSON: Mrs. Falk does that answer your question?

FALK: Yes, because I have to bow to these...to the planners and to the Administration on their assurance that the eyesore will be corrected.

PESTA: We're talking about gasoline now. We're talking about the gasoline...

FALK: We're talking about the Beach station.

FESTA: Yes, I understand that but that is a C=6. When Redevelopment comes in, they're going to be coming in asking where are we going to get more C=6 to take care of the businesses that are down First to Sixth Street. And I have a business down there that I...

FALK: I'm not opposed to your having the C-6 district. I'm not opposed to keeping the cars there but if in Mr. Cohen's opinion, Mr. Toal's opinion they would recommend a 7 foot fence and maybe all around fence with just one entrance and one exit. So...

FESTA: Whatever they want, I will comply.

FALK: .. So then I would have no further objection.

PRSTA: O.K. I'm going to comply. I won't mention any names now but I am one of the few towing services that is ...kas a C-6 and C-6 is what you need for towing.

COHEN: You know the Administration has no objection, Mrs. Falk, to an amendment stating that the fence shall be such that the storage cars cannot be seen from any of the adjacent readways.

FALR: Perfect.

MEYERSON: Would you accept that amendment, Mr. Fester?

FESTA: Yes. Did we acknowledge whether it was masonry or whether it was opaque?

FALK: I don't care.

MEYERSON: Mr. Cohen?

COURN: Under the present ordinance it must be masonry.

FESTA: O.K. That will go for the goose and the gander.

MEYERSON: Yes.

FESTA: - O.K.

FRIEDMAN: What does that

MEYERSON: Well, what do you mean by the gander? We know what the goose is.

PESTA: Well, O.K. All right. There are five, six people involved in this and in the past...in the past I have been pointed out...I have been pointed out in violation even though I was C-6 and people who were in R-1, R-1-2-5 were not. We are not mentioning names.

COHEN: Mr. Mayor.

MEYERSON: Mr. Cohen.

COHEN: Yes, I just want to have the gentleman clear that we may amend that ordinance in the future so what we're suggesting here relates to his conditional use only and not to the towing contract and what bidders may or may not be required under that later on.

MEYERSON: Yes.

DAOUD: Mr. Mayor.

MEYERSON: You understand that, Mr. Festa, what Mr. Cohen is saying? Right now you're here on a conditional use.

FESTA: That's right.

MEYERSON: .. and those are the conditions that we're posing to you. It may not apply to the other members because they are not asking for conditional use.

FESTA: All right. Now, what they're doing is, they're telling me that I have to do something different from anybody else even though I'm in the right zoning.

MEYERSON: Well, you're in the right zoning provided that the Commission gives you the conditional use. And the conditions have to be met.

FESTA: I understand but I just don't like to be favored by anybody and I just don't like to be not favored.

MEYERSON: Yes. Well, that's not the issue here. No one is taking advantage of you. You have a conditional use and we're trying to determine whether or not those conditions if they are met will be in the public interest. That's ull.

FESTA: Right. Well the public interest...s gas station...a filling station would be nicer to look at then a junk yard.

MEYERSON: O.K. You made your point.

FESTA: O.K.?

DAGUD: Mr. Mayor.

MEYERSON: Mr. Daoud.

DAGUD: I have two crucial questions. Number one, and this is very important so I want you to think it over before you answer it. Are you going to be open on week-ends when everybody clse is closed?

FESTA: Yes. In the past I was open all night because I had the police towing and I also had Triple A. So we were all open. The Police Department is notified, Central Cab is notified, everybody is notified. And we were a God send that City Hall Garage was opened.

MEYERSON: What's the name of your towing service?

PESTA: Beach Towing.

MEYERSON: Beach Towing.

DAOUD: And number two, I wanted to clarify one point. Are you still doing the towing For...in the area. You're towing derelict cars away?

FESTA: Yes.

DACAD: You still are presently?

FESTA: Yes, we do. I think...Yes, anybody who calls up, we are the ones. Even when Dade County had a problem, for an 8 month problem, and they would not take any of the cars out because they are contracted to take them out, the Police Department called me as a favor and took them out and I held them for 45 days. I'm talking about cars with no wheels on it, and I mean I'm talking about dorelicts. And I held them for 45 days to sell it for \$25. So it was for the better of Miami Beach.

MEYERSON: Mr. David, what was the vote of the Planning Commission on the approval of the conditional use?

DAVID: This was a unanimous vote by the Commission with these conditions. And if I may, Mr. Mayor, for the record, there's two points I'd like to clarify. One is that in addition to the items that I read into the record, listed here is also another condition

DAVID (Con't): in regarding the sign. The triangular metal sign which should be removed and replaced by a sign that conforms with the sign code for that district. And the second thing is in regard to Mrs. Falk's amendment which is well accepted. I think just something that would indicate that in addition to that that it be not less than six feet, if it's required to be more that's line but I think we should have something in there at least minimizing the height.

PALK: Mr. David I think Murray Meyerson expressed it very well. So that no matter what height is required so that the junked cars should not be visible for people traveling up and down Dode Boulevard.

DAVID: O.K.

FRIEDMAN: Mr. Mayor.

HEYERSON: Yes, Mr. Friedman.

FRIEDMAN: Yes. I have a couple of questions. First of all landscaping has to be added, is that correct?

COHEN: That's correct.

FRIEDMAN: It's not currently there. Another thing is, I'm a little bit concerned knowing that under normal circumstances you will control your gas station, the flow of traffic but that arrow is really not going to be a najor degerent for someone going that way and out across Dade Boulevard or creating a bottlencck in that area there. Is there any possible way, I've seen other areas, I'm not too fond of them because my MG doesn't fit over them, but where they have where you can go in one way without any problem, you know, they're kinds like things in the ground but to go the other way you can't go without really damaging your car. That serves as a real deterrent for someone jumping across Dade Boulevard like that. I'll tell you semething. I read this and it said that when this gas station first open which was in '56 - '58 something like that. That sticks in my head.

FESTA: '56

FRIEDMAN: '56. It was desirable. But '56 and 1980 is a different time and the amount of traffic flow in that area based on that fly-over there has.. well it creates a bottleneck. And I'm somewhat concerned that with added density in that area... residential density in that area, I don't know. I'm really kind of.. Bob, can you assure me that we won't have a bottleneck, backing cars up. Because it's nice to say that we will have someone who will put up a barrier and not let the cars backup. But you know, I'm in business to pump gas and if I'm pumping gas, the more I pump the more I make and so if I can get then in this way coming off Bade Boulevard, or if I can get thom in coming from North Bay Road, the more I can get in the more the money I can make and the better it is for me. And it's nice to say that yes, we would have the option of withdrawing the conditional use but the guy is, you know, he's going to build it already and you're not going to go in and rip the pumps out of the ground. So you know, what is going to be our remedy? I mean if he says, hey, I've got it. I'm working. I'm in business and you know, I'm open for business and I'm open.

FESTA: Well, Mr. Friedman, there is no ... there's only one way. There's only traffic coming from Dade Boulevard. That's it.

FRIEDMAN: Can you cross Dade Boulevard going east?

FESTA: To go cast?

FRIEDMAN: Does the over...the fly-over comes down that way. So I couldn't jump from this gas station going east on Dade Boulevard.

FESTA: No. You can't.

MEYERSON: You can't.

FRIEDMAN: Do you see the fly-over? Does that come...in other words could I make a loft turn from ...

DAVID: There's a divider

MEYERSON: Yes.

DAVID: If you're talking about the eastbound lane...

FRIEDMAN: Yes.

DAVID: There's a divider that would prohibit you from making a left hand turn into the station at that point. The only way you could do it would be to go on North Say Road.

FRIEDMAN: O.K. So in other words you could not go...you could not go east from the gas station out of that entrance.

DAVID: No.

FRIEDMAN: No. Because I couldn't tell from your diagram, and I didn't really remember. Well, I guess that takes care of my questioning. Thank you.

MEYERSON: Mr. Mendelson, any questions?

MENDELSON: No.

HEYERSON: The recommendation of the Administration is to approve the conditional use. The Planning Board has voted unanimously for it. The Administration concurs. Even though there are some questions in connection with this area, because of the fly-over predominately and because of the building of the 800 units and perhaps more on Purdy Avenue. You've been in business in this community for a long time, Mr. Festa, and you know what the Commission is trying to achieve. Where's the City Attorney? What is the vote that's necessary to approve the Planning Board's recommendation?

RITTER: I believe we need a 5/7th vote.

HEYERSON: Yes. A conditional use?

DAVID: It's a majority vote.

TOAL: To reject 5/7 - on conditional use.

RITTER: What is this, a conditional use?

DAVID: Conditional use.

RITTER: For conditional use we need a majority, Mr. Mayor.

MEYERSON: Yes. All right. I think to reject the Planning Board it needs a 5/7th vote.

TOAL: That's right.

MEYERSON: O.K. If there's no further discussion the Chair will entertain a motion.

FALL: Move it

MEYERSON: You're moving to accept the recommendation of the Administration? Is that?

FALK: Yes.

HEYERSON: O.K. Mrs. Falk has moved to accept the recommendation of the Administration for the conditional use as approved by the Planning Board and concurred in by the Administration. Do I hear a second?

WIKLER: I'll second it.

MEYERSON: Seconded by Dr. Wikler.

WIKLER: With this comment that I hope this gentlemon makes enough money to pay for his wall and all that sort of thing. I think he's been very accommodative with us and wish you good luck in your venture.

PESTA: Thank you very much.

MEYERSON: Very well. Any further discussion? Call the roll.

MATTHEWS: Mr. Nayor, is this with the further condition that was to be added? The additional condition.

MEYERSON: All conditions to be added as ...

MATTHEWS: You need to set that forth. That condition that it's a wall to be no less than...what..how it is to be worded.

MEYERSON; No. I don't think, Miss Matthews, I think that the recommendation of the Administration...

MATTHEWS: Was not that.

MEYERSON: Involves the 8 conditional uses that that have been delineated by Mr. David and is in the backup material as part of the Agenda package and has been stipulated by Mr. Pesta.

FALK: Point of information.

MEYERSON: You intend to comply with all the conditions, do you not?

FESTA: The ones we talked about.

FRIEDMAN: Yes, plus the modification of condition one.

FALK: Mr. Mayor.

MEYERSON: Yes.

PALK: Mr. Cohen just told me that what I stated has to be added as an amendment.

HEYERSON: Yes, the 7 foot wall, you're talking about.

FRIEDMAN: Whatever was necessary.

COHES: Whatever was necessary to conceal from all directions.

MEYERSON: Very well.

COMEN: But no less than 6 feet.

MEYERSON; With that modification. With that modification, Very well, any further discussion? Any thing from the Administration? Any thing from the City Attorney?

RITTER: No, Mr. Mayor, it's in proper legal form.

MEYERSON: Call the roll.

MATTHEWS: Mr. Daoud Yes. Mr. Mendelson Yes
Mrs. Falk Yes Mr. Meyerson Yes
Mr. Friedman Yes Dr. Wiklor Yes

Six in favor. None opposed.

MEYERSON: Thank you, Mr. Feata.

FESTA: Thank you. Thank you gentlemen. Thank you lady.

MEYERSON: And good luck to you, sir,

FESTA: Thank you very much.

MEYERSON: We'll move on now to ITEM R3D. This is an item where the applicant has requested that the Public Hearing be continued to August 20, 1980, at the same time

FRIEDMAN: Mr. Mayor. May I make a request. There are some people here. I know Mr. Goodman is here and I know the Bicycle Club from Miami Beach Senior High School is here, in terms of the bond re-allocation.

MEYERSON: R9A. Let's take R9A.

MATTHEWS: Mr. Mayor, excuse me, will you ploase make the announcement with respect to the hearing on the conditional use for 1840 Alten Road (R3D) that is to be continued at the request of the applicant.

MEYERSON: Thank you for reminding me.

MATTHEWS: This is to August 20, 1980, at 3:15 p.m.

MEYERSON: Ladies and Gentlemen, in connection with Item R3D. This is a public hearing on a conditional use. At the request of the applicant and based on the Administration recommendation this matter will be continued to the August 20, 1980, meeting. Those of you where are here to speak at the public hearing on this frem will be available on August 20th and you will be heard.

EXHIBIT "D"

Vincent Festa November 10, 2017

1	IN THE CIRCUIT COURT OF THE
2	11TH JUDICIAL CIRCUIT IN AND FOR
3	MIAMI-DADE COUNTY, FLORIDA
4	CIVIL DIVISION
	CIVIL DIVISION
5	
6	
7	SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01
8	Plaintiff,
9	vs.
10	MARK FESTA, individually and as trustee,
11	Defendants.
12	——————————————————————————————————————
13	AND ALL RELATED CROSS-ACTIONS.
14	
15	VIDEOTAPED DEPOSITION OF VINCENT J. FESTA
16	November 10, 2017
17	10:09 a.m.
18	
19	1230 Columbia Street, Suite 400
20	San Diego, California
21	
22	
23	REPORTED BY:
24	Barbra Zucker
25	CSR No. 11289

	110 1 0112001		,		
	Page 2				Page 4
1	IN THE CIRCUIT COURT OF THE	1		INDEX TO EXAMINATION	rage 1
	11TH JUDICIAL CIRCUIT IN AND FOR	2			
2	MIAMI-DADE COUNTY, FLORIDA				
3	CIVIL DIVISION	3		WITNESS: VINCENT J. FESTA	
4		4	EXAMINATION		PAGE
5	SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01	5	By Mr. Buckner		7
6	Plaintiff,		-		
7	vs.	6	By Mr. Reiss		141
8	MARK FESTA, individually and as trustee,	7			
	MAUREEN FESTA,	8			
9	VINCENT J. FESTA, individually and as trustee,				
1	THE FESTA TRUST, and BEACH TOWING SERVICES, INC.,	9			
10	BEACH TOWING SERVICES OF MIAMI, INC.,	10			
l.,	CONSOLIDATED STORAGE YARDS, INC.,	11			
11	GOOFE PARTNERS, INC.,	12			
1.0	MIAMI AVENUE PROPERTIES, INC.,	12			
12	1718 BAY ROAD CORPORATION,	13			
13	FESTA TRANSPORT AND STORAGE, INC.,	14			
14	And CORONA STORAGE, LLC,	15			
1 4	Defendants.				
15	- -	16			
1,	and	17			
16		18			
1	THE LOFTS AT SOUTH BEACH CONDOMINIUM				
17	ASSOCIATES, INC.,	19			
18	Intervenor-Defendant.	20			
19		21			
20		22			
21		22			
22		23			
23		24			
24		25			
25					
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1	APPEARANCES:	1		INDEX TO EXHIBITS	
2	For Plaintiff: BUCKNER & MILES	2		VINCENT J. FESTA	
	DAVID M. BUCKNER, ESQ.	3	Sunset Lan	d Associates, LLC vs Mark Festa,	et al.
4	3350 Mary Street,	4		Friday, November 10, 2017	
	Miami, Florida 33133	5		Barbra Zucker, CSR No. 11289	
5	305.964.8003	6			
6	786.523.0485 david@bucknermiles.com	7	MARKED	DESCRIPTION	PAGE
7	davidebuckieimiies.com	8	Exhibit 1	Exhibit F	26
	For Defendants Mark Festa, Maureen Festa, Beach	9		Exhibit D	26
8	Towing Services, Inc., Beach Towing Services of	10		Aerial Photo of 1349	69
	Miami, Inc., Consolidated Storage Yards, Inc.,	10			69
9	Goofe Partners, Inc., Miami Avenue Properties, Inc., 1718 Bay Road Corporation, Festa Transport			Dade Boulevard	
10	and Storage, Inc., and Corona Storage, LLC:	11			
11	(Via Telephone)			Notice of Videotaped Deposition	89
12	LEVINE & PARTNERS, P.A.	12		of Victor J. Festa	
	ALLAN S. REISS, ESQ.	13	Exhibit 5	Warranty Deed	90
13	3350 Mary Street	14	Exhibit 6	Mr. Festa and the Festa Trust	94
14	Miami, Florida 33133 305.372.1350			Answer and Affirmative Defenses	
	305.372.1352	15			
15	asr@levinelawfirm.com		Exhibit 7	Series of plans for	107
16		16		1349 Dade Boulevard	-
17	For Defendants Vincent Festa and The Festa Trust:	17	Exhibit 8	Orange Dade Oil Company	118
1 /	THE LAW OFFICE OF SUSY RIBERO-AYALA, P.A.	* ′	TVIIIDIC 0		110
18	SUSY RIBERO-AYALA, ESQ.	1, 2		building/permit card	
	201 Alhambra Circle, Suite 1200	18			
1	Coral Gables, Florida 33134	19			
19					
	305.854.4711	20			
20	305.854.4711 305.468.6197	20 21			
20	305.854.4711				
	305.854.4711 305.468.6197	21			
20 21 22 23	305.854.4711 305.468.6197 susy@riberoayalalaw.com	21 22			
20 21 22 23 24	305.854.4711 305.468.6197 susy@riberoayalalaw.com Also Present:	21 22 23			
20 21 22 23	305.854.4711 305.468.6197 susy@riberoayalalaw.com Also Present:	21 22 23 24			

Page 18 1 Q. -- but would it -- does the name Orange State 2 ring a bell? 3 A. No. It's not that. 4 Q. It wasn't Orange State? Okay. A. No, it wasn't that. It's a famous name. It 5 5 wasn't S-o --6 6 7 Q. Was it Citgo? 7 A. Citgo. Okay. Good one. 8 8 9 9 Q. Okay. And the reason I say that is, we'll go through some documents later, I saw the Citgo logo in 10 10 there somewhere. I wasn't sure if you had a Citgo 11 11 12 station or if it was previous --13 A. No. I had a Citgo station. I also had a 14 station in -- on Miami Beach on 14th Street and -- Miami 14 15 Beach. 15 16 Q. Okay. So you had two -- at some point in time, 16 17 you had two gasoline stations on Miami Beach? 17 A. Yes, and towing. 18 19 Q. And towing. 19 2.0 Okay. So there was the one obviously 1349 Dade 20 21 Boulevard. That's the one that you bought that was a gas 21 22 station, correct? 23 A. Was a gas station. 23 24 Q. Right. And then there was another one, I think 24 25 it was -- am I correct, it was on Alton that you owned? 25 Page 19 A. No. It was on Collins Avenue, actually. It was on Collins Avenue, yes. 3 Q. Which one did you own first, do you recall? 4 A. The one on Collins. 5 Q. Okay. And did you ever own any more than those 6 two gas stations on Miami Beach? 7 7 A. No, I don't think so. 8 Q. What prompted you to start buying gas stations? 8

Page 20 1 not complete by any means. So as we go through this 2 stuff, if there is a document that might refresh your 3 recollection on some of this stuff, I am happy to give it to you, and we will go through them. I just --A. Okay. Q. -- I don't know what's going to help you because --A. Yeah. Q. -- I don't know the history. A. If it helps you, see if it helps you. Q. We'll see. I don't know how much can help me. I mean, we will have to see by the end of the day. Maybe not much. A. All right. Q. Okay. So the 1349 Dade Boulevard was a gas station when you bought it. And is it your recollection that you were able to continue operating as a gas station or were you --A. No. I didn't want gas. Q. Okay. A. I didn't want gas because we had the gas wars, 22 not gas wars, but we had rationing for a while, a long time ago. Q. You are talking in the 1970s? A. Something like -- maybe before that too. Page 21

- 9 A. Well, I had a friend of mine, we did a lot of
- investing. We bought properties and sold them, 10
- 11 properties. And we -- we went into Alton Road and
- 12 picked up a station that we did AAA and towing.
- 13 Q. Right. So you had a towing operation at the
- 14 gas station sort of as an accessory to the gas station?
- 15 A. Right.
- 16 Q. Okay. And so with regard to the gas station at
- 17 1349 Dade Boulevard, your recollection is that was a
- Citgo station? 18
- 19 A. I think so. I think you're right.
- 20 O. Okay.
- 21 A. That would have been my guess.
- Q. Yeah, and, by the way, this -- I didn't say
- 23 this before, but I think I have sort of implied it, but
- 24 I will say it now. This is not meant to be a
- 25 closed-book test. I have got some documents; they are

- A. We had a gas station on Alton Road. It was a
- Gulf station that we just leased it, you know. You buy
- their -- you buy their equipment, and they let you use
- their station. And I had AAA and I had towing, and I
- had -- I had everything.
- Q. Right. So when you bought the gas station --
- so -- let me strike that.
- 9 So you had the other gas station --
 - A. I had Alton Road first.
- 11 Q. Okay. And I just want to make sure we are
- talking about the same thing because a moment ago you
- said you thought the other station was on Collins.
- 14 A. It is Collins. Alton Road -- Alton Road was a different place. We did AAA there --15
 - Q. Oh, I see.
- 17 A. -- then we had Collins, then we had Collins
 - Avenue which I bought the property and sold it. There
- is a high-rise there now. And then I had 1349 Dade 19
- 20 Boulevard.

10

16

21

23

24

25

- Q. Okay. That's my mistake. I thought we were --
- 22 A. That's okay.
 - Q. -- talking about two places.
 - A. No problem.
 - Q. So just so I am clear, you owned a gas station

```
Page 26
                                                                                                                   Page 28
             So let me -- I have handed the witness --
1
                                                                             MS. RIBERO-AYALA: Right, right.
                                                                1
2
             MR. REISS: Okay.
                                                                             MR. BUCKNER: \operatorname{\mathsf{--}} there is more in here than
3
             MR. BUCKNER: I am going to tell you what they
                                                                3 just his stuff. So I don't want to --
    are, and we will see if we can get you to them, Allan.
                                                                4
                                                                             MS. RIBERO-AYALA: Right. Let's not bog him
 4
5
             I am going to hand the witness two documents.
                                                                5
                                                                    down with stuff. Let me let him go through whatever
6 All right? One is, on the cover of it, it says, "Exhibit
                                                                    belongs to him, and then he can say what he understands
7 F." It starts with the roll call, City of Miami Beach
                                                                7 it to be. So --
8 Commission. It's a series of documents related to the
                                                                8 BY MR. BUCKNER:
    conditional use permit, but it's Exhibit F. And the
9
                                                                9
                                                                         Q. Maybe I can help. You are in Exhibit 1,
    other one is Exhibit -- has got Exhibit D on the cover.
                                                               10 Mr. Festa. The fourth page of Exhibit 1 you will see a
10
11
             MR. REISS: I see that.
                                                                   City of Miami Beach letterhead.
             MR. BUCKNER: Okay. So we are going to -- here
12
                                                               12
                                                                             MR. BUCKNER: You are there, Susy.
13 is what we are going to do. We are going to mark
                                                               13 BY MR. BUCKNER:
    Exhibit F as Exhibit 1 here and Exhibit D as Exhibit 2
14
                                                               14
                                                                         Q. A memorandum dated May 7th, 1980. Do you see
15
    for this deposition. Okay?
                                                               15
                                                                   that?
             MR. REISS: Thank you.
                                                               16
                                                                             MS. RIBERO-AYALA: Okay. All right. So let's
16
                                                               17 let him read this.
17
             MR. BUCKNER: Yeah, no worries.
             (Exhibits No. 1 and No. 2 marked.)
                                                               18
                                                                             MR. BUCKNER: Go ahead. I think that may help.
18
19 BY MR. BUCKNER:
                                                               19
                                                                             THE WITNESS: Okay.
         Q. Mr. Festa, let me give you that.
2.0
                                                               20 BY MR. BUCKNER:
21
             (Discussion off the record.)
                                                               21
                                                                         {\tt Q.}\,\, So the reason I showed you that is because this
22 BY MR. BUCKNER:
                                                                   document relates to a conditional use application for
23
         Q. Here is a copy for each of you. So let me
                                                               23
                                                                    operating a filling station at 1349 Dade Boulevard.
   just -- I am going to hand you this in a second,
                                                               24
                                                                             Do you see that?
25 Mr. Festa.
                                                               25
                                                                             MR. REISS: Objection to the form.
                                                   Page 27
                                                                                                                   Page 29
             We have marked as Exhibit 1 a document that on
                                                                             THE WITNESS: I see it, but I don't remember
2 its face says, "Roll Call Miami Beach City Commission"
                                                                2 it.
    and has a series of agenda items behind it. And that's
                                                                3 BY MR. BUCKNER:
    your copy, Mr. Festa, Exhibit 1.
                                                                         Q. Okay. So you don't recall applying for a
```

And Exhibit 2 is entitled -- well, it's on City 6 of Miami Beach letterhead, at least the first page, and it's entitled, "Action Summary," but then behind it, several pages back, there is a transcript of a hearing from the City of Miami Beach Commission. It appears to be June 4th, 1980, I think. And that's No. 2. 10 11 Let me give you both of those. 12 And, by the way, when I hand you documents today, you can take as much time as you need to look at 14 them. We are not in a hurry. So, you know, be my guest. 15 A. This is saying that in 1980 I was selling gas? 16 Q. No. Well, let me go through it with you, and I 17 will tell you what I think it says, and we will see if it refreshes your recollection. There is -- the first item here is a -- in 19 20 Exhibit 1 -- let me find it. 21 MS. RIBERO-AYALA: Well, why don't we let him go through it. 23 MR. BUCKNER: Yes, go through it.

MS. RIBERO-AYALA: Yeah.

MR. BUCKNER: I don't want the --

24

25

```
conditional use permit to operate a filling station in
    1980 at the Dade Boulevard location?
             MR. REISS: Objection to form, documents speak
   for themselves, mischaracterizing the witness'
    testimony.
10
             You can answer the question.
             THE WITNESS: No. I was doing mostly towing.
   I don't remember -- I was one of the few people that
    was -- in fact, at one time I was the only one that was
    doing towing.
   BY MR. BUCKNER:
16
         Q. Right.
17
          A. So I was towing from the -- I was also -- had
    a -- rented a place down on 5th Street, and we were
19
    towing on Collins Avenue, and we were towing on 1349
20
    Dade Boulevard.
21
             I can't -- I can't remember how we could get all
22 those cars in and out with pumps there. I just -- that's
23 what I can't understand ---
24 BY MR. BUCKNER:
```

25

Q. Okay.

EXHIBIT "E"

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	
The Planning Bo Ordinance. If y them to:	ou have any suggestions on how this Ordinance may be improved, please send Miami Beach Planning Board c/o Director of Planning 1700 Convention Center Drive Miami Beach, Florida 33139
Name	
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.
- 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)

- 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.
- 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

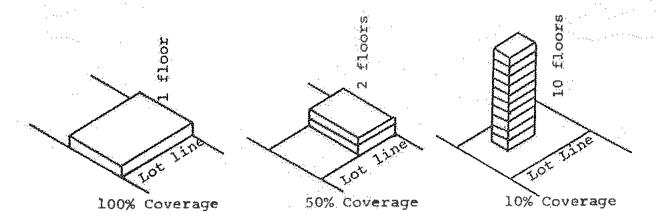
- 34. DORMITORY: A residence or building providing sleeping accommodations for students enrolled in a religious, educational, or business program who occupy rooms on a contractual basis generally corresponding to the length of the curriculum.
- 35. DRIVE-IN: A term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space.
- 36. <u>DWELLING:</u> 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 excusively 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.
- 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.
- 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.
- 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.
- 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.
- 1. 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.
- [. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.
- 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.
- 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.
- 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, lobhies, 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.
- 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 offstreet parking spaces in the computation of required off-street parking spaces.

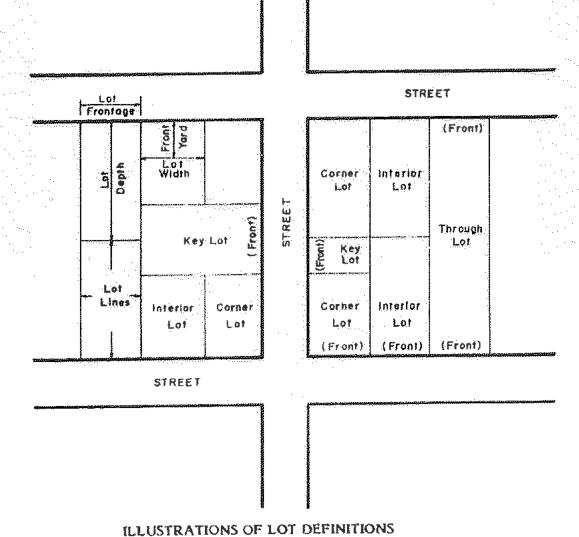
- 68. LOT: A parcel of land of at least sufficient size to meet minimum zoning requirements for use, minimum width, and area, and to provide such yards and other open spaces as are required in the Zoning Ordinance. Such lot shall have frontage on a public street, and may consist of:
 - a. A single lot of record;
 - A portion of a lot of record;
 - 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.



- 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.
- 8[. 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 lot 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 iil, 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
 - 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.
- PARKING LOT, STORAGE: A landscaped at grade all weather surface or 95. grayel 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, 1-1 of this Ordinance. There shall be a minimum five foot landscaped area between the fence or decorative mansonary 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 2% 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.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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)
- 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.

- III. 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.
- 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.
- 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.

- 51GN, 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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, take, 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.
- 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:

SYMBOL	DISTRICT
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-H	Marine District
NH	Nursing Home
R-PSI	Residential Medium-Low Density
R-PS2	Residential Medium-Low Density
R-PS3	Residential Medium-High Density
R-PS4	Residential High Density
C-PSI	Commercial Limited Mixed Use
C-PS2	Commercial General Mixed Use
C-P53	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.
- The boundary line adjacent to Biscayne Bay is the established bulkhead line.
- 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.
- 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.
 - 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 permissable 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 use:
 - 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.

- RS-1 30,000 square feet.
- 2. RS-2 18,000 square feet.
- RS-3 10,000 square feet.
- 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.
- 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.
 - 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:
 - 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.
 - 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.
 - 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.
 - 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.
- 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.
- Municipal buildings and uses.
- g. Private club,
- h. Two family dwelling.
- 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.

PUD: 50 feet.

E. MINIMUM YARDS.

- 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%.

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.
- 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.
 - One- or two-family dwelling.
 - Rooming house.
 - Community garage.
 - 6. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
 - 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.
- 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.
- Publicly owned and operated recreation facility, playground, playfield, park and beach.
- in. 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.
 - Multiple family buildings other than adult congregate living facilities:
 - a. Dwelling Unit Shall have a minimum of 400 square feet.
 - Sleeping Unit Shall have a minimum of 400 square feet.
 - 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.
- 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.
 - Hotel, motel and tourist residence.
 - 4. One- or two-family dwelling.
 - 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.
- Marine dockage.
- k. Municipal buildings and uses.
- I. Private club.
- m. Public and governmental buildings and uses.
- 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.
- 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
- 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:
 - Apartment building and apartment hotel.
 - Group houses.
 - 3. Hotel, motel and tourist residence.
 - One or two-family dwelling.
 - 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.
 - 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.
- 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.
- Temporary use for a period not to exceed 15 days.
- 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
 - Multiple family buildings other than adult congregate living facilities:
 - a. Dwelling Unit Shall have a minimum of 400 square feet.
 - 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.
- 1. 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. <u>DISTRICT PURPOSE</u>. 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.
 - 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.
 - Drug Store
 - Garden shop, florist shop, greenhouse, nursery and landscape office.
 - Grocery Store
 - 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.
 - 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.
 - 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.
- 13. 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.
 - Municipal buildings and uses.
 - g. Undertaking establishment or funeral home.
 - 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.
- Residential use: 5,500 square feet.

D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None.
- Residential use: 50 feet.

E. MINIMUM YARDS.

- 1. Residential use: As provided in Section 8.
- Non-residential uses

- 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
- 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.
- Residential Use: 60 units per acre.

6-9 C-2 General Office District.

- A. <u>DISTRICT PURPOSE</u>. 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:
 - Those uses listed as conditional uses in each of these districts.
 - 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

- I. 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.
 - 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.

- I. 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.
 - Banks, including savings and loan associations.
 - Barber shops.
 - 9. Beauty parlors.
 - 10. Bicycle stores.
 - Book stores.
 - 12. Clothing and costume stores, selling new merchandise or rentals.
 - 13. Club, private.
 - 14. Confectionary or ice cream stores.
 - 15. Dental office.
 - 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.
- Medical offices.
- Messenger service.
- 28. Music stores.
- 29. Newsstands.
- 30. Nite clubs.
- 31. Optical stores
- 32. Photography stores and studios.
- Picture framing shops.
- 34. Pottery shops
- Printing and developing establishments.
- 36. Professional offices.
- 37. Radio or television broadcasting station, studio, and office, but not sending or receiving towers.
- 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.
 - I. Religious institutions.
 - 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.

- 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.
- Sidewalk cases, 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 cases 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.

- I. Non-residential use: None.
- 2. Residential use: 50 feet.

E. MINIMUM YARDS.

- Non-residential use: 10 feet when abutting a residential district; otherwise none.
- Residential Use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 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.

MAXIMUM DENSITY.

- 1. Non-residential use: None.
- 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.
 - Beaches, commercial.
 - e. Bus terminals.
 - f. Churches, synagogue and temple.
 - g. Colleges, junior colleges, or institutions of higher learning.
 - h. Filling station.
 - Institution, educational or philanthropic, including museum and art gallery.
 - i. Marina.

- k. Municipal buildings and uses.
- 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.
- Residential use: 50 feet.

E. MINIMUM YARDS.

- 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
- Residential use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- I. Non-residential use: None.
- 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.

- I. 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 tight 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.
 - Auction parlor.
 - 4. Automobile accessories, new parts and equipment store, including new tires and sale of trade-in tires.
 - 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.
 - 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.
- 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 that 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:
 - 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.
 - 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.
- Temporary use for a period not to exceed 15 days.
- 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.

- I. Non-residential use: None.
- Multiple family Buildings.
 - 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.

MAXIMUM DENSITY.

- 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.
 - 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.
 - 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.
 - 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.
 - Filling station.
 - e. Institution, educational or philanthropic, including museum and art gallery.
 - 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.
 - 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.

H. MAXIMUM FLOOR AREA RATIO, 1.0.

6-14 RH Hospital District.

- A. DISTRICT PURPOSE. This district is designed to accommodate hospital facilities.
- it. 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

HOSPITAL	Front	Rear	Side
St. Francis	25'	401	1.51
Mt. Sinai	25'	40°	1.51
South Shore	20'	20'	151
Heart Institute	20'	20'	151
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. <u>USES PERMITTED</u>. 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.
 - 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 cental 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.
 - 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.
- 1. 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. Flotels 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.
 - Coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries.
 - Accessory off-street parking and loading spaces.
 - 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 more 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. 270 units per acre.

6-13 CCC Convention Center District.

- A. DISTRICT PURPOSE. The general goals of this district include the following specific purposes:
 - 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.
 - Publicly owned and operated recreation facility or park.
 - Public and governmental buildings, services and uses such as governmental
 office, fire station, library, museum, auditorium, garden center.
 - 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.
- Accessory olf-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.
- MAXIMUM DENSITY.
 - 1. Maximum number of hotel guest rooms in this district shall not exceed 3000.
 - Minimum number of guest hotel rooms per hotel will be 500.
 - 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:
 - 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.
 - 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-1 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: 7% 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 minterials 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. <u>DISTRICT PURPOSE</u>. 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:
 - Wet dockage of pleasure craft, not including house boats or house barges.
 Live aboards shall be limited as provided in subparagraph 2 (a) below.
 - Wet dockage of the following commercial vessels only: fishing boats, four 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 existance 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:
 - 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 2% 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:
- 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-1.

6-21 NH Nursing Flome District

- A. <u>DISTRICT PURPOSE</u>. 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:
 - 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.
 - 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, not withstanding 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 esstential 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.
- 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.

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.
- 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.

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

- 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:
 - 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) \$200.00 plus \$0.50 per as described in Sec. 6-4 K.2. mailing address
- 3. Adult Congregate Living Facility \$400.00 plus \$35.00 per bed plus \$0.50 per mailing address
- 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.
- 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.
- 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.
- 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.
- Valet Parking.
- 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.
- 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.
- 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 rentait 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.
- 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.

- 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:
- 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.
- 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.
- 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.

- Storage of office supplies or merchandise normally carried in stock in connection with a permitted office or business use subject to applicable District regulations.
- Accessory off street parking and loading spaces, subject to applicable District regulations.

D. INDUSTRIAL.

- Storage of goods used in or produced by permitted industrial uses or related activities, subject to applicable District regulations.
- 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.

Octave Band	Maximum Permitted Sound Level (Decibels).				
(Frequency, Cycles per second)	Along Property Lines Abutting or within a Residential District	Along Property Lines Within a Business or Industrial District.			
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.
- 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.
- 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.

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.
- 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.
- Porches and Platforms Open, unenclosed porches or platfroms 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

I. 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).
 - 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 ience 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.
- 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.
 - 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 sald court games, shall have the following minimum required yards: Iront 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.

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

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.
- 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.
- 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.
- 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) it., six (6) inches above the sidewalk elevation.
 - d. They maintain any required sound buffering equipment outside the minimum five (5) It. yard area specified in part a. above.
- 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.
- 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.

- 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 filteen (15) feet from their intersection.

8-3 Minimum Yard Regulations for Multiple-Family Zoning Districts.

A. MF DISTRICTS ESTABLISHED.

- 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 I through a include ocean front properties. Districts 5 through 8 include waterway and bayfront properties. Districts 9, 10 and 11 include interior properties.
- Any property located within a multiple-family, FIM, 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	RICT LEVEL FRONT REAR		AR	,	
	MF-1	Sub Ground Pedestal Tower	50 50 50 50	50 50 90 90	+ .4 height**	novemb poly Amphonic
	MF-2	Sub Ground Pedestal Tower	20 20 40 40	50 50 75	height**	
AND THE PROPERTY OF THE PROPER	MF-3	Sub Ground Pedestal Tower	20 20 20 40	50 50 50	height**	
	MF-4	Sub Ground Pedestal Tower	20 20 20 20 20	50 50 50 .33	height**	
	MF-5	Sub Ground Pedestal Tower	20 20 20 20 40	0 10 40 40	:	
***************************************	MF-6	Sub Ground Pedestal Tower	20 20 20 20 20	0 10 20 20		
AND THE PROPERTY OF THE PROPER	MF-7	Sub Ground Pedestal Tower	25 25 25 25 25	0 10 40 40		
	MF-8	Sub Ground Pedestal Tower	20 20 20 20	0 20 20 30		

	DISTRI	CT	LEV	ËL	FRONT	Ri	EAR		· · ·
- 19 40 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950	والمهدولين والمهارية والمنافقة والمنافقة والمنافقة والمنافقة والمنافقة والمنافقة والمنافقة والمنافقة والمنافقة	A COLUMNIA CONTRACTOR OF THE PERSON OF THE P	No s	ubterran	ean area sl	nall b	e allowed	in thi:	s district.
	MF-9		Grou		20	10			
			Pede		20	10			
			Tow	er	20	.3	height**		
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				ubterran	ean area sh	nall b	e allowed i	in this	district.
	MF-10		Grou		20	10			
			Pede		20	10	((),		
the second			Tow	er	*	.3	height**		
Assessed Assessed	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,					*************************************	······································
DISTRIC	T LEVEL	FRO	NT	REAR	INTER		SIDE	ST.	OR ALLEY
								······································	
MF-11								10'	-Grade
(815 - 1 1	·			_				**********	
	Sub.	20		.0	.0			0	-Below
	Ground	20	٠.	10	10% or	7.5	Min.		10,
	Pedestal	20		20	10% 0	7.5	Min.		10'
the programme of the contract of				•					

.3 ht.**

.3 ht.**

30

Tower

^{*}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.
 - 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.

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.

 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:

Height of Building	Lot Coverage
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.

 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:
 - 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.
 - Permitted uses are limited to the following: shade structures, sidewalk cases, 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.
- 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 inrisdiction.
- 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 (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 (I) 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 -

- Single-family detached dwelling 2 spaces.
- Two, three and four-family 1 1/2 spaces for each unit.
- Group House 1 1/2 spaces for each unit.
- Apartment building and apartment-hotel 1 space for each 1 efficiency unit; I 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 I space for each I sleeping unit.
- Motel or motor lodge 1 space per sleeping unit.
- 8. Church, synagogue or temple, auditorium or place of assembly I space per 6 seats, or bench seating spaces in main auditorium.
- 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 I space per 6 seats or bench seating spaces in chapel.
- 4. 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 I space for each 400 square feet of floor area.
- d. Research facility I 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:

- 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 I space per 400 square feet of floor area.
- 20. Nursing homes I space for each 2 beds.
- 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 I 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 I space per 1,000 square feet of floor area.
- 29. Laundry I 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 I space per boat berth.
- 33. Dormitory I space for each 150 square feet of dormitory floor area plus I 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. I above, except as follows:

1. Apartment building and apartment-hotel - I 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 I 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;
- 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.
- 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.

- 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.

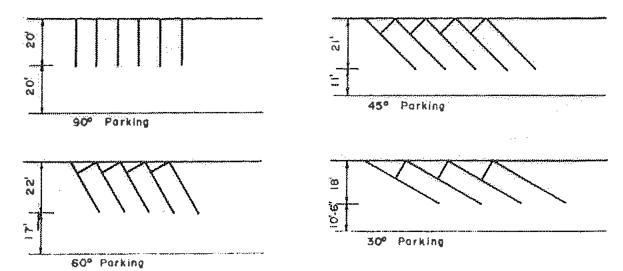
- C. SEPARATION FROM WALKWAYS AND STREETS. Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, or curbing or other approved protective device, as specified by Dade County Ordinance No. 67-75.
- D. ENTRANCES AND EXITS. Location and design of entrances 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 arrangment 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.

450 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 nurked 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.
- 1. 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
 - 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.
 - 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.

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:

en e	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	l 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.

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.

II-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:
 - 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 R5-1, 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.
- it. GENERAL ADVERTISING SIGNS. No general advertising sign shall be constructed, erected, used, operated or maintained in the City of Miamil Beach.

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.
- 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.
- No sign may be a flashing sign, intermittent, moving or revolving.

K. NONCONFORMING USES.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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-I, RS-2, RS-3, RS-4 and RM-14-DISTRICTS

- 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.
- 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.

- 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 (i) 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:

- 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.
- 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.

- 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.
- 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.
- A sign or sign structure erected pursuant to this Section shall by January I 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.
- 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 nonilluminated, 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.
- 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.
- 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.
- 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.
- 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.

1. SIGNS PERMITTED IN THE R-PS 1-4 DISTRICTS

Zoning District	Notes	Awning/ Marquee	<u>Flat</u>	Projecting	Detached (Pole/Pylon)
R-P5 i 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. fi.	60 sq. ft.	not permitted	not permitted

J. SIGNS PERMITTED IN THE C-PS 1-3 DISTRICTS

Zoning District	Notes	Awning/ Marquee	Flat	Projecting	Detached (Pole/Pylon)
C-PS i		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% of wall 70 sq. ft. max.	20 sq. ft.	20 sq. ft.

Zoning District	Notes	Awning/ Marquec	Flat	Projecting	Detached (Pole/Pylon)
C-PS 3	Aggre- gate Sign Area 200 sq. it./ 100' of	15 sq. ft.	15% of wall 100 sq. ft. max.	40 sq. ft.	40 sq. ft.

street frontage

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.

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 cailings: 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:
 - d, , 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 with 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:
 - 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.

- 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;
 - 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.
- 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 alledged 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:

 If a deferment is requested by the applicant, an additional fee shall be assessed as follows:

(a)	Single-Family Residences	\$50
(P)	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.
- 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.

ADMINISTRATION

[4-] 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.
- 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 (I) 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.
- 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.
- 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.

4-4 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.

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.

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:
 - 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 Cierk 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.
- 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:
 - 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.
 - 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.
 - Amendment to the Zoning Ordinance not involving a zoning change. plus newspaper notice.

\$350 per section of the Ordinance requiring language modification

 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.

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.

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.

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.

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.

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.

Zoning Districts

Symbol	Use	Density (U/A)	
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	as specified	
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	O	
RH	Hospital District	Ó	
MR	Marine Recreational	0	
MÜ	Municipal Use	0	
HM	Hotel-Motel	220	
CCC	Convention Center District	as specified	
MD-I	Marine District	0	
MD-II	Marine District	0	
NH	Nursing Home District	as specified	
R-PS I	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-P5 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

Symbol	Location	
MF-1 MF-2 MF-3 MF-4 MF-5 MF-6 MF-7 MF-8 MF-9 MF-10	Ocean Front Ocean Front Ocean Front Ocean Front Ocean Front Bay or Waterway Bay or Waterway Bay or Waterway Bay or Waterway Interior	
MF-11	Interior Interior	

C. Explanation of Overlay Zones and Districts.

Symbol	Explanation		
DOD DOZ HOD HOZ HPD	Dune Overlay District Dune Overlay Zone Hotel Overlay District Hotel Overlay Zone Historic Preservation		
POD POZ	District Parking Overlay District 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. <u>BUILDING PERMIT</u> 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. <u>CITY COMMISSION</u> 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 Fia, 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. <u>DEVELOPMENT</u> 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.
- 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.
- 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.
- 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

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		
		R-PS 1	R-PS 2	R-PS 3	R-PS 4	<u>C-PS 1</u>	C-PS 2 C-PS 3	
• • • •	Residential	р	P	P	P	P	p p	
	Hotel/Motel	N	N	C	P	С	р	
* *	Commercial	Ń	N	N	N	P	P P	
	Office	N	N	N	Ν.	р	Р	
	Institutional	P	p	P	P	P	P P	
	Accessory	P	P.	P	Ρ.	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.
- 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

Residential Subdistricts

Per	formance Standard	R-PS1	R-PS2	R-PS3	R-PS4	
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 Se by 23-6G here		ning Ordinance	e, except as m	odified
12.	Minimum Parking Requirement	Pursuant to Se	ction 9 of Zor	ning Ordinance	e and Section 2	23-6H

13. Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance.

14. Signs

Pursuant to Section 11 of Zoning Ordinance.

C. Table of Commercial Performance Standards

Commercial Subdistricts

Per	formance Standard	<u>C-P\$ 1</u>	C-PS 2	<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)	0.1	2.0	2.5
5.	Maximum Floor Area Ratio (with bonus)	2.0	2.5	3.5
6.	Residential Development	Pursuant to all R-P52 district regula- tions.	Pursuant to all R-P\$3 district regula- tions.	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.

^{*}enclosed parking shall meet the requirements set forth in Section 9-5 l of this Ordinance, shall be covered by a roof and shall contain no residential use.

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 23-61 herein.

 Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance

II. 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.

- In order to encourage the aggregation of Performance Standard Bonuses. 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

Res	Residential Bonus Factors		Maximum Bonus	
14	Par	cel 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	

Dwelling Unit Size

- a) for each 100 sq.ft increase in minimum average floor area per dwelling unit up to 200 sq. ft. increase
- b) For each 100 sq. ft.
 increase in minimum
 floor area per dwelling
 unit for all units, up
 to 200 sq. ft. increase
- 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:

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)

.1 increase in FAR

.1 increase in FAR

.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

.05 - .15

.05 - .10b) Paying (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 grading (considering slope, drainage, use of ground cover, air movement, use separation, public and private circulation, form and scale, visual interest, space creation, publicprivate transitions and continuity, and architectural integration) .05 -.10 water features (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) .05 signs and graphics (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) .05 f) street furniture (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)

	lighting (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)	.05
	arcades (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, accessi- bility and usability)	.0518
	site planning (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)	.0515
j)	building design (considering scale, height, mass, facade, surface materials, rooftop, aesthetics, integration with urban design features, color, relation— ship to adjacent buildings and	.0525

spaces and continuity with respect

to architectural design)

F. Table of Commercial Performance Standard Bonuses

Commercial Bonus Factors

I. Parcel Aggregation

- a) for each 10,000 sq. ft.
 above minimum lot area, up
 to 40,000 sq. ft.
- b) for each 20,000 sq. ft. above 40,000 sq. ft., up to 80,000 sq. ft.

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:

- 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)
- 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)

Maximum Bonus

.15 increase in FAR

.1 increase in FAR

.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.

Maximum Permissable Bonus Range

.05 - .15

.05 - .10

		9.5
c)	grading (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)	.05
d)	water features (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)	.05 - 1.10
e)	signs and graphics (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).	.0510
f)	street furniture (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)	.0510
(g)	lighting (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	.0510

and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)

.05 - .15h) arcades (considering pedestrian access, accommodation of activities, linkage in circulation pattern, relationship to architectural and urban design leatures, shading and cooling effect, protective effect, relationship to public and private spaces, accessibility and usability) .05 - .15 i) site planning (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) .05 - .25building design (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) C-PS 2 Only a) Outdoor cafe (with minimum of 500 square .05 - .15 increase in FAR feet) First Floor Commercial Use (with minimum .05 - .15 increase in FAR b) of 1,000 square feet) 1,000 gross square foot Development Rights Transfer - for each c)

G. Supplementary Yard Regulations

development right

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.

increase in maximum permis-

sible floor area

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 leet 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 23-68 herein and shall be subject in-lieu thereof to a minimum open space ratio of .40.

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 7% 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:

Front 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 with- standing 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.

Rear 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 onehalf 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:
 - 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.

I. 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.

Supplemental Parking Regulations: C-PS3 District

1.25 parking spaces per dwelling unit, I 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:

Parking Angle	Standard Spaces	Compact Spaces	
900	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	
450	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long	
Parallel	9'0" Wide 23'0" Long	7'8" Wide 20'0 " Lo ng	
Handicapped	12'0" Wide 18'0" Long	****	

Access aisles shall be provided in accordance with the following chart:

Size/Car	Angle of Parking	Width of Aisle: One-Way Traffic Double Loaded	Width of Aisle: Two-Way Traffic Double Loaded	Width of Aisle One-Way Traffic Single Loaded
Standard	900	23.0 feet	23.0 feet	23.0 feet
Standard	60°	11.8 feet	19.3 feet	12,7 feet
Standard	450	9.5 feet	18.5 feet	10.8 feet
Compact	900	20.0 feet	21.0 feet	20.0 feet
Compact	600	9.5 feet	19.0 feet	10.3 feet
Compact	4 50	9.2 feet	18.7 feet	10.6 feet
Standard	Parallel	10.0 feet	20.0 feet	10.0 feet
& Compact	Parking			

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.

8. 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>	Gross Square Foot Increase in Floor Area in Receiving Area
Year 4 Year 5 Year 6 Year 7 Year 8	900 800 700 600 500
Year 9	400
Year 10	300
Year II	200
Year 12	100
Year 13 and afte	er 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 aproval 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.

23-9 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.
- 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 buildhead rear yard setback for oceaniront 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:
 - 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.
 - 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.

3. MEMBERSHIP

- 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
 - American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

- 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.
- all permits for interior alterations and repairs.
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 - a. American Institute of Architects, local chapter
 - b. American Society of Landscape Architects, local chapter
 - 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 - Ail 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 YOTING

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:

- Shall find that the Design Review Board acted arbitrarily and capriciously in abuse of its discretionary powers; and
- 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 Mlami 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.
 - 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.
- 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.
 - 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 (7%) 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.

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.
- P. "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.
- 1. "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.
- I. "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(8) 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, Eire 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;
- 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;
- 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.
- 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.

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.

1. 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

- 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
 - 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

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.
- 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 defineated on the City's zoning map.
- 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

- 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.
- 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 written description of the proposed action;
 - b. A site plan as described in Section 14-3(A) of this Ordinance;
 - 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

- 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.
- 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.
- 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.
- 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.
- 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, nothwithstanding 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.

ADULT CONGREGATE LIVING FACILITES

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.
 - 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:
 - Smaller scale (6-16 residents) are encouraged in order to provide a noninstitutional environment.
 - 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.
- 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 surrouding neighborhood.

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 cases, if a permitted use in the applicable district, shall only be considered under the regulations set forth for variances.
 - Uses in the Civic and Convention Center (CCC) District and Hospital (RH) District
- 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
 - 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
 - MR Marine Recreation District
 - 10. MU Municipal Use District
 - 11. HM Hotel Motel District
 - 12. CCC Convention Center District
 - 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 visable 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.
- 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.

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.
- 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 cases 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 impowered 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 exoflicio 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 appy 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.

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.

PARKING OVERLAY REGULATIONS

31-1 GENERAL PROVISIONS

A. Purpose

 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.
- 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.
 - 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

 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 compatibility 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.

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:
 - 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;
 - amelioration of the impact of noise and light;
 - 6. Integration of any structures with adjacent body of water; and
 - 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:

- All permits for plumbing, heating, air conditioning, elevators, fire alarms, and extinguishing equipment, and other mechanical and electrical equipment.
- 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:
 - 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;
 - sculptures and water features;
 - 6. outdoor furniture such as benches and outdoor lighting; and
 - paving materials such as concete 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;
 - 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.

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 live (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.

 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.

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.

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. <u>DWELLING UNIT AND SLEEPING UNIT RATIO</u>. The number of dwelling units shall not exceed twenty five (25) percent of the total number of sleeping units provided on the site.
- C. <u>DENSITY AND LOT COVERAGE</u>. None.

D. MINIMUM FLOOR AREA PER UNIT

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.
- 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 (7.50) 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, layatory, and bath, with or without a shower.
- 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

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

When a development is located in a residential district, the following required yards shall apply:

AND REAR	

SIDE

As required by the designated MF District pursuant to Section 8-3B.

As required by Section 8.

2. When a development is located in a commercial district, the following required yards shall apply:

	EDONIT	REAR	
	FRONT		
Subterranean	O ft.	50 ft. except as listed in Section 8-6	
Ground	Offt.	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	Oft.	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 pursuanted 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:
- 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 "F"

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.

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

	Page 2
1	APPEARANCES:
2	
3	On behalf of the Plaintiff: BUCKNER + MILES 3350 Mary Street
4	Miami, Florida 33133 (305) 964-8003
5	By: DAVID M. BUCKNER, ESQ. By: BRETT E. VON BORKE, ESQ.
6	
7	On behalf of the Plaintiff: HOLLAND & KNIGHT, LLP
8	701 Brickell Avenue Suite 3300
9	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.,
13	Consolidated Storage Yards, Inc., Goofe
14	Partners, Inc., Miami Avenue Properties, Inc., 1718 Bay Road Corporation, Festa Transport and
15	Storage, Inc., and Corona Storage, LLC: LEVINE & PARTNERS, P.A.
16	3350 Mary Street Miami, Florida 33133-5215 (305) 372-1350
17	By: ALLAN S. REISS, ESQ.
18	
19	On behalf of Touch of Class Paint & Body Shop, Inc. and Rudolf Budja Gallery, LLC: BRODSKY, FOTIU-WOJTOWICZ, PLLC
20	169 East Flagler Street Suite 1224
21	Miami, Florida 33131 (305) 503-5054
22	By: BENJAMIN H. BRODSKY, ESQ.
23	
24	
25	

Page 3 1 APPEARANCES: On behalf of Thomas R. Mooney: 3 CITY OF MIAMI BEACH CITY ATTORNEY'S OFFICE 1700 Convention Center Drive 4 4th Floor Miami Beach, Florida 33133 5 (305) 673-7000 6 By: ALEKSANDR BOKSNER, ESO. By: NICK KALLERGIS, ESQ. 7 ALSO PRESENT: 8 9 Daniel Marinberg Bradley Colmer W. Tucker Gibbs, Esq. 10 Rafael E. Andrade, Esq. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

- 1 MR. REISS: And then we're going to switch
- 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.
- 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.
- MR. BUCKNER: We'll figure it out. A lot
- 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.
- Okay. What's an accessory use?
- 21 A A use that is subordinate to the main
- 22 permitted use.
- 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 O And there's been a lot of different words
- 10 used today. I want to make sure I'm using the right
- 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.
- 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 O 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 O 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.

- O 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.
- 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.
- 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 O 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 0 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 O And there are some set forth as
- 9 conditional uses, correct?
- 10 A That's correct.
- 11 O 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 O 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 O 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.
- Today does the City of Miami Beach still
- 14 approve on occasion conditional uses of property?
- 15 A Yes.
- 16 O 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 O Did they used to require commission
- 22 approval?
- 23 A Under the previous code, City Commission
- 24 approval was required.
- 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.
- 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.
- 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.
- Q Do you know for a fact that the city clerk
- 25 kept a record?

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- 1 A That I don't know.
- 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 O 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
- 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.
- 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 O 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 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 O 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?
- MR. REISS: Form.
- 23 A Yes. That's correct.
- 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
- 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 O 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 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.
- 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 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.
- 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.
- 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 O So it's a specific delineated use?
- 22 A That's correct.
- 23 Q But as Mr. Reiss asked you several times,
- in the pre-1989 code you cannot find the words
- 25 "towing" or "towing use" or "towing services"

- anywhere in there? 1
- That's correct.
- You also, by the way, in the pre-1989 3
- 4 code, if I'm not mistaken, cannot find the term
- 5 "nuclear power plant;" is that correct?
- That's correct. 6 Α
- 7 And you also can't find --
- 8 MR. BUCKNER: Guys. You can whisper.
- 9 BY MR. BUCKNER:
- And like I was asking you before, there 10 0
- 11 are a number of other uses that don't appear in the
- 12 code. That's correct?
- 13 Α That's correct.
- 14 In the pre-1989 code? Q
- 15 Α That's correct.
- 16 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?
- 2.0 MR. REISS: Form. Predicate. Improper
- 21 hypothetical.
- Depending upon the use and depending upon 22
- 23 the property that you wanted to put the use, we
- would have to evaluate whether or not that use would 24
- 25 be consistent with the listed permitted uses.

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- 1 O 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.
- 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
- or more permitted uses, and which would not be
- 15 inappropriate in the district." Did I read that
- 16 right?
- 17 A Yes.
- 18 O 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 O 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.
- 9 Because I want to ask the other stuff first.
- 10 A Okay.
- 11 O 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.
- MR. BUCKNER: Al, I actually have another
- one. Just one.
- MR. BOKSNER: Just one.
- MR. BUCKNER: Just one. I'm going to keep
- apologizing.
- 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 O These are BTR categories, at least some of
- 12 them, in the transportation and warehousing
- 13 category, correct?
- 14 A That's correct.
- 15 O 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
- is storage yard on Exhibit 3. You see that?
- 20 A Yes.
- 21 O And a storage yard is -- what's your
- 22 understanding of what a storage yard is?
- 23 A A place where things are stored.
- Q Is it specifically a place where
- 25 automobiles are stored?

August 24, 2018

- 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 O 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.
- 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.
- Q But each use is separate and independent,
- 25 correct?

- 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 O 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 O 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 O 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 O 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 O 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 O 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?
- MR. REISS: Form. Improper hypothetical.
- 17 Predicate.
- 18 A I'm familiar with how that could
- 19 potentially happen.
- 20 O Right. And if an accessory use expands
- 21 and overtakes the permitted use, that doesn't make
- the accessory use permitted, does it?
- 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.
- MR. BUCKNER: Yes, the two.
- 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.

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EXHIBIT "G"

CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive Miami Beach, Florida 33139-1819

TRADE ADDRESS:

Business Type

Code

#Locations

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

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 "H"

Susana Alonso September 06, 2018

1	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA				
2	Case No. 2016-004547 CA 01				
3	Case No. 2010 004547 CA 01				
4					
5	SUNSET LAND ASSOCIATES, LLC,				
6	Plaintiff,				
7	vs.				
8	MARK FESTA, individually and as				
9	trustee, MAUREEN FESTA, VINCENT J. FESTA, individually and as trustee,				
10	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,				
11					
12					
13					
14	Defendant(s).				
15					
16	and THE LOFTS AT SOUTH BEACH CONDOMINIUM ASSOCIATION, INC.				
17	Intervenor-Defendant,				
18					
19	and				
20	MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.				
21	Counter-Plaintiffs,				
22	v.				
23	SUNSET LAND ASSOCIATES, LLC, a				
24	Florida limited liability company, SH OWNER, LLC, a Florida limited				
25	liability company, TOUCH OF CLASS PAINT & BODY SHOP, INC., a Florida corporation and RUDOLF BUDJA GALLERY,				

	September	06	54 to 57
	Page 54		Page 56
1	aware of any written finding or written document by the		A. And he says well, first we will have to
2	2 administrative official for the City of Miami Beach		determine whether it's a legal nonconforming use.
3	that Beach Towing is a legal nonconforming use at 1349	3	Q. And did he make that determination?
4	Dade Boulevard?	4	A. We went about it together, yes.
5	A. No, sir.	5	Q. And how did you decide it was a legal
6	Q. And prior to and are you aware of any other	6	nonconforming use?
7	record finding by an administrative official for the	7	A. We did some research.
8	City of Miami Beach that Beach Towing specifically is a	8	Q. And what did you find?
9	local nonconforming use at 1349 Dade Boulevard?	9	A. We found it was.
10	A. How do you define a record?	10	Q. Why?
11	Q. Any kind of finding at all.	11	A. Because the use had been existing prior to
12	A. Yes.	12	1989. Legally existing prior to 1989.
13	Q. Okay. And tell me what.	13	Q. And I understand the use existed prior to
14	A. It was requested to determine once and it was	14	1989. How did you determine that it was legal prior to
15	determined verbally.	15	1989?
16	Q. Okay. And tell me when that was.	16	A. We looked for BTR'S and occupational license
17	A. 2010.	17	records.
18	Q. Is this in your discussion with who's the	18	Q. All right. And BTR's and occupational license
19	planning director at the time?	19	records showed that Beach Towing was operating a towing
20	A. Mr. Lorber.	20	operation prior to 1989, correct?
21	Q. Okay. And Mr. Lorber was requested to	21	A. Yes, sir.
22	determine whether Beach Towing was a legal	22	Q. What other evidence did you have?
23	nonconforming use at 1349 Dade Boulevard?	23	A. Prior approval of other planners going back to
24	A. Yes, sir.	24	the '70s.
25	Q. Who requested it?	25	Q. So when you say prior approvals, approvals of
1	Page 55 A. I did.	1	Page 57 what?
1			
2 3	Q. And did he create a written document that reflected his findings?	2 3	A. Approvals of BTR's, approvals of changes in small changes here and there. Just accumulation of
4	A. No, it was a verbal determination.	4	stuff that happens through the years.
5	Q. So he just told you.	5	Q. Are any of those documents that you reviewed,
6		6	are those referenced in your list of documents?
7	A. Yes. Q. And you were working for the City at the time.	7	A. No, sir. I don't have access to them right
8	A. Yes.	8	now.
9	Q. Other than what he told you, is there any	9	Q. Okay. So in terms of what documents would
10	record of that?	10	back up what you're telling, those are all documents
11	A. I approved the license based on his approval.	11	you don't have.
12	Q. And which license did you approve?	12	A. I don't have them, no.
13	A. I approved well, I approved the	13	MR. REISS: Just for the record, I think she
14	occupational business tax receipt. I don't remember	14	was listed as both a fact and expert witness, just
15	what it was for. We had to determine it was for adding	15	for your clarification.
16	an additional owner or an additional associate to the	16	MR. BUCKNER: Okay.
17	operation.	17	BY MR. BUCKNER:
18	Q. Okay. This was in 2010?	18	Q. So the basis for your statement here today
19	A. A-ha.	19	that Beach Towing was a legal nonconforming use prior
20	Q. Is that a yes?	20	to 1989 is based on what about Mr. Lorber told you,
21	A. Yes, sir.	21	correct?
22	Q. You had a conversation with Mr. Lorber. Tell	22	MR. REISS: Form.
	me what you asked him.	23	THE WITNESS: No, sir.
1 22			THE WITHEOUT INC. OLL.
23	A. I asked him can I approve this.	24	BY MR. BUCKNER:

Q. What's it based on?

25

Q. And what did he say?

Page 60 A. That was what it was based off in 2010. Today Q. And that's the transcript from the Magnum 1 1 2 it's based on Mr. Kurlancheek's determination, Towing matter, correct? 3 A. Yes. 3 contemporaneous determination that it was legal nonconforming at the time. Q. Other than those two things, do you have any 5 Q. Okay. And that's based on the records you 5 other basis for determining that Beach Towing was a cite from the Magnum Towing matter. legal nonconforming use at 1349 Dade Boulevard? 6 7 7 MR. REISS: Form. A. Yes, sir. Q. And so with regard to what Mr. Kurlancheek 8 THE WITNESS: There is also several contracts 8 9 9 with the police. The uses are very well meant and what he was talking about, you would obviously defer to him on that, correct? established prior to 1989. 10 10 11 A. Yes, because he's the official. BY MR. BUCKNER: 11 12 Q. Okay. But let's talk about prior to 2010. I 12 Q. Okay. 13 want to break this up. Leave aside Mr. Kurlancheek's 13 A. So the transition, you just have to prove determination. I want to finish with Mr. Lorber's 14 existence before and existence after the transition. 15 determination. 15 Q. Well, you have to prove lawful existence. 16 With regard to Mr. Lorber's determination that 16 A. Yes. 17 Beach Towing was a legal nonconforming use, that's 17 Q. So if Beach Towing was operating a towing based solely on what he told you, correct? operation unlawfully at 1349 Dade Boulevard before 18 19 A. No, sir. 1989, the mere fact of the transition to the new code 2.0 2.0 wouldn't convert it to a legal nonconforming use, Q. Okay. What's it based on? 21 A. Like I said, we went through the records, the correct? 21 22 old records and he asked me to do some research before 22 A. Define lawfully. he made a determination. 23 23 Q. Well, there is legal and there is more than 24 Q. All right. And you found old BTR's and old one kind of nonconforming use, isn't there? 24 25 licenses for the City? A. No. Page 59 Page 61 1 A. Yes, sir. Q. There is only a legal nonconforming use? Q. For the City of Miami Beach for Beach Towing. A. If it's nonconforming, then you can't -- it's either legal nonconforming or not permitted. 4 Q. You didn't find any conditional use permits, Q. Okay. So if something was not permitted prior 5 correct? to 1989 on a particular district, the mere fact that a 6 A. No, sir. new code is enacted doesn't make it legal 7 Q. And you didn't make the determination that nonconforming, correct? 8 Beach Towing was a legal nonconforming use. Mr. Lorber A. True. 9 had to do that, right? Q. It has to be both nonconforming and legal 10 A. Yes, sir. prior to the change in code. 11 Q. Because he's the administrative officer. 11 MR. REISS: Form. 12 A. Yes. 12 THE WITNESS: You have to rephrase that. 13 Q. So he told you that. 13 BY MR. BUCKNER: 14 A. Yes. 14 Q. Sure. What does the word legal in legal 15 Q. That's how you know that because he had to 15 nonconforming use mean? 16 tell you, correct? 16 A. It means authorized by the City. 17 A. Yes. 17 Q. And it means it had to be authorized under the 18 Q. You would agree with me that -- strike that. old code, correct? 19 So I want to make sure I exhausted the 19 A. It had to be authorized in some form, yes. universe of stuff you know about this area. 20 Q. Right. Because if it was authorized under the 20 new code, that use, you wouldn't need to go through the 21 So other than your conversations with Mr. Lorber and the documents you brought to him that you legal nonconforming analysis, right? don't have, there is the stuff that you said from Mr. 23 23 A. Okay.

24

25

Q. Is that right?

A. Sure.

24

25

Kurlancheek, right?

A. Yes.

62 to 65

	bepeember		02 00 05
1	Page 62 Q. For example, if CD-2 allowed a towing use,	1	Page 64 you ever encounter a BTR that was issued in error?
2	Beach Towing would be able to operate at 1349 Dade	2	A. I don't think so.
3	Boulevard under the current code, correct?	3	Q. Okay. So Beach Towing's status today at 1349
4	A. Sure.	4	Dade Boulevard is a nonconforming use of land, correct?
5	Q. But because CD doesn't allow towing, right?	5	MR. REISS: Form.
6	A. It doesn't.	6	THE WITNESS: I don't understand that
7	Q. The only way Beach Towing can operate lawfully	7	question.
8	there is if they are a legal nonconforming use,	8	BY MR. BUCKNER:
9	correct?	9	Q. I said Beach Towing's use at 1349 Dade
10	MR. REISS: Form.	10	Boulevard today is as a nonconforming use of land,
11	THE WITNESS: Yes.	11	correct?
12	BY MR. BUCKNER:	12	MR. REISS: Form.
13	Q. I want to make sure I'm done with this.	13	THE WITNESS: Yeah. I object to the form,
14	Other than Mr. Kurlancheek that you told me	14	too.
15	about and Mr. Lorber and your discussions with him, are	15	BY MR. BUCKNER:
16	there any other basis for your assertion that Beach	16	Q. Okay. You can't object to the form.
17	Towing is a legal nonconforming use at 1349	17	A. Rephrase, please.
18	A. Yes.	18	Q. You know what a nonconforming use of land is,
19	Q. Okay. And you said one of them was that they	19	right?
20	had gotten permits, towing permits, correct?	20	A. Again, nonconforming use of land.
21	A. No.	21	Q. Okay. Tell me what kinds of nonconforming
22	Q. Okay. Tell me what else.	22	uses there are.
23	A. The use was well established prior to 1989 and	23	A. This is an existing use that is nonconforming
24	it's on records, including police contracts, including	24	to the district.
25	BTR's and there is records of that available in	25	Q. Okay.
	Page 63	1	Page 65
1	microfiche and they are included on my list of stuff.	1	A. So it's not it's not a land use that is I know it's complicated. It's difficult to understand.
3	Q. Okay. Anything else?A. No, that's sufficient.	3	Q. Well, what I'm asking you is
4	Q. Have you looked at the pre-1989 code as part	4	A. There is a line in there.
5	of your work in this case?	5	Q. Okay. I'm trying to figure out what that line
6	A. Yes, sir.	6	is. You can have a nonconforming use of a building,
7	Q. And do you find in looking at the pre-1989	7	right?
8	code, is a towing listed anywhere in the code?	8	A. Yes.
9	A. No, sir.	9	Q. And you can have nonconforming use of land,
10	Q. And you are aware BTR's have language on them	10	right?
11	that say strike that. Let's just use one.	11	A. Yes.
12	MR. REISS: Off the record.	12	Q. And so is there anything else other than land
13	(Thereupon a recess was taken in	13	and buildings on which zoning is involved?
14	deposition, after which the	14	A. No.
15	deposition continued as follows:)	15	Q. Okay. So it's either a nonconforming use of a
16	BY MR. BUCKNER:	16	building or it's a nonconforming use of land, correct?
17	Q. Just so I'm clear, in the entirety of your	17	A. Okay.
18	work for the City of Miami Beach, you never have been	18	Q. I'm asking you, Beach Towing has a large, we
19	the administrative officer charged with making the	19	will call it a lot, on which they keep cars that they
20	determination of whether something is or is not	20	have towed, right?
21	consistent with the code, correct?	21	A. Okay.
22	A. No, sir.	22	Q. You have been out there, right?
23	Q. You have not been.	23	A. Yes.
24	A. I have not been.	24	Q. Have you been out there recently?
25	Q. In the time that you worked for the City, did	25	A. Yes.
- 1	- · · · · · · · · · · · · · · · · · · ·	1	

	September		0, 2010 00 00 09
	Page 66		Page 68
1	Q. Okay. So that's the land they are using to	1	A. Currently, yes. They are morphing it into, I
2	store those cars, correct?	2	think CD's or a mixture of commercial and residential.
3	A. Yes.	3	They are working on it.
4	Q. And so the legal nonconforming use of that	4	Q. Who's make that change?
5	property is a legal nonconforming use of land, correct?	5	A. The City of Miami Beach and some applicants.
6	A. Yes.	6	Q. Have you had any involvement in that?
7	Q. Okay. So let's talk about some other stuff.	7	A. No, sir. I've seen some
8	I want to you don't have to look at your report.	8	Q. You just heard about it, right?
9	You can always look at whatever you want. It's not a	9	A. Right, through the grapevine.
10	closed book test. I want to ask you some stuff about	10	Q. So I want to bounce around a little bit. Let
11	your other parts of your report.	11	me see if we can move this along.
12	First of all, you talk about, on page five,	12	One of the things you reviewed in this case
13	you say the only other industrial district is located	13	was Ms. Dougherty's report, correct?
14	on Watson Island, a small island off MacArthur	14	A. Yes, sir.
15	Causeway, right?	15	Q. And you also reviewed her declaration?
16	A. Yes.	16	A. Yes.
17	Q. Isn't Watson Island part of the City of Miami?	17	Q. You saw where she discussed uses in the Sunset
18	A. No, sir.	18	Harbour area that had changed, correct?
19	Q. Watson Island is part of the City Miami Beach?	19	A. I need to go read it again.
20	A. No, sir. That's where the City's municipal	20	Q. Sure.
21	lot is. It's the portion close to Miami Beach. It's	21	A. Do you want to walk me through it?
22	called Terminal Island really, but it's a portion of	22	Q. On page seven let's do this. I'm going to
23	Watson Island that is part of Miami Beach.	23	mark her report. Exhibit 7 Ms. Dougherty's report.
24	Q. Is it zoned industrial?	24	(The document referred to
25	A. Yes. It's changing now. There is obligations	25	was thereupon marked as
	Daga 67		Page 60
1	Page 67 to morph it into nonindustrial.	1	Page 69 Plaintiff's Exhibit Number
2	Q. Is the whole of Watson Island zoned	2	7 for Identification,
3	industrial?	3	a copy of which is attached
4	A. No, they are changing it. Like I said, it's	4	hereto.)
5	under change right now.	5	BY MR. BUCKNER:
6	Q. Okay. Let's break it into pieces.	6	Q. Okay.
7	Prior to the current change, when strike	7	A. Did you say page seven?
8	that. When did the effort to change Watson Island	8	Q. Right. On pages seven and eight of the
9	start, do you know?	9	report. You see there is a summary of changes from
10	A. Terminal Island. I think two years ago.	10	2003 to 2014 in the first block, and then there is from
11	Q. Okay. You refer to Watson. Is it Watson	11	2014 to 2017 in the second block. Do you see those?
12	Island or Terminal Island?	12	A. Say that again.
13	A. Terminal Island is a piece of Watson and	13	Q. That's okay.
14	that's the part that belongs to Miami Beach.	14	A. I was reading.
15	Q. All right. So Watson Island	15	Q. That's all right. Let's be specific.
16	A. Miami.	16	Have you looked at this part of Ms.
17	Q belongs to Miami.	17	Dougherty's report?
18	A. Most of it, yeah.	18	A. Yes, sir.
19	Q. Terminal Island belongs to Miami Beach.	19	Q. And let's talk first about notable changes
20	A. Yes.	20	from 2003 to 2014, which is the bullets at the top of
21	Q. And Terminal Island is where you're talking	21	page seven. Do you see those?
22	about that is the only other industrial district in	22	A. Yes.
23	Miami Beach.	23	Q. With regard to any of those, have you
24	A. Yes, sir.	24	determined that she is incorrect about any of those
24			determined that blie is incorrect about any or those
25	Q. And it's zoned I-1 currently?	25	changes?

	September	06	, 2018	70 to 73
	Page 70			Page 72
1	A. Not incorrect. How's that?	1	Q. Do you know if the	at's a legal nonconforming
2	Q. That's fine. So looking at the second block	2	ise?	
3	of bullet the summary of notable changes from 2014 to	3	A. It must be.	
4	2017, in reviewing those, have you found that any of	4	Q. Well, when you say	y it must be, do you know?
5	her determinations there are incorrect?	5	A. I don't know. I l	know it's existing.
6	A. No, they are not incorrect.	6	Q. You know it exists	s today in 2018.
7	Q. Okay. And tell me again, what exhibit did I	7	A. And it has existed	d there for a few years.
8	mark that?	8	Q. Do you know if it	existed there prior to 1989?
9	A. 7.	9	A. I don't.	_
10	Q. Now, you attached to your latest version of	10	Q. And so to be a lea	gal nonconforming use, it
11	your report, a map entitled distribution of existing	11	would have to have existed	there prior to 1989,
12	industrial uses in Sunset Harbour neighborhood XT.	12	correct?	-
13	A. Yes.	13	A. Probably, yes.	
14	Q. Did you create that?	14	Q. But if it didn't,	it's not a legal
15	A. Yes.	15	nonconforming use, correct	_
16	Q. I want to ask you about this. I'm going to go	16	A. Probably not, yes	
17	ahead and mark it separately because I actually pulled	17		ou worked for the City of
18	it off your thumb drive last night. I'm going to put	18		take any enforcement action
19	the sticker here.	19	against the scooter shop?	
20	(The document referred to	20	A. No, sir.	
21	was thereupon marked as	21		oday, you said you don't know
22	Plaintiff's Exhibit Number	22	whether it existed prior to	
23	8 for Identification,	23	A. I don't know. It	
24	a copy of which is attached	24		out that. When you say it
25	hereto.)	25		t take for a illegal use to
1	Page 71 BY MR. BUCKNER:	1	come up	Page 73
2	Q. All right. So I want to ask you about a few	2	MR. REISS: Form.	
3	things on here and I may need you to mark stuff so we	3	BY MR. BUCKNER:	
4	know later on what we are talking about. I have a pen	4	O at the City of	Miami Beach when you worked
5	if you need one. Tell me what you were trying to do	5	there?	-
6	with this map.	6	A. They would have to	o come in for an application,
7	A. Show existing industrial uses in the Sunset	7	-	hey would have to have a code
8	Harbour neighborhood.	8	enforcement action against	them.
9	Q. Okay. And the existing industrial uses are	9	Q. And who starts co	de enforcement actions?
10	the ones you circled in, what is that, light purple?	10	A. Code. The code de	epartment.
11	A. Yes.	11	Q. Sp they would have	e to discover the illegal use
12	Q. I want to ask you about a few of these.	12	and bring it to your attent	tion. When I say your, I
13	First of all, there is a use on the corner of	13	mean the planning departmen	nt.
14	Purdy and 18th furthest to the west, right north of the	14	A. Yes.	
15	assembled properties, do you see that?	15	Q. I assume that hap	pened from time to time when
16	A. Purdy and 18th, yes.	16	you worked at the City.	
17	Q. Okay. And that building there is used for	17	A. Quite often.	
18	kayak rentals, correct?	18	-	rd to the scooter rental
19	A. Yes, and a motorcycle shop.	19	shop.	
20	Q. When you say a motorcycle shop, scooter	20	-	that I remember. Not that I
21	rentals, right?	21	remember with regards to th	
22	A. They have repairs on site. Repairs are not	22	_	- let's head due east from
23	allowed in the City.	23		e same block as the Tremont
24	Q. That's a CD-2 zoned lot, right?	24		got a use on the corner of
	· •	05		

25 18th and West Avenue.

25

A. Yes.

EXHIBIT "B"

THE CITY OF MIAMI BEACH BOARD OF ADJUSTMENT BY-LAWS AND RULES OF ORDER

BOARD OF ADJUSTMENT MEMBERS

Barton Goldberg, Chair Noah Fox, Vice Chair Heidi Tandy Richard Segal Richard Baron James Orlowsky Daniel Nagler Elsa Urquiza Barry Klein

BOARD OF ADJUSTMENT PROFESSIONAL STAFF

Thomas R. Mooney, AICP, Planning Director Rogelio Madan, AICP, Chief of Community Planning & Sustainability Steven Williams, Principal Planner Eve Boutsis, Deputy City Attorney Nick Kallergis, Senior Assistant City Attorney Monique Fons, Office Associate V

> By-Laws adopted on June 5, 1998 Revised August 8, 2014

MIAMIBEACH

THE CITY OF MIAMI BEACH BOARD OF ADJUSTMENT BY-LAWS AND RULES OF ORDER

ARTICLE I ORGANIZATION

Sec. 1 MEMBERS

The Board Membership shall consist of seven (7) members who are residents of, or have a place of business in Miami Beach. All members shall serve as such without compensation and shall hold no other municipal office. The term of each member shall two (2) years or until a successor takes office, as provided by the City Code. The Director of Planning or designee shall serve as advisor to the Board.

Sec. 2 OFFICERS

At the regular meeting in January, or as soon, thereafter as possible, the Board shall elect all officers of the Board to include a Chairperson and Vice-Chairperson to serve the term.

Sec. 3 CHAIRPERSON: POWERS AND DUTIES

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, the Chairperson shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chairperson shall appoint such committees as may be found necessary or desirable. The Chairperson or Vice-Chairperson in the Chairperson's absence shall preside over meetings and shall administer oaths.

Sec. 4 VICE-CHAIRPERSON

The Vice-Chairperson shall act as Chairperson in case the Chairperson is absent, disabled, or otherwise unable to perform the duties required.

Sec. 5 CLERK

The Director of Planning or a designated representative shall act as clerk or secretary for the Board. The secretary shall prepare all of the clerical work of the Board including, all correspondence of the Board, sending all notices required by law and rules and orders of the Board and keep dockets of the Board's proceedings, compile all required records, maintain necessary files and indexes, and prepare an order to be filed in each case. The secretary shall record, through the use of audio equipment, the Board's proceedings, and mark the vote of each member upon each question on a voting slip, or if absent, or failing to vote, indicating such fact.

Sec. 6 QUORUM AND VOTING REQUIREMENTS

Four (4) members must be present at any meeting of the Board to constitute a quorum. If a quorum is not present, all cases will be continued until the next meeting or as otherwise provided by resolution of the Board. The concurring vote of four (4) members of the Board shall be necessary for any action taken by the Board. The concurring vote of five (5) members of the Board shall be necessary to grant a variance or to grant an appeal.

Sec. 7 CONFLICT OF INTEREST

No member of the Board shall vote in any matter in which he or she has a conflict of interest, and must file a conflict of interest form with the clerk within fifteen (15) days after the hearing.

Sec. 8 REGULAR MEETINGS

Regular meetings of the Board are open to the public and shall be held on the first Friday of each month in the City Commission Chambers, commencing at 9:00 a.m. However, in the event a regular meeting date falls on a holiday or that it is known ahead of time that a quorum of the Board cannot be attained on a regular meeting date, then that regular meeting shall be rescheduled to an alternate date on which there can be a quorum. Special meetings may be held at the call of the Chairperson and as the Board may determine.

Sec. 9 SPECIAL MEETINGS

Special meetings may be called by the Chairperson, or at written request of three (3) members. Written notice of such special meeting as to time, place and subject matter shall be given by mail or email to each member of the Board, the Director of Planning, and the City Attorney, at least 48 hours before the time set, except that the announcement of a special session at any meeting at which a quorum is present shall be sufficient notice of such meeting. Notices shall be posted publicly as required by law.

ARTICLE II APPLICATIONS TO THE BOARD

Sec. 1 APPLICATION FORM

Every application for action by the Board shall be made on the appropriate official form. These forms shall be furnished by the clerk upon request. Any communication, purporting to be an application, shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed before the deadline date. Every application form shall include, but not be limited to, disclosure forms for corporations, trust, and partnerships, and disclosure of information regarding contract purchasers and/or lessees, and their percentages(s) of interest. Such disclosure shall include, but not be limited to, disclosure of all natural persons having an ownership interest, direct or indirect, in the subject real property. Disclosure shall not be required of any entity, the equity interests in

which are regularly traded on an established securities market in the United States or another country, or where ownership interests are held in a limited partnership consisting of more than five thousand (5,000) separate interests and where no one person or entity holds more than a total of five (5) percent of the ownership interest in the limited partnership. Disclosure forms shall be established by the Director of Planning, and shall be approved by the Board. Such disclosure forms shall be included with the agendas distributed to the Board in connection with the hearing on each such application.

If the application and information is not complete and correct before the closing date, or such other date reasonably established by the Planning Director, the case shall not be placed on the docket for that meeting and shall not be placed on a docket until it is complete and correct.

Sec. 2 FILING PERIOD

Every application for an after the fact variance or an appeal from an administrative decision shall be filed within thirty (30) days from the date of the refusal of a permit by, or the date of the order, notice of violation, ruling, decision or determination of the Building Official or other administrative official.

Sec. 3 MINIMUM REQUIREMENTS FOR A VALID APPLICATION

A. Application for a variance:

- 1. A completed application and completed ownership form, bearing the notarized signature of the owner of the property; if necessary, an authorization for the applicant, if not the legal owner, permission to represent the owner; and, completed and notarized disclosure of interest forms.
- 2. Original hardship letter and fourteen copies.
- 3. Fourteen copies of registered survey of the subject property, which shall be current or brought up-to-date; at least one original shall be signed, sealed and dated.
- 4. Fourteen complete sets of supporting architectural plans, one of which must be signed, sealed and dated, which clearly indicate the variance request. Unless determined otherwise by staff, the architectural plan shall be supplemented by a landscape plan which shall include, but not be limited to:
 - a. an identification of areas to be landscaped;
 - b. the type of species of existing and proposed plant material;
 - c. approximate height of landscaping at time of installation;
 - d. all ground cover and surface materials, such as concrete with decorative gravel, scored concrete, or pavers shall be identified.
 - e. An existing tree survey.

- f. A tree disposition plan.
- 5. Notification Process to Surrounding Property Owners
 - a) Two (2) copies of a list (on gummed labels), with the names and mailing addresses of all property owners located within 375 feet of the exterior boundary of the subject property.
 - b) Two (2) copies of a list with the legal description of land owned by each property owner.
 - c) Two (2) copies of a map of the subject area showing the 375 ft. radius, with the subject property highlighted.
 - d) Original certified letter plus one (1) copy stating that the ownership list, map and mailing labels are a complete and accurate representation of the real estate property and property owners within 375 ft. of the subject property. This letter must be dated and give the address of the subject property and its legal description, subdivision and plat book number and page, and also state the source for this information.
- 6. A filing fee must accompany each application, except applications filed by the Department on behalf of the City, funding for which is provided through the departmental budget.
- B. Applications for appeals from alleged errors in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance:
 - 1. Letter describing the error in the decision, interpretation, order or requirement made by an administrative official charged with the enforcement of the Zoning Ordinance, and the relief requested.
 - 2. Same as Article II, Section 3 A. 1,3, and 6. Additional information, including applicable plans, may be required, at the discretion of staff.
 - 3. Items 1 through 3, above, must all be submitted before the Clerk may deem the application as complete.

Sec. 4 SITE PLAN

No variances or granting of an appeal from an administrative decision shall be commenced or maintained upon a lot or parcel except in accordance with the site plan approved with the original application. Except for those modifications that take place prior to the Board's

approval, if a substantial amendment of a site plan or other requirement is necessary, that is beyond the scope of the Planning Director or designee to approve, the applicant shall apply for amendment in the same manner as the original application. The amendment shall be processed in the same manner as an original application.

Sec. 5 DEADLINE FOR APPLICATION

All cases must be complete and on file with the secretary of this Board no later than noon of the deadline or closing date. The Director of Planning shall determine the final date for acceptance of applications for each meeting.

Sec. 6 BOARD TO HEAR ONLY BONAFIDE CASES

The Board may hear only those applications for variances brought by the legal title owner of record of the subject property or by a prospective purchaser holding an option to purchase the property in question, pursuant to a binding contract entered into with the legal title owner of record.

Sec. 7 RENOTIFICATION FEE

The applicant shall be required to pay a renotification fee of \$75.00 plus a fee per mailing address as provided for in Appendix A, Fee Schedule when renotification and publication is required because of any act, change, omission, or error on the application by the applicant. If any act, change, omission, or error requiring renotification is caused by the Secretary of the Board of Adjustment, the City shall bear the cost of publication and renotification.

ARTICLE III THE HEARING

Sec. 1 NOTICE

- A. Notice of the public hearing shall be in accordance with the applicable requirements of the City Code.
- B. The Board shall request the appearance at the hearing of such representatives of any municipal department, any municipal board, agency, trust, commission, building inspector, zoning inspector, or other officer having supervision of the construction of buildings or the power of enforcing municipal building and zoning laws as are deemed necessary or helpful in making its decision upon the application.

Sec. 2 ORDER OF BUSINESS OF THE HEARING

The order of business at all regular meetings of the Board shall be as follows, unless otherwise announced by the Chair or majority vote of the Board:

- (a) administration;
- (b) requests for deferrals/continuances;

- (c) progress reports;
- (d) extensions of time;
- (e) clarifications and/or amendments;
- (f) hearing of continued/deferred cases;
- (g) hearing of new cases;
- (h) other business;
- (i) Property Maintenance Standards Appeals Board and Flood Plain Management Board, as applicable.

Sec. 3 TESTIMONY AND DOCUMENTS

- A. At the public hearing of the case before the Board, the applicant or appellant shall appear in his/her own behalf or be represented by counsel or agent.
- B. Any person interested in any case before the Board is entitled to be heard when the case is called and may appear in person, or by attorney or agent.
- C. The Board must listen to any testimony of any person to whom it is required to give notice, subject to limitations imposed by the Chair or majority vote of the Board.
- D. The Board may listen to any testimony and inspect any data, or any sites as it may deem necessary to enable it to render a fair and informed decision.
- E. Any person testifying shall clearly identify himself/herself, their interest in the proceedings, and any special credentials that they may have pertaining to the subject matter of their testimony.
- F. Every person before the rostrum shall abide by the order and direction of the Chairperson. Discourtesy or disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairperson deems proper.
- G. Any documents provided shall be clearly identified by name, or some other designation, and the persons so providing them shall also be identified.
- H. A record shall be made of all the proceedings appropriate means.
- I. Written protests or petitions shall be filed with the Secretary and submitted to the Board at any time before the hearing.
- J. The Chairperson shall have the discretion to establish time limitations for all presentations before the Board in accordance with applicable law and regulations.

Sec. 4 DECISIONS OF THE BOARD

After making a decision on the application, the Board of Adjustment shall issue a written decision stating its findings of facts, its conclusions, and the reasons thereof.

ARTICLE IV DISPOSITION BY THE BOARD

Sec. 1 WITHDRAWAL, DEFERMENT, CONTINUANCE, OR DENIAL

- A. An application may be withdrawn without prejudice by written request to the Secretary at any time prior to the giving of any required notice.
- B. Except in the instance of an application which would relieve an existing violation, if notice has not been mailed, the applicant may be granted a continuance by written request to the Secretary.
- C. In the instance where there is an existing violation or notice has been mailed, a request for continuance must be submitted in writing by the applicant prior to the meeting, or request made verbally at the meeting, and the applicant or his representative shall be present to hear any protest and to present his/her case if the Board decides against a continuance and to hear the case.
- D. An applicant may defer an application before the public hearing only one time. The request to defer shall be in writing. When an application is deferred, it shall be renoticed at the applicant's expense as provided in section 118-357(2). The applicant shall also pay a deferral fee as set forth in this article. In the event that the application is not presented to the board for approval at the meeting date for which the application was deferred, the application shall be deemed null and void. If the application is deferred by the board, the notice requirements shall be the same as for a new application as provided in section 118-357(2), and shall be at the city's expense.
- E. The board may continue an application to a date certain at either the request of the applicant or at its own discretion.
- F. In the event the application is continued due to the excessive length of an agenda or in order for the applicant to address specific concerns expressed by the board and/or staff, the applicant shall present for approval to the board a revised application inclusive of all required exhibits that attempts to address the concerns of the board and/or staff, for the date certain set by the board, which shall be no more than 120 days after the date on which the board continues the matter.

- G. In the event that the applicant fails to present for approval to the board, a revised application as described above within 120 days of the date the application was continued, the application shall be deemed null and void.
- H. Deferrals or continuances for a specific application shall not exceed one year cumulatively for all such continuances or deferrals made by the board, or the application shall be deemed null and void.
- I. An application may be withdrawn by the applicant if such request is in writing and filed with the planning department prior to the public hearing, or requested during the public hearing, provided, however, that no application may be withdrawn after final action has been taken. Upon a withdrawal or final denial of an application by the board of adjustment the same application cannot be filed within six months of the date of the withdrawal or denial unless, however, the decision of the board taking any such action is made without prejudice to refile.
- J. In the event there is a lack of a quorum, all pending or remaining matters shall be automatically continued to the next available meeting of the board.

Sec. 2 RECONSIDERATION

Cases heard and decided by this Board will not be again set down for hearing by this Board within six (6) months of the date of such decision unless the Board makes its decision without prejudice to refile within said time limitation. Motions for rehearings will not be entertained.

Sec. 3 BUILDING PERMITS

Unless the Board specifies a different time limitation, the applicant shall take all necessary steps to have a full building permit issued by the Director of the Building Department within eighteen (18) months from the date of the Order of the Board. If the applicant fails to obtain a full building permit within the time provided by the Board, the Order shall become null and void. The Board may grant an extension within which the applicant must secure a permit if the applicant applies for such extension within the time limitations as provided in Section 118-355.

Sec. 4 APPEAL PERIOD AFTER FILING OF BOARD ORDER

When applications are approved by the Board, a period of ten (10) days after the filing of the Board's Order must elapse before such permits can be issued by the Director of the Building Department upon presentation of a copy of the final Order of this Board. Where appeals are taken to the Circuit Court, no permits will be issued until the close of all litigation connected therewith. During the pendency of litigation, there shall be an automatic stay of proceedings, as provided for in the City Code. The applicant shall have six (6) months from the date of the final court decision to have a building permit issued by the Director of the Building Department. When an appeal of administrative decision is denied by the Board,

there shall be an appeal period of thirty (30) days after the filing of the Board's Order.

Sec. 5 PROCEDURE FOR REVOCATION OF VARIANCE

- A. The Planning Director notifies applicant of failure to conform with the provisions of the variance and is given fifteen (15) days to comply.
- B. If after the 15 days the applicant fails to comply, the Planning Director, at a regular meeting of the Board of Adjustment, shall notify the Board to consider setting a public hearing for the purposes of examining the issues.
- C. The Board of Adjustment holds a public hearing to consider the revocation of variances.

ARTICLE V AMENDMENTS

These rules may be amended by an affirmative vote of not less than four (4) members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereon at a subsequent meeting.

ARTICLE VI RULES OF ORDER

Robert's Rules of Order - as amended shall govern the Board of Adjustment in all cases to which they are applicable and are not inconsistent with the by-laws or special rules of order of the Board.

END OF BOARD OF ADJUSTMENT BY-LAWS

F:\PLAN\\$zba\By-Laws\By-Law Updates\BOA By-Laws August 2014 v 2 Adopted.docx

EXHIBIT "C"

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

RAUL J. AGUILA, CITY ATTORNEY Office of the City Attorney Tel: 305-673-7470, Fax: 305-673-7002

October 17, 2018

Ms. Tracy R. Slavens, Esq. Holland & Knight LLP 701 Brickell Avenue Suite 3300 Miami, FL 33131 Sent Via Electronic Mail tracy.slavens@hklaw.com

Re: Administrative Appeal, dated September 26, 2018, of the City of Miami Beach's Administrative Determination, published on August 31, 2018, regarding the towing services operation located at 1349 Dade Boulevard (Board of Adjustment File No. ZBA18-0079)

Dear Ms. Slavens.

The City of Miami Beach (the "City") is in receipt of Sunset Land Associates LLC's ("Sunset Land") Petition for Administrative Appeal, dated September 26, 2018, which sets forth your appeal of the City's Administrative Determination, published on August 31, 2018, regarding Beach Towing Services, Inc.'s ("Beach Towing") towing services operation located at 1349 Dade Boulevard, Miami Beach, FL 33139.

In order for the City to process your appeal, and in order to schedule the appeal for hearing by the Board of Adjustment, you are hereby advised of the following next steps.

1. Within ten (10) business days of the date of this letter (i.e. by October 29, 2018), you are required to submit (if you have not done so already) a completed application for a land development board hearing; provide the City with copies of any documents you intend to rely on in your appeal; pay all required fees so that your appeal may be considered; and provide the City with all other documents required by the Planning Department. Please contact Rogelio Madan, Chief of Community Planning and Sustainability, at rogeliomadan@miamibeachfl.gov, and Steven Williams, Principal Planner, at stevenwilliams2@miamibeachfl.gov, regarding the Planning Department's requirements for your appeal to be heard. If this deadline is not met, your appeal will be dismissed.

- Once the Planning Department certifies in writing that you have complied with the requirements in item no. 1, above, the City and Beach Towing shall have 20 days to file their respective responses to your appeal.
- Within ten (10) days after the filing of any responses by the City and Beach Towing, Sunset Land may file a written rebuttal.
- If Sunset Land intends to request an extension of time, please contact all other parties to attempt to agree upon a mutually agreeable extension.
- Once all briefs have been filed, the record will be complete, and the matter will be scheduled and advertised for public hearing, consistent with the 30-day notice requirements in the City Code.

If you have any questions regarding your appeal, you may contact the City's Planning Department, at the email addresses listed above.

Sincerely,

Nick Kallergis

Senior Assistant City Attorney

c: Rogelio Madan, Chief of Community Planning and Sustainability Steven Williams, Principal Planner Aleksandr Boksner, Chief Deputy City Attorney Rafael E. Andrade, Esq., Counsel for Beach Towing Services, Inc.

EXHIBIT "D"

Slavens, Tracy R (MIA - X27642)

From: Williams, Steven - Planning <StevenWilliams2@miamibeachfl.gov>

Sent: Friday, October 19, 2018 5:19 PM

To: Slavens, Tracy R (MIA - X27642); 'bradley.colmer@decocapital.com'; Madrid, Vanessa.

(MIA - X27453); Arce, Mercy S (MIA - X22178) Kallergis, Nick; Madan, Rogelio; Fons, Monique

Subject: RE: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA #

ZBA18-0079)

Attachments: Ltr to Sunset Land Assoc Re Administrative Appeal (80A # ZBA18-0079).pdf

Update...

Cc:

The physical submittal and CD have been received. The only pending item to complete step 1 from Nicks' letter dated October 17, 2018 is the payment of the final invoice; Invoice No. 00143323, \$2,778.00

Please let me know if you have any questions.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Williams, Steven - Planning

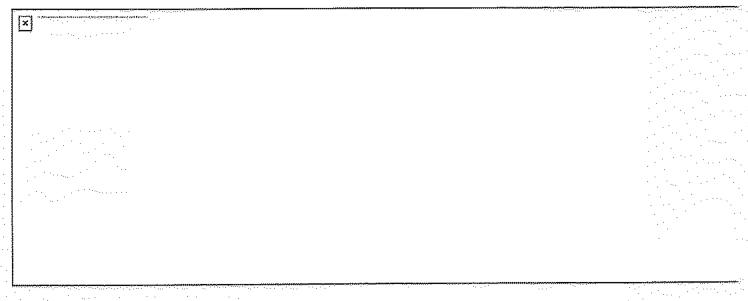
Sent: Wednesday, October 17, 2018 12:52 PM

To: 'Tracy.Slavens@hklaw.com'

Cc: Vanessa.Madrid@hklaw.com; Mercy.Arce@hklaw.com; Kallergis, Nick; Madan, Rogelio; Fons, Monique Subject: RE: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

I will be out of the office tomorrow, but I am available Friday at 3:30 if you would like to meet.

The online submittal has been completed and the application has been reviewed. The only pending item at this time is the physical submittal. Per the submittal checklist, please provide the following, no later than the date indicated by Nick's letter.



The application fee has been paid. However, the balance of the fees for notice and advertisement will be invoiced no later than Friday afternoon. If you have any questions regarding the fees or the requirements for the physical submittal please reach out to Monique Fons (copied).

Let me know if you have any further questions.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Tracy.Slavens@hklaw.com [mailto:Tracy.Slavens@hklaw.com]

Sent: Wednesday, October 17, 2018 12:01 PM

To: Madan, Rogelio; Williams, Steven - Planning; Kallergis, Nick

Cc: Vanessa Madrid@hklaw.com; Mercy.Arce@hklaw.com

Subject: FW: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Hello all,

I am writing you as a follow up to the instructions in the attached letter. Please let us know whether there are any pending application items needed or additional documentation that is required at this time. Also, please confirm that the fees have been paid. We would like to schedule a meeting with you to discuss the review process, required submittals, and next steps in order to ensure compliance with the appeal process. Please let us know your availability. I am available this afternoon, I will be at the City tomorrow for another meeting at 10:00 and open the rest of the day, and Friday is open.

Thank you.

8est, Tracy

Tracy Slavens | Holland & Knight

Partner

Holland & Knight LLP

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 Phone 305.789.7642 | Fax 305.789.7799 tracy.slavens@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Perez, Sandra <sandraperez@miamibeachfl.gov>

Sent: Wednesday, October 17, 2018 9:32 AM

To: Slavens, Tracy R (MIA - X27642) < Tracy. Slavens@hklaw.com>

Cc: Madan, Rogelio < Rogelio Madan@miamibeachfl.gov >; Williams, Steven - Planning

<StevenWilliams2@miamibeachfl.gov>; Boksner, Aleksandr <<u>AleksandrBoksner@miamibeachfl.gov</u>>;

ralph@randradelaw.com; Kallergis, Nick < NickKallergis@miamibeachfl.gov >

Subject: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Ms. Slavens,

Please see the attached correspondence on the above-subject matter.

Thank you, Sandra



Sandra Perez, Parategal Specialist to
Aleksandr Boksner, Chief Deputy City Attorney and
Nicholas Kallergis, Senior Assistant City Attorney
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /
Sandra Perez@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Please note that Florida has a broad public records law and that any communication with the City of Miami Beach could be considered a public record. If you do not wish for your email address to become a public record, please do not send electronic communications to the City of Miami Beach.

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

811 (161 (81 (81 (17 (17 (8 V/A))

BILLING CONTACT

Tracy Slavens Hölland & Knight 701 Brickell Avenue, 3300 Miami, Fl 33131



1700 Convention Center Drive Miami Beach, Florida 33139 305.673.7000

	INVOICE NUMBER	INVOICE OATE	INVOICE OUE OATE	INVOICE STATUS	INVOICE OESCRIPTION
I	00143323	10/19/2018	10/19/2018	Paid In Full	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
ZBA18-0079	Advertisement	\$1,500.00
	Board Order Recording	\$100.00
	Courier (per package)	\$70.00
	Mail Notice Per Label	\$1,008.00
	Posting (per site)	\$100.00
1349 Dade Blvd Miami Bea	Ich, FL -331391420 SUB TOTAL	\$2,778.00

TOTAL	\$2,778.00

Any refund associated with this invoice will only be issued to the billing contact listed herein.

Holland & Knight

ORIGINAL DOCUMENTS

701 Brickell Avenue, Suite 3300 | Mlami, FL 33131 | T 305.374.8500 | F 305.789.7799 Holland & Knight LLP | www.hklaw.com

2018-007-19 PH to 09

Memorandum

Date: October 19, 2018

To: Mr. Thomas Mooney, AICP

Director, City of Miami Beach Planning Department

From: Tracy R. Slavens, Esq. CC: Vanessa Madrid, Esq.

Re: Sunset Land Associates, LLC and SH Owner ("Appellants")

Appeal of an Administrative Decision – BOA #ZBA18-0079 ("Application")

On behalf of the Appellants, enclosed please find the final submittal package for the Application. This final submittal consists of the following documents:

- Application with signed and notarized affidavits and disclosures
- Letter of Intent dated September 26, 2018
- Exhibits:
 - Tab A: Planning Director's determination issued on August 30, 2018
 - Tab B: Certified Radius Map dated September 12, 2018
 - <u>Tab C</u>: Excerpts from June 4, 1980 City of Miami Beach Conditional Use Recommendation and Approval
 - Tab D: Transcript of Videotaped Deposition of Vincent J. Festa dated November 10, 2017
 - Tab E: City of Miami Beach Zoning Ordinance as Amended through January 18, 1985
 - Tab F: Excerpts from Transcript of Deposition of Thomas Mooney dated August 24, 2018
 - Tab G: Sample City of Miami Beach Business Tax Receipt Form
 - Tab H: Excerpts from Transcript of Deposition of Susana Alonso dated September 6, 2018

If you have any questions or require additional information, please feel free to call me directly at 305-789-7642.

EXHIBIT "E"

SUPPLEMENTARY DISCLOSURE OF INTEREST

Interests in Sunset Land Associates, LLC

Percentage of Interest

Sunset Harbor Holdings, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

100%

Interests in SH Owner, LLC

Percentage of Interest

Sunset Harbor Holdings, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 100%

Interests in Sunset Harbor Holdings, LLC

Percentage of Interest

Deco Capital Investments, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

10%

RWNIH-REP Sunset Harbor, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

90%

SOIB OCT 26 PM 2: 04

**(Hogy

Interests in Deco Capital Investments, LLC

Percentage of Interest

Brad Colmer c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.65%
Dan Marinberg c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	9.90%
M-1752 Deco Investor, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	4.98%
Michael Beattie c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	4.42%
Frederic Khalil c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	10.00%
David Neithardt Beaumont c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	6.86%
Douglas Silverman c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	13.53%
Noelle Villaneuva c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	1.60%

	•
Boris Marinberg c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.94%
Deco Capital Group, LLC c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	3.58%
Ralph Bekkevold c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	18.95%
Joseph Furst c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	1.69%
Max and Roger Leifer c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	6.76%
Christopher Roe c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	2.56%
Gloria Canasi c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	9.59%

Interests in RWNIH-REP Sunset Harbor LLC

Percentage of Interest

RWNIH-REP, LLC	95.9588%
c/o Deco Capital Group	
1691 Michigan Ave., Suite 510	
Miami Beach, FL 33139	
Ari Shalam-REP, LLC	0.4822%
c/o Deco Capital Group	
1691 Michigan Ave., Suite 510	
Miami Beach, FL 33139	
Joshua Shapiro	0.0698%

1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 Barry Kringstein

c/o Deco Capital Group

c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

Interests in RWNIH-REP LLC

Percentage of Interest

3.4892%

Marc Rowan and Carolyn Rowan, as Husband and Wife c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	98.5603%
Ken Glassman c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	1.2972%
Mary Harada c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139	0.1299%

0.0126%

Ari Shalam c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139

M-1752 Deco Investor, LLC

Percentage of Interest

Camilo Miguel c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 100%

Deco Capital Group, LLC

Percentage of Interest

Brad Colmer c/o Deco Capital Group 1691 Michigan Ave., Suite 510 Miami Beach, FL 33139 100%

EXHIBIT "F"



Planning Department, 1700 Convention Center Drive 2nd Floor Miami Beach, Florida 33139, www.miamibeachfl.gov 305.673.7550

ADMINISTRATIVE APPEAL APPLICATION CHECK LIST

	Property address:1349 Dade Blvd Date; _9-7-2018 File #: _ZBA1B-0079
	Incomplete, or submittals found to be insufficient will not be placed on a Board of Adjustment agenda.
	es shall be paid before an item can be scheduled for an agenda. It is the applicant's responsibility to make this payment, if an invoice is not ated by the CAP system, the applicant should contact staff prior to the submittal deadline to be invoiced and make payment.
ITEM	
#	To be uploaded online (CAP) by the applicant before 5:00 pm on the submittal deadline.
_	Application with all signed and notarized applicable affidavits and disclosures.
	Signed and dated Letter of Intent. Letter must indicate the decision that is being appealed and other information as required by Section 118-9 (b).
3	Mailing Labels: Upload property owner's list and copy of original certified letter from provider. See #52 for submittal of Hard copy / originals of these items.
4	Full legal description of the property if not included in survey (for lengthy legal descriptions, attach as a separate document - label clearly).
ITEM	PHYSICAL SUBMITTAL
#	To be hand delivered to the Planning Department before 5:00 pm on the submittal deadline.
1	Original application with all signed and notarized applicable affidavits and disclosures.
2	Originals of all items provided in the online submittal.
3	One (1) signed, stapled and collated set of all provided documents.
4	14 collated copies of all provided documents
5	One (1) CD/DVD with electronic copy of entire package (plans, application, Letter of Intent, etc.) see CD/DVD formatting attached, for instructions.
6	Mailing Labels -2 sets of gummed labels and a CD including: Property owner's list and Original certified letter from provider
CD are	the responsibility of the applicant to confirm that documents submitted via CAP, Paper Submittal sets (14 copies), and electronic version on a consistent with each other and legible. Comments required for Board applications must be submitted in an electronic format (PDF) via CD in the manner prescribed herein. The CD is lered the "Formal Submission", and must include the electronic version of all hard copy documents associated with the application. A new seed CD will be required if any modifications are made before or after hearing. Failure to comply with the aforementioned may result in a
	ring before the applicable board at the applicant's expense.
	Applicant's or designee's signature Date

EXHIBIT "G"

Madrid, Vanessa (MIA - X27453)

From: Williams, Steven - Planning <StevenWilliams2@miamibeachfl.gov>

Sent: Wednesday, October 17, 2018 12:52 PM

To: Slavens, Tracy R (MIA - X27642)

Cc: Madrid, Vanessa (MIA - X27453); Arce, Mercy S (MIA - X22178); Kallergis, Nick; Madan,

Rogelio; Fons, Monique

Subject: RE: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA #

ZBA18-0079)

Attachments: Ltr to Sunset Land Assoc Re Administrative Appeal (BOA # ZBA18-0079).pdf

I will be out of the office tomorrow, but I am available Friday at 3:30 if you would like to meet.

The online submittal has been completed and the application has been reviewed. The only pending item at this time is the physical submittal. Per the submittal checklist, please provide the following, no later than the date indicated by Nick's letter.

ITEM	PHY5(CAL SUBMITTAL
#	To be hand delivered to the Planning Department before 5:00 pm on the
1	Original application with all signed and notarized applicable affidavits and disclosures.
447.	Originals of all items provided in the online submittal.
3	One (1) signed, stapled and collated set of all provided documents.
рания	14 collated copies of all provided documents
	One (1) CD/DVD with electronic copy of entire package (plans, application, Letter of Intent, etc.) see CD/instructions.

It is the responsibility of the applicant to confirm that documents submitted via CAP, Paper Submittal sets (1 CD are consistent with each other and legible.

The application fee has been paid. However, the balance of the fees for notice and advertisement will be invoiced no later than Friday afternoon. If you have any questions regarding the fees or the requirements for the physical submittal please reach out to Monique Fons (copied).

Let me know if you have any further questions.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Tracy.Slavens@hklaw.com [mailto:Tracy.Slavens@hklaw.com]

Sent: Wednesday, October 17, 2018 12:01 PM

To: Madan, Rogelio; Williams, Steven - Planning; Kallergis, Nick

Cc: Vanessa.Madrid@hklaw.com; Mercy.Arce@hklaw.com

Subject: FW: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Hello all,

I am writing you as a follow up to the instructions in the attached letter. Please let us know whether there are any pending application items needed or additional documentation that is required at this time. Also, please confirm that the fees have been paid. We would like to schedule a meeting with you to discuss the review process, required submittals, and next steps in order to ensure compliance with the appeal process. Please let us know your availability. I am available this afternoon, I will be at the City tomorrow for another meeting at 10:00 and open the rest of the day, and Friday is open.

Thank you,

8est, Tracy

Tracy Slavens | Holland & Knight

Partner

Holland & Knight LLP 701 Brickell Avenue, Suite 3300 | Miami, FL 33131 Phone 305.789.7642 | Fax 305.789.7799 tracv.slavens@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Perez, Sandra < sandraperez@miamibeachfl.gov >

Sent: Wednesday, October 17, 2018 9:32 AM

To: Slavens, Tracy R (MIA - X27642) < Tracy. Slavens@hklaw.com>

Cc: Madan, Rogelio < Rogelio Madan@miamibeachfl.gov >; Williams, Steven - Planning

<<u>StevenWilliams2@miamibeachfl.gov</u>>; Boksner, Aleksandr <<u>AleksandrBoksner@miamibeachfl.gov</u>>;

ralph@randradelaw.com; Kallergis, Nick < NickKallergis@miamibeachfl.gov>

Subject: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Ms. Slavens,

Please see the attached correspondence on the above-subject matter.

Thank you, Sandra

MIAMIBEAC

Sandra Perez, Paralegal Specialist to
Aleksandr Boksner, Chief Deputy City Attorney and
Nicholas Kallergis, Senior Assistant City Attorney
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miaml Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /
SandraPerez@miamibeachfl.gov

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EXHIBIT "H"

Slavens, Tracy R (MIA - X27642)

From: Williams, Steven - Planning <StevenWilliams2@miamibeachfl.gov>

Sent: Friday, October 19, 2018 5:19 PM

To: Slavens, Tracy R (MIA - X27642); 'bradley.colmer@decocapital.com'; Madrid, Vanessa.

(MIA - X27453); Arce, Mercy S (MIA - X22178) Kallergis, Nick; Madan, Rogelio; Fons, Monique

Subject: RE: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA #

ZBA18-0079)

Attachments: Ltr to Sunset Land Assoc Re Administrative Appeal (80A # Z8A18-0079).pdf

Update...

Cc:

The physical submittal and CD have been received. The only pending item to complete step 1 from Nicks' letter dated October 17, 2018 is the payment of the final invoice; Invoice No. 00143323, \$2,778.00

Please let me know if you have any questions.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

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From: Williams, Steven - Planning

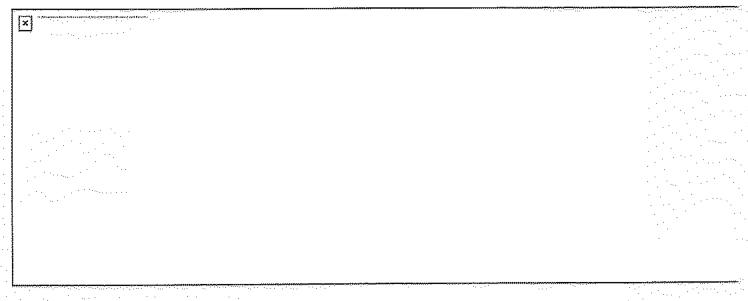
Sent: Wednesday, October 17, 2018 12:52 PM

To: 'Tracy.Slavens@hklaw.com'

Cc: Vanessa.Madrid@hklaw.com; Mercy.Arce@hklaw.com; Kallergis, Nick; Madan, Rogelio; Fons, Monique Subject: RE: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

I will be out of the office tomorrow, but I am available Friday at 3:30 if you would like to meet.

The online submittal has been completed and the application has been reviewed. The only pending item at this time is the physical submittal. Per the submittal checklist, please provide the following, no later than the date indicated by Nick's letter.



The application fee has been paid. However, the balance of the fees for notice and advertisement will be invoiced no later than Friday afternoon. If you have any questions regarding the fees or the requirements for the physical submittal please reach out to Monique Fons (copied).

Let me know if you have any further questions.

MIAMIBEACH

Steven Williams, Principal Planner

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Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

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From: Tracy.Slavens@hklaw.com [mallto:Tracy.Slavens@hklaw.com]

Sent: Wednesday, October 17, 2018 12:01 PM

To: Madan, Rogelio; Williams, Steven - Planning; Kallergis, Nick

Cc: Vanessa Madrid@hklaw.com; Mercy.Arce@hklaw.com

Subject: FW: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Hello all,

I am writing you as a follow up to the instructions in the attached letter. Please let us know whether there are any pending application items needed or additional documentation that is required at this time. Also, please confirm that the fees have been paid. We would like to schedule a meeting with you to discuss the review process, required submittals, and next steps in order to ensure compliance with the appeal process. Please let us know your availability. I am available this afternoon, I will be at the City tomorrow for another meeting at 10:00 and open the rest of the day, and Friday is open.

Thank you.

8est, Tracy

Tracy Slavens | Holland & Knight

Partner

Holland & Knight LLP

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 Phone 305.789.7642 | Fax 305.789.7799 tracy.slavens@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Perez, Sandra <sandraperez@miamibeachfl.gov>

Sent: Wednesday, October 17, 2018 9:32 AM

To: Slavens, Tracy R (MIA - X27642) < Tracy. Slavens@hklaw.com>

Cc: Madan, Rogelio < Rogelio Madan@miamibeachfl.gov >; Williams, Steven - Planning

<<u>StevenWilliams2@miamibeachfl.gov</u>>; Boksner, Aleksandr <<u>AleksandrBoksner@miamibeachfl.gov</u>>;

ralph@randradelaw.com; Kallergis, Nick < NickKallergis@miamibeachfl.gov >

Subject: Ltr to Tracy Slavens Re Sunset Land Associates LLC's Administrative Appeal (BOA # ZBA18-0079)

Ms. Slavens,

Please see the attached correspondence on the above-subject matter.

Thank you, Sandra



Sandra Perez, Parategal Specialist to
Aleksandr Boksner, Chief Deputy City Attorney and
Nicholas Kallergis, Senior Assistant City Attorney
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /
Sandra Perez@miamibeachfl.gov

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81) (1.6) (6) (2) (1.5) (1.6) (8) (8)

BILLING CONTACT

Tracy Slavens Holland & Knight 701 Brickell Avenue, 3300 Miami, Fl 33131



1700 Convention Center Drive Miami Beach, Florida 33139 305.673.7000

INVOICE NUMBE	R INVOICE OATE	INVOICE OUE OATE	INVOICE STATUS	INVOICE DESCRIPTION
00143323	10/19/2018	10/19/2018	Paid In Full	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
ZBA18-0079	Advertisement	\$1,500.00
	Board Order Recording	\$100.00
	Courier (per package)	\$70.00
	Mail Notice Per Label	\$1,008.00
	Posting (per site)	\$100.00
1349 Dade Blvd Miami Bea	ch, FL -331391420 SUB TOTAL	\$2,778.00

TOTAL	\$2,778.00	

Any refund associated with this invoice will only be issued to the billing contact listed herein.

EXHIBIT "I"

Slavens, Tracy R (MIA - X27642)

Williams, Steven - Planning <StevenWilliams2@miamibeachfl.gov> From:

Tuesday, October 30, 2018 12:58 PM Sent:

Slavens, Tracy R (MIA - X27642); Mooney, Thomas; ralph@randradelaw.com To:

Madan, Rogelio; Fons, Monique; Kallergis, Nick; Boksner, Aleksandr; Arce, Mercy S (MIA Cc:

- X22178)

Admin, Appeal - 1349 Dade Blvd; ZBA18-0079 Subject:

Ltr to Sunset Land Assoc Re Administrative Appeal (BOA # ZBA18-0079).pdf **Attachments:**

High importance:

This email shall serve as written confirmation that the appellant, Sunset Land Associates LLC, has complied with requirements set forth in item no. 1 of the attached letter.

The City's Planning Director and Beach Towing Services, Inc. shall have 20 days, until November 19, 2018, to file their respective responses to the appeal.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

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EXHIBIT "J"

Holland & Knight

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 | T 305.374.8500 | F 305.789.7799 Holland & Knight LLP | www.hklaw.com

Tracy R. Slavens, Esq. 305 789 7642 tracy.slavens@hklaw.com

December 20, 2018

VIA HAND DELIVERY

Mr. Thomas Mooney Planning Director City of Miami Beach 1700 Convention Center Drive, 2nd 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). 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:

2

¹ 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.² 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.

4

² 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."³

- 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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³ 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.

- 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 <u>land</u>. 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 <u>all</u> 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 enforceland 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 <u>all</u> 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 Uses⁴ 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,"

⁴ 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 <u>Rinker</u> case bolsters the Appellants' argument. The Appellant has limited their analysis to the wording of the Pre-1989 Code. *See* <u>Holly v. Auld</u>, 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 <u>A.R. Douglass, Inc. v. McRainey</u>, 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. <u>1349 Dade as a nonconforming use of land</u>

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, 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:

20

⁵ 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).⁶

CONCLUSION

We hereby resta

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.

⁶ 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

racy 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"



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")

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 localed 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 Bouleyard 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"

Vincent Festa November 10, 2017

1	IN THE CIRCUIT COURT OF THE		
2	11TH JUDICIAL CIRCUIT IN AND FOR		
3	MIAMI-DADE COUNTY, FLORIDA		
4	CIVIL DIVISION		
	CIVIL DIVISION		
5			
6			
7	SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01		
8	Plaintiff,		
9	vs.		
10	MARK FESTA, individually and as trustee,		
11	Defendants.		
12	——————————————————————————————————————		
13	AND ALL RELATED CROSS-ACTIONS.		
14			
15	VIDEOTAPED DEPOSITION OF VINCENT J. FESTA		
16	November 10, 2017		
17	10:09 a.m.		
18			
19	1230 Columbia Street, Suite 400		
20	San Diego, California		
21			
22			
23	REPORTED BY:		
24	Barbra Zucker		
25	CSR No. 11289		

	110 1 01120 01		,		
	Page 2				Page 4
1	IN THE CIRCUIT COURT OF THE	1		INDEX TO EXAMINATION	1 4 9 0 1
	11TH JUDICIAL CIRCUIT IN AND FOR	2			
2	MIAMI-DADE COUNTY, FLORIDA	3		WITNESS: VINCENT J. FESTA	
3 4	CIVIL DIVISION	4	EXAMINATION		PAGE
5	SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01				
6	Plaintiff,	5	By Mr. Buckner	:	7
7	vs.	6	By Mr. Reiss		141
8	MARK FESTA, individually and as trustee,	7			
	MAUREEN FESTA,	8			
9	VINCENT J. FESTA, individually and as trustee, THE FESTA TRUST, and BEACH TOWING SERVICES, INC.,	9			
10	BEACH TOWING SERVICES OF MIAMI, INC.,	10			
	CONSOLIDATED STORAGE YARDS, INC.,				
11	GOOFE PARTNERS, INC.,	11			
	MIAMI AVENUE PROPERTIES, INC.,	12			
12	1718 BAY ROAD CORPORATION,	13			
13	FESTA TRANSPORT AND STORAGE, INC., And CORONA STORAGE, LLC,	14			
14	Defendants.	15			
		16			
15					
	and	17			
16	THE LORDS AT COUNTY DESCRIPTIONS	18			
17	THE LOFTS AT SOUTH BEACH CONDOMINIUM ASSOCIATES, INC.,	19			
18	Intervenor-Defendant.	20			
19		21			
20		22			
21					
22		23			
23 24		24			
25		25			
	Page 3				Page 5
1 2	APPEARANCES: For Plaintiff:	1		INDEX TO EXHIBITS	
3	BUCKNER & MILES	2	Garage T. and	VINCENT J. FESTA	1
١.	DAVID M. BUCKNER, ESQ.	3	Sunset Lan	d Associates, LLC vs Mark Festa,	et al.
4	3350 Mary Street, Miami, Florida 33133	5		Friday, November 10, 2017	
5	305.964.8003	6		Barbra Zucker, CSR No. 11289	
_	786.523.0485	7	MARKED	DESCRIPTION	PAGE
6 7	david@bucknermiles.com	8		Exhibit F	26
	For Defendants Mark Festa, Maureen Festa, Beach	9		Exhibit D	26
8	Towing Services, Inc., Beach Towing Services of	10		Aerial Photo of 1349	69
9	Miami, Inc., Consolidated Storage Yards, Inc., Goofe Partners, Inc., Miami Avenue Properties,			Dade Boulevard	
	Inc., 1718 Bay Road Corporation, Festa Transport	11			
10	and Storage, Inc., and Corona Storage, LLC:		Exhibit 4	Notice of Videotaped Deposition	89
11 12	(Via Telephone) LEVINE & PARTNERS, P.A.	12		of Victor J. Festa	
	ALLAN S. REISS, ESQ.	13		Warranty Deed	90
13	3350 Mary Street	14		Mr. Festa and the Festa Trust	94
14	Miami, Florida 33133 305.372.1350			Answer and Affirmative Defenses	
	305.372.1352	15			
15	asr@levinelawfirm.com		Exhibit 7	Series of plans for	107
16	For Defendants Vincent Festa and The Festa Trust:	16		1349 Dade Boulevard	
17	- of Belemanes vincent lebea and the resta ilust.	17	Exhibit 8	Orange Dade Oil Company	118
	THE LAW OFFICE OF SUSY RIBERO-AYALA, P.A.			building/permit card	
18	SUSY RIBERO-AYALA, ESQ. 201 Alhambra Circle, Suite 1200	18			
19	Coral Gables, Florida 33134	19			
	305.854.4711	20			
20	305.468.6197 susy@riberoayalalaw.com	21			
21	susyerincioayararaw.com	22			
22	Also Present:	23			
23					
l .	Huntington Paulson, Videographer	24			
24 25	Huntington Paulson, Videographer	24 25			

	Page 6		Page 8
1	San Diego, California;	1	understand. I want you to understand what I am asking.
2	Friday, November 10, 2017, 10:09 a.m.	2	If you do answer my questions, all of us are
3		3	going to assume that you understood what I was asking you
4	THE VIDEOGRAPHER: Good morning. We are on the	4	and you were answering it based on the best of your
5	record. My name is Huntington Paulson with U.S. Legal	5	knowledge.
6	Support in San Diego, California, where this deposition	6	If, like I said, if you need to take a break at
7	is taking place.	7	any point, we can take a break.
8	This is the recorded video deposition of Vincent	8	A. Is it too early?
9	Festa in the matter of Sunset Land Associates versus Mark	9	Q. No, no. If you want to take a break
10	Festa. The date is November 10th, 2017, at 10:09 a.m.	10	A. I'm only kidding.
11	Video and audio recording will be taking place	11	Q. I know. I know.
12	at all times unless all counsel have agreed to go off the	12	And at various points during the day, your
13	record.	13	lawyer or Mr. Reiss, who is on the phone, may object to
14	Would all present today please identify	14	one of my questions. The rules basically require that
15	themselves beginning with the witness?	15	for certain kinds of objections, that they are stated on
16	THE WITNESS: I am Vincent J. Festa.	16	the record. You are still going to answer the question.
17	MS. RIBERO-AYALA: Susy Ribero-Ayala on behalf	17	It's really just a placeholder for the lawyers so that
18	of Vincent J. Festa.	18	later on, if there is an issue with the question, there
19	MR. BUCKNER: David Buckner on behalf of	19	is a record that there was an objection at the time.
20	plaintiff.	20	The only exception to that is if your lawyer instructs
21	MR. REISS: Allan Reiss for a bunch of	21	you not to answer something for some reason, but I don't
22	defendants except for Vincent Festa, Barbara Festa or	22	expect that will come up today, but if it does, it does.
23	The Lofts.	23	Before we begin, do you have any questions for
24	THE VIDEOGRAPHER: The certified court reporter	24	me?
25	is Barbra Zucker.	25	A. I don't think so.
			Dago 0
1	Page 7 Would you please swear in the witness?	1	Page 9 Q. Okay. Is there any reason why you can't give
	Page 7	1 2	
1	Page 7 Would you please swear in the witness?		Q. Okay. Is there any reason why you can't give
1 2	Page 7 Would you please swear in the witness? VINCENT J. FESTA,	2	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today?
1 2 3	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined	2 3	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why.
1 2 3 4	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined	2 3 4	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why. Q. Okay. Are you on any medication or anything else that would affect your ability to testify or to
1 2 3 4 5	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined and testified follows:	2 3 4 5	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why. Q. Okay. Are you on any medication or anything
1 2 3 4 5 6	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined and testified follows:	2 3 4 5 6	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why. Q. Okay. Are you on any medication or anything else that would affect your ability to testify or to remember the events that we are here on?
1 2 3 4 5 6 7	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined and testified follows: EXAMINATION	2 3 4 5 6 7	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why. Q. Okay. Are you on any medication or anything else that would affect your ability to testify or to remember the events that we are here on? A. I just had six hours' sleep. That's all.
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1 2 3 4 5 6 7 8 9	Page 7 Would you please swear in the witness? VINCENT J. FESTA, having been first duly sworn, was examined and testified follows: EXAMINATION BY MR. BUCKNER: Q. All right. Good morning, Mr. Festa, again.	2 3 4 5 6 7 8	Q. Okay. Is there any reason why you can't give full, complete and accurate testimony here today? A. No reason why. Q. Okay. Are you on any medication or anything else that would affect your ability to testify or to remember the events that we are here on? A. I just had six hours' sleep. That's all. Q. I am sorry to hear that. I assume that six hours of sleep won't affect your ability to testify?
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A. Yes. Vincent, J., for John, Festa,

25 just ask me to rephrase it and I will until you

	November	ΤÜ	1, 2017 10 to 13
	Page 10		Page 12
1	V-i-n-c-e-n-t, J, for John, Festa, F, as in Frank,	1	backward because we were talking before we started
2	e-s-t-a, Festa.	2	about, you know, Miami and Miami Beach in the 1950s. So
3	Q. Okay. Mr. Festa, where do you currently	3	I know you were there at least that far back. I want to
4	reside?	4	sort of start backwards and sort of move forwards.
5	A. At 8660-4 Via La Jolla Drive, La Jolla,	5	So where were you where were you born?
6	California 92037.	6	A. In New York City.
7	Q. How long have you lived there?	7	Q. And did you grow up there?
8	A. 33 years.	8	A. Well, we moved around quite a bit. I was born
9	Q. And has that been your exclusive residence for	9	on Mulberry Street and for probably six, seven years
10	the last 33 years, or have you lived other places part	10	there. Then we moved to Brooklyn for two years and
11	of the year?	11	ended up in the Bronx.
12	A. No. Exclusive.	12	Q. All right. And what was the highest level of
13	Q. Okay. So 33 years, I have to now do math	13	education you completed?
14	A. Nineteen seventy 1983, '84.	14	A. I completed high school.
15	Q. Okay. So is that when you moved to California?	15	Q. And was that also in New York, somewhere in New
16	A. In 1983, in December, I think.	16	York?
17	Q. Okay. And you know, I may jump around a little	17	A. Yeah, Samuel Gompers in the Bronx.
18	today.	18	Q. Oh, Samuel Gompers, the great labor union
19	A. That's okay.	19	leader.
20	Q. If I do, forgive me. But just sort of as we	20	A. Yeah.
21	go; I am not trying to be confusing.	21	Q. And what did you do after high school?
22	A. That's okay. Are you comfortable, relaxed?	22	A. I did what he told me, strike. No. I am
23	Q. I am okay. You?	23	kidding. But anyway, I am sorry.
24	A. Great.	24	Q. That's okay.
25	Q. I know, it's an unusual sort of thing, a	25	A. I shouldn't do this.
1	Page 11 deposition, but we will try and make it as	1	Page 13 Q. That's okay.
2	comfortable	2	MS. RIBERO-AYALA: Of course you can.
3	A. I am new at this but okay.	3	BY MR. BUCKNER:
4	Q. Yeah, I know. It is what it is, but it will be	4	Q. That's fine.
5	fine.	5	MS. RIBERO-AYALA: Of course you can.
6	So when you moved to California, you said 1983,	6	BY MR. BUCKNER:
7	were you working or had you retired?	7	Q. It really is.
8	A. I retired.	8	A. Can you repeat that?
9	Q. And what was the last job or occupation you	9	Q. Sure, of course.
10	held before retirement?	10	I said what did you do after you completed high
11	A. I owned Beach Towing.	11	school?
12	Q. Okay. And that what did	12	A. I went into show business.
13	A. I did the towing for the city.	13	Q. Okay. And was that also in New York?
14	Q. And the City of Miami Beach?	14	A. No. It was in Florida.
15	A. Uh-huh.	15	Q. Okay. So what year was that? What year did
16	Q. Oh, and let me say something else.	16	you
17	The court reporter can't take down, you know,	17	A. Say in 1955.
18	uh-huh. You have to say either yes or no just because	18	Q. And that was the year you moved to Florida?
19	she can't make a record of that.	19	A. Well, I didn't move. I just went down there
20	A. Oh, I'm sorry.	20	for the season.
21	Q. No, not at all.	21	Q. Oh, I see. Okay. So you were performing in
22	So when I asked you that was towing for the	22	some kind of show business-related
23	City of Miami Beach, you said	23	A. In nightclubs, yes.
24	A. Yes.	24	
25	Q. Let me go a little so I want to work	25	
45	Q. Het me go a fittie SO I want to work	45	A. I did comedy. I was with a trio, Dave Fisher

	November	Τ0	, 2017 14 to 17
	Page 14		Page 16
1	Trio.	1	Q. Okay.
2	MS. RIBERO-AYALA: Of course, you were.	2	A. No. Excuse me yeah, about 1965. Did shows
3	BY MR. BUCKNER:	3	and worked other jobs in the in the Seville Hotel
4	Q. You did comedy. Of course, you did.	4	Q. I see.
5	I mean, so far, you know, you are way funnier	5	A ended up ended up being a catering
6	than I am.	6	manager.
7	Okay. So you started going	7	Q. Okay. So I take it during that time, somewhere
8	A. Yeah, but looks aren't everything.	8	during that time, you actually moved to Miami Beach full
9	MS. RIBERO-AYALA: This is the best this is	9	time, is that right?
10	the best deposition in this case by far.	10	A. Yeah, I lived in Hollywood.
11	THE WITNESS: Okay. I'm sorry. I'll	11	Q. Okay. What year did you move to Hollywood, do
12	BY MR. BUCKNER:	12	you remember?
13	Q. It's okay.	13	A. 1970 wait. No. 1960, something like that.
14	MS. RIBERO-AYALA: No, no. This is great.	14	I don't remember.
15	BY MR. BUCKNER:	15	Q. Okay. So sometime in the 1960s, you become a
16	Q. It's fine. It really is fine.	16	full-time Florida resident?
17	So you started going to Florida in 1955-ish,	17	A. Oh, yes, always Florida.
18	correct?	18	Q. Okay. So I want to jump ahead.
19	A. Yes. It was seasonal then.	19	We talked when we started that at a certain
20	Q. And were you going to Miami Beach or to a	20	point, you were involved with Beach Towing, correct?
21	different	21	A. No. I went into Beach Towing. I bought I
22	A. Miami Beach.	22	bought the building in 1970, I think, '75.
23	Q. And how long were you in show business as a	23	Q. And, listen, I realize this is a long time ago.
24	living, I guess I should say?	24	So I am
25	A. I would say to '75, '80.	25	A. Yeah.
	Page 15		Davis 17
1	Page 15 Q. Okay. And during that time from basically 1955	1	Page 17 Q I am not looking for absolute precision.
2	to whenever that was in the '75, 1975 to '80,	2	A. Yeah.
3	somewhere in there, was were you in any other line of	3	Q. I am sort of trying to get a sense as to your
4	work besides performing	4	sort of history. So
5	A. No.	5	A. You can tell I didn't rehearse.
6	Q in comedy clubs?	6	Q. Yeah, that's okay. Again, it's a long time
7	A. No. I was in I was with the comedy trio.	7	ago, you know.
8	Q. Okay. And then at a certain point you, I	8	A. Yeah.
9	guess, left comedy and decided to go into a different	9	Q. So let me see if I can break this down a
10	line of work?	10	little.
11	A. Well, I was I was doing comedy with a trio,	11	When you say you bought the building, is that
12	and I didn't want to go on the road anymore. So I ended	12	the building at 1349
13	up doing catering. I used to do the weddings and the	13	A. Dade Boulevard.
14	bar mitzvahs at the Seville Hotel.	14	Q Dade Boulevard?
15	Q. Okay. That was the Seville Hotel in Miami	15	Okay. And so and your recollection is you
16	Beach?	16	bought 1349 Dade Boulevard sometime in the 1970s, is
17	A. Right, 29th and Collins.	17	that right?
18	Q. And so you opened a catering business	18	A. Yes, I think so, 1970, yeah.
19	sometime	19	Q. Okay. And was there already a business
20	A. I didn't open it. I worked for the Seville	20	operating there, or did you start a business?
21	Hotel.	21	A. It was a gas station. I even forgot the name
22	Q. I see. Okay. So you worked for the Seville	22	of the brand it was.
23	Hotel, and do you remember when you started working for	23	Q. Was it and I'm not trying to put words in
24	the Seville?	24	your mouth
1		1	

A. That's okay.

A. Well, 19 -- maybe 1960, '65.

Vincent Festa Page 18 1 Q. -- but would it -- does the name Orange State 2 ring a bell? 3 A. No. It's not that. 4 Q. It wasn't Orange State? Okay. A. No, it wasn't that. It's a famous name. It 5 5 wasn't S-o --6 7 7 Q. Was it Citgo? A. Citgo. Okay. Good one. 8 8 9 9 Q. Okay. And the reason I say that is, we'll go through some documents later, I saw the Citgo logo in 10 10 there somewhere. I wasn't sure if you had a Citgo 11 11 12 station or if it was previous --13 A. No. I had a Citgo station. I also had a 14 station in -- on Miami Beach on 14th Street and -- Miami 14 15 Beach. 15 16 Q. Okay. So you had two -- at some point in time, 17 you had two gasoline stations on Miami Beach? 17 A. Yes, and towing. 18 19 Q. And towing. 19 2.0 Okay. So there was the one obviously 1349 Dade 20 21 Boulevard. That's the one that you bought that was a gas 21 22 station, correct?

Page 20 1 not complete by any means. So as we go through this 2 stuff, if there is a document that might refresh your 3 recollection on some of this stuff, I am happy to give it to you, and we will go through them. I just --A. Okay. Q. -- I don't know what's going to help you because --A. Yeah. Q. -- I don't know the history. A. If it helps you, see if it helps you. Q. We'll see. I don't know how much can help me. I mean, we will have to see by the end of the day. Maybe not much. A. All right. Q. Okay. So the 1349 Dade Boulevard was a gas station when you bought it. And is it your recollection that you were able to continue operating as a gas station or were you --A. No. I didn't want gas. Q. Okay. A. I didn't want gas because we had the gas wars, 22 not gas wars, but we had rationing for a while, a long 23 time ago. 24 Q. You are talking in the 1970s? 25 A. Something like -- maybe before that too. Page 21

Page 19

A. No. It was on Collins Avenue, actually. It was on Collins Avenue, yes. 3 Q. Which one did you own first, do you recall? 4 A. The one on Collins. 5 Q. Okay. And did you ever own any more than those two gas stations on Miami Beach? 7 A. No, I don't think so. 8 Q. What prompted you to start buying gas stations?

25 it was -- am I correct, it was on Alton that you owned?

Q. Right. And then there was another one, I think

A. Was a gas station.

9 A. Well, I had a friend of mine, we did a lot of investing. We bought properties and sold them, 11 properties. And we -- we went into Alton Road and 12 picked up a station that we did AAA and towing.

13 Q. Right. So you had a towing operation at the 14 gas station sort of as an accessory to the gas station? 15 A. Right.

16 Q. Okay. And so with regard to the gas station at 17 1349 Dade Boulevard, your recollection is that was a Citgo station? 18

19 A. I think so. I think you're right.

20 O. Okay.

23

24

21 A. That would have been my guess.

Q. Yeah, and, by the way, this -- I didn't say

23 this before, but I think I have sort of implied it, but

24 I will say it now. This is not meant to be a

25 closed-book test. I have got some documents; they are

A. We had a gas station on Alton Road. It was a Gulf station that we just leased it, you know. You buy their -- you buy their equipment, and they let you use their station. And I had AAA and I had towing, and I had -- I had everything. 7 Q. Right. So when you bought the gas station -so -- let me strike that.

9 So you had the other gas station --

10 A. I had Alton Road first.

Q. Okay. And I just want to make sure we are talking about the same thing because a moment ago you

said you thought the other station was on Collins.

14 A. It is Collins. Alton Road -- Alton Road was a 15 different place. We did AAA there --

16 Q. Oh, I see.

17 A. -- then we had Collins, then we had Collins Avenue which I bought the property and sold it. There is a high-rise there now. And then I had 1349 Dade 19 20 Boulevard.

21

Q. Okay. That's my mistake. I thought we were --

22 A. That's okay.

Q. -- talking about two places.

A. No problem.

Q. So just so I am clear, you owned a gas station

23

24

```
Page 22
                                                                                                                   Page 24
1 on Collins, correct?
                                                                1 reason I ask this is I think I saw something about this
         A. No. We leased -- we didn't buy -- we didn't
2
                                                                2 in the records -- when you purchased 1349 Dade Boulevard
    own the property. We just ran it. Gulf owned it, we
                                                                3 from the prior owner, is it your recollection that
    sold their gas and we ran AAA and towing out of there.
                                                                   whatever gas company was supplying the gasoline there
5
         Q. That's the one on Collins?
                                                                   wasn't willing to let you continue operating as a
6
         A. Collins. Then we grew because the City of
                                                                    service station, as a gasoline station?
                                                                7
                                                                             MR. REISS: Form.
7
    Miami Beach was getting a lot of tows away -- tow-aways.
    And so we bought a piece of property on Collins Avenue,
                                                                             THE WITNESS: That I don't remember.
                                                                8
9
    I think that was on 12th and Collins. I am not sure.
                                                                9
                                                                             MR. REISS: Object to form.
         Q. And I am not trying to quibble with you; I am
                                                               10
                                                                   BY MR. BUCKNER:
10
    just trying to keep it straight.
                                                               11
                                                                         Q. Okay. Well, we will go through and let's see,
11
12
                                                                   actually, let me see -- let me see if I can lay my hands
             So you leased the property on Alton and you
    owned the property on Collins?
13
                                                                    on a document that might help you. Give me a minute. I
                                                                    am looking for something specific.
14
         A. Yeah. Well, see, a lot of gas stations, you
                                                               15
    don't buy the property. You just work for Gulf Oil, you
                                                                             This is it.
15
    buy their parts --
                                                               16
                                                                             Do you recall in about 1980 you went before the
16
         Q. Sure.
17
                                                               17
                                                                   City of Miami Beach Commission to get a conditional use
         A. -- and you sell their gas, and that's it.
                                                                   permit to start selling gasoline at 1349 Dade Boulevard
18
19
         Q. Right. So --
                                                               19
                                                                    again?
         A. But I owned -- I didn't own that. I owned the
2.0
                                                               2.0
                                                                         A. Did I? I don't remember.
21 one on 1349 Dade Boulevard and the one on Collins
                                                               21
                                                                         O. You don't remember?
22 Avenue.
                                                               22
                                                                         A. I really don't.
23
         Q. Okay. So the Collins one is owned and the Dade
                                                               23
                                                                         Q. Let me make sure this is the right thing. I
    Boulevard is owned by you or was owned by you --
                                                                   can't see anymore either.
24
                                                               24
25
         A. Uh-huh.
                                                               25
                                                                         A. What year did you say that was?
                                                   Page 23
                                                                                                                   Page 25
         Q. -- and the Gulf station -- was it the Gulf
                                                                         Q. 1980.
 2
    station?
                                                                         A. 1980?
 3
         A. Gulf station on Alton Road, yes.
                                                                         Q. Yes. I am going to hand you -- here's what I
 4
         Q. That was the one you leased?
                                                                   am going to -- I am going to hand you a couple of
5
         A. Okay.
                                                                    documents. Let me see if I can help with your memory on
 6
         Q. Am I right about that?
                                                                    this. Like I said, I know it's been a long time.
7
         A. Yeah, okay.
                                                                             MR. BUCKNER: Allan --
8
         Q. Okay. No. I --
                                                                             THE WITNESS: 1980 I wasn't selling gas there
9
         A. No. Leased. I understand what you mean now.
                                                                9
                                                                   at all.
10
         Q. Okay. I got you. Well, leased may not be the
                                                               10
                                                                    BY MR. BUCKNER:
11 right word --
                                                               11
                                                                         Q. Right, you weren't, but I want to show you --
12
         A. Yeah, okay.
                                                               12
                                                                             MR. BUCKNER: Would you mark this, please?
13
         Q. -- but you basically worked for them, they
                                                               13
                                                                             Allan, I am handing the witness Exhibit 22 from
14
    owned it?
                                                                    my set which we are going to mark as Exhibit 1.
15
         A. Right. We bought their parts and we used their
                                                               15
                                                                             MR. REISS: Exhibit 22 in what?
   gas -- and we sold their gas.
                                                               16
                                                                             MR. BUCKNER: How did -- you got an e-mail with
17
         Q. Got it. Okay. And, yeah, the only reason we
                                                               17
                                                                    all the exhibits?
18 can't talk over each other is she can only take down one
                                                               18
                                                                             MR. REISS: You gave me a flash drive, but they
```

22 stations, correct? A. Gas, gas -- no. I wasn't selling gas at the 23 24 Citgo, at 1349.

25 Q. Okay. And is it your recollection -- and the

voice at a time, and it's kind of hard for her. That

And so you were selling gas from these three

19 20

21

was my fault.

a second. We will figure out a way to work through this, but she can't take all that down so fast.

Andrade, the deed --

are not identified as exhibits. There is one subfolder

complaint log, contract, contract with city, e-mail from

MR. BUCKNER: Allan, hang on a second. Hang on

marked Discovery, and then there is aerial, aerial,

22

```
Page 26
                                                                                                                   Page 28
             So let me -- I have handed the witness --
1
                                                                             MS. RIBERO-AYALA: Right, right.
                                                                1
2
             MR. REISS: Okay.
                                                                             MR. BUCKNER: \operatorname{\mathsf{--}} there is more in here than
 3
             MR. BUCKNER: I am going to tell you what they
                                                                    just his stuff. So I don't want to --
    are, and we will see if we can get you to them, Allan.
                                                                4
                                                                             MS. RIBERO-AYALA: Right. Let's not bog him
 4
5
             I am going to hand the witness two documents.
                                                                5
                                                                    down with stuff. Let me let him go through whatever
6 All right? One is, on the cover of it, it says, "Exhibit
                                                                    belongs to him, and then he can say what he understands
                                                                   it to be. So --
7 F." It starts with the roll call, City of Miami Beach
8 Commission. It's a series of documents related to the
                                                                8 BY MR. BUCKNER:
    conditional use permit, but it's Exhibit F. And the
9
                                                                9
                                                                         Q. Maybe I can help. You are in Exhibit 1,
    other one is Exhibit -- has got Exhibit D on the cover.
                                                                  Mr. Festa. The fourth page of Exhibit 1 you will see a
10
                                                               10
11
             MR. REISS: I see that.
                                                                    City of Miami Beach letterhead.
             MR. BUCKNER: Okay. So we are going to -- here
12
                                                               12
                                                                             MR. BUCKNER: You are there, Susy.
13 is what we are going to do. We are going to mark
                                                               13
                                                                  BY MR. BUCKNER:
    Exhibit F as Exhibit 1 here and Exhibit D as Exhibit 2
14
                                                               14
                                                                         Q. A memorandum dated May 7th, 1980. Do you see
15
    for this deposition. Okay?
                                                               15
                                                                   that?
             MR. REISS: Thank you.
                                                               16
                                                                             MS. RIBERO-AYALA: Okay. All right. So let's
16
                                                               17 let him read this.
17
             MR. BUCKNER: Yeah, no worries.
             (Exhibits No. 1 and No. 2 marked.)
                                                               18
                                                                             MR. BUCKNER: Go ahead. I think that may help.
18
19 BY MR. BUCKNER:
                                                               19
                                                                             THE WITNESS: Okay.
2.0
         Q. Mr. Festa, let me give you that.
                                                               20
                                                                  BY MR. BUCKNER:
21
              (Discussion off the record.)
                                                               21
                                                                         Q. So the reason I showed you that is because this
22 BY MR. BUCKNER:
                                                                   document relates to a conditional use application for
23
         Q. Here is a copy for each of you. So let me
                                                               23
                                                                    operating a filling station at 1349 Dade Boulevard.
   just -- I am going to hand you this in a second,
                                                               24
                                                                             Do you see that?
25 Mr. Festa.
                                                                25
                                                                             MR. REISS: Objection to the form.
                                                   Page 27
                                                                                                                   Page 29
             We have marked as Exhibit 1 a document that on
                                                                             THE WITNESS: I see it, but I don't remember
2 its face says, "Roll Call Miami Beach City Commission"
                                                                2 it.
```

and has a series of agenda items behind it. And that's your copy, Mr. Festa, Exhibit 1. And Exhibit 2 is entitled -- well, it's on City 6 of Miami Beach letterhead, at least the first page, and it's entitled, "Action Summary," but then behind it, several pages back, there is a transcript of a hearing from the City of Miami Beach Commission. It appears to be June 4th, 1980, I think. And that's No. 2. 10 11 Let me give you both of those. 12 And, by the way, when I hand you documents today, you can take as much time as you need to look at 14 them. We are not in a hurry. So, you know, be my guest. 15 A. This is saying that in 1980 I was selling gas? 16 Q. No. Well, let me go through it with you, and I 17 will tell you what I think it says, and we will see if it refreshes your recollection. There is -- the first item here is a -- in 19 20 Exhibit 1 -- let me find it. 21 MS. RIBERO-AYALA: Well, why don't we let him go through it. 23

MR. BUCKNER: Yes, go through it.

MR. BUCKNER: I don't want the --

MS. RIBERO-AYALA: Yeah.

24

25

3 BY MR. BUCKNER: Q. Okay. So you don't recall applying for a conditional use permit to operate a filling station in 1980 at the Dade Boulevard location? MR. REISS: Objection to form, documents speak for themselves, mischaracterizing the witness' testimony. 10 You can answer the question. THE WITNESS: No. I was doing mostly towing. I don't remember -- I was one of the few people that was -- in fact, at one time I was the only one that was doing towing. BY MR. BUCKNER: 16 Q. Right. 17 A. So I was towing from the -- I was also -- had a -- rented a place down on 5th Street, and we were 19 towing on Collins Avenue, and we were towing on 1349 20 Dade Boulevard. 21 I can't -- I can't remember how we could get all 22 those cars in and out with pumps there. I just -- that's 23 what I can't understand --

25

24 BY MR. BUCKNER:

Q. Okay.

30 to 33

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

22

23

24

Boulevard, correct?

A. Right.

the witness' testimony and leading.

MR. REISS: Objection to form, mischaracterizes

22 had two gas stations. One was at Alton Road, which was

23 the Gulf, and the one which was down on Collins Avenue

24 and was it 7th -- I don't remember the street. 7th

25 Street?

Page 34 1 BY MR. BUCKNER: 2 Q. Those three operations together, were all three of those part of Beach Garage? 3 4 A. Right. 5 Q. They were? 6 A. Until -- until we got -- we got rid of Alton 7 Road. 8 Q. Okay. So those three businesses were Beach 9 Garage, and what business was Beach Garage in then, selling gasoline --10 11 A. No. I don't remember. 12 MS. RIBERO-AYALA: Objection; form, leading. 13 THE WITNESS: I don't remember that, honest. I 14 don't remember selling gas there. BY MR. BUCKNER: 15 16 Q. All right. I am not trying to suggest at 1349 17 you were selling gas. I am saying Beach Garage 18 generally. 19 A. Well, yeah, when we had the station down on 20 Collins Avenue, we were selling gas, and then when we 21 had -- our original first gas station was Alton Road 22 on -- the Gulf station. We started there. We were 23 doing towing, we were doing AAA, we were doing --24 selling gas. 25 Q. Okay. Page 35 A. And I don't -- okay. Q. No. Go ahead, go ahead. I didn't mean to 3 interrupt you.

Page 36 A. Yeah, I guess we could have done some repairs 1 2 there. Q. Okay. And were you doing vehicle repair at the Alton Road location? 5 A. At the Alton Road, yes, definitely. Q. Okay. And that was all under the umbrella of 6 7 Beach Garage, correct? 8 A. That was me, Beach Garage. 9 MR. REISS: Objection to form, leading, mischaracterizes the witness' testimony. 10 11 THE WITNESS: I didn't hear him. BY MR. BUCKNER: 12 13 Q. You don't have to. You don't have to worry about what he is saying. The answer was yes, that was the answer to $\mathfrak{m} y$ 15 question, yes? 16 17 A. Give me the question again. 18 Q. I said all three of those were operating under the umbrella of Beach Garage, correct? A. Beach Garage. 20 Q. Got it. And then in terms of sales of --21 A. Beach Towing -- go ahead. 22 23 Q. Right. And sales of gasoline, do you recall selling gasoline at the Alton Road location, correct? 25 A. Definitely. Page 37 Q. Okay. And you recall selling gasoline at Collins? A. Definitely. Q. But as you sit here today, you don't have any recollection of ever selling gasoline at 1349 Dade Boulevard? 7 A. I don't know. No, I don't. Q. So I showed you, there are two exhibits in front of you, Exhibit 1 and Exhibit 2. You had a chance to look at Exhibit 1. I know you looked at at least part of it, which is the commission memorandum on the fourth page. I know you had that in front of you with regard to a conditional use application for a filling 14 station at 1349 Dade Boulevard. 15 Do you recall applying for a conditional use permit to operate a filling station at that location? 17 A. I guess I did. I had to, yeah.

```
6 if they closed it or it wasn't paying off for us,
    something like that. Then I sold -- then I sold the gas
8
    station which they put a condominium up on Collins
9
10
         Q. Okay. So over time, and we will see if we
11 can't fix it in time, you stopped operating at Alton
12 Road and you sold the gas station at Collins. So all
13
    you had left was 1349 Dade, correct?
14
         A. Yes.
15
         Q. Okay. And as we talk, we will see if we can
   figure out when that happened, but to the best of your
17
    recollection, the only -- well, strike that.
             So were you doing vehicle repair at the Collins
18
19
    Avenue location?
20
         A. Yes.
21
         Q. Okay. Were you doing vehicle repair at the
22
    Dade Boulevard location?
         A. That I am not sure of. Let me think a minute.
23
24
   Okay?
25
         Q. Okay.
```

A. Again, I don't remember anymore that we got rid

of Alton Road or else they closed -- I don't even know

4

18 Q. Okay. Well, I don't want you to guess. I just 19 want to make sure we're clear on which --20 A. Yes, I had to. I had to. I guess it was the format that I had to comply with the city. 22 Q. Okay. And I want to make sure you and I are 23 talking about the same thing. 24 A. Okay. 25 Q. I am just talking now about 1349 Dade

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

25

A. I want to comply, but I really don't remember.

Vincent Festa November 10, 2017

```
Page 42
                                                                                                                   Page 44
                                                                1 BY MR. BUCKNER:
          Q. No, no, no. Listen, Mr. Festa, I don't want
1
 2
    you to feel --
                                                                         Q. Okay. So when you --
 3
         A. No, no.
                                                                         A. -- but I didn't have anyplace to put it -- to
 4
          Q. -- you are under any obligation.
                                                                    put the cars. I needed that spot too.
                                                                5
5
         A. No. I know that.
                                                                         O. Okay.
6
          Q. I mean, I am just really just trying to find
                                                                         A. I also had a place on 5th Street, but it's not
7
    out what you remember.
                                                                    in this -- it's not in there. So but -- yeah, Man --
8
         A. I don't.
                                                                   Manchester, they used to do conventions and stuff.
9
                                                                9
                                                                    Man -- Mancraft, does that sound familiar to you?
          Q. Okay. So as you sit here, you don't remember
    appearing in front of the City of Miami Beach
                                                                         Q. No, but that doesn't mean anything.
10
                                                               10
11
    Commission --
                                                                         A. Okay. I once had a place down on 5th Street --
                                                               11
12
                                                                         Q. Okay.
         A. I really don't.
                                                               12
13
         Q. -- in 1980?
                                                               13
                                                                         A. -- Mancraft.
         A. No, I don't.
                                                                         Q. So when it says here, "Well, I had a gas
14
                                                               14
15
          Q. Do you recall -- let me -- I want to -- here is
                                                                   station down at 1150 Collins Avenue which I had to get
16 what I want to try and do. Again, if it doesn't refresh
                                                                    out after 30 years because I couldn't get a license for
17
    your recollection, so be it. But I want to work through
                                                               17
                                                                    towing," do you know what you were referring to there?
    this transcript a little, show you some of the things
                                                               18
18
    that you said to the commission and see if that helps
                                                               19
19
                                                                             MR. REISS: Objection to form, predicate,
    you recall any aspects of it --
                                                                    mischaracterizes the witness' testimony, leading.
20
                                                               2.0
         A. I think that's a good idea.
                                                                21
                                                                             You can answer.
21
22
         Q. -- if it does, great. If it doesn't, you tell
                                                               22
                                                                   BY MR. BUCKNER:
23 me.
                                                                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
             So if you go a little further down that page,
25 it says -- there is a statement that purports to be by
                                                                   the commission. If you go partway down the page, it
                                                   Page 43
                                                                                                                   Page 45
1 you. It says, "Okay. Well, I had a gas station down at
                                                                   says, "They are not" -- again, it purports to be quoting
2 1150 Collins Avenue which I had to get out after 30
                                                                    you. It says, "They are not in there. If you'd look at
    years because I couldn't get a license for towing.
                                                                    this piece of property is 135 by 200, and the last 30 to
    Wrecker license after 30 years of doing wrecker service
                                                                    40 feet of the 200 is where the cars are stored."
    there for everybody on the Beach, we finally came up
                                                                             MS. RIBERO-AYALA: Where is this?
    with a reason why it couldn't be renewed."
                                                                6
                                                                             MR. BUCKNER: I'm sorry, it's about six lines
7
             Let me ask you a few questions about that.
                                                                7
                                                                   down.
8
             Is the 1150 Collins Avenue the service station
                                                                8
                                                                   BY MR. BUCKNER:
     on Collins you were telling me about before?
                                                                9
                                                                         Q. Do you see it says, "Festa" --
10
             MR. REISS: Objection to the form, predicate.
                                                               10
                                                                             MR. REISS: Objection to form.
11
             THE WITNESS: Ask me that again.
                                                               11
                                                                             MS. RIBERO-AYALA: They are not in there?
12 BY MR. BUCKNER:
                                                               12
                                                                             MR. BUCKNER: Yeah, they are not in there.
13
          O. Sure. I said is the 1150 Collins Avenue the
                                                               13
                                                                    BY MR. BUCKNER:
   service station location you told me about before as one
                                                               14
                                                                         Q. Go ahead, go ahead and read it, and then I will
15
    of the three service stations --
                                                               15
                                                                    ask you again.
16
         A. Yes.
                                                               16
                                                                         A. What's your question?
                                                               17
17
         Q. -- operated by Beach Garage?
                                                                         Q. Okay. My question is --
                                                                             MR. BUCKNER: Allan?
18
         A. Yes. I sold that property.
                                                               18
                                                               19
                                                                             MR. REISS: Yeah.
19
          Q. Okay. And do you recall that the reason you
   sold it was they weren't going to let you do towing of
                                                               20
                                                                             MR. BUCKNER: Who is that?
                                                               21
    vehicles to there anymore?
                                                                             MR. ANDRADE: This is Ralph.
22
             MR. REISS: Form, leading, predicate.
                                                                22
                                                                             MR. BUCKNER: Who is that? I'm sorry, I didn't
23
             THE WITNESS: No. I did -- I did towing there
                                                               23
                                                                    hear you.
24 until I sold it --
                                                                24
                                                                             MR. REISS: Ralph.
25 ///
                                                                25
                                                                             MR. BUCKNER: Oh, Ralph Andrade. Okay. Sorry.
```

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November 10, 2017
                                                                                                           46 to 49
                                                   Page 46
                                                                                                                  Page 48
1 That's fine.
                                                                1 the 200 is where the cars are stored."
2 BY MR. BUCKNER:
                                                                            Is it your recollection that in 1980 when this
3
         Q. So it says, Mr. Festa -- well, it purports that
                                                                3 purports to have taken place, this hearing, you were
 4 you said to the commission, "They are not in there. If
                                                                   storing cars at 1349 Dade Boulevard only on the back 30
5 you'd look at this piece of property is 135 by 200, and
                                                                   to 40 feet of the property?
6 the last 30 to 40 feet of the 200 is where the cars are
                                                                        A. I don't know.
7
    stored."
                                                                            MR. REISS: Objection to form, misleading,
8
             Is it your recollection that at 1349 Dade
                                                                   mischaracterizes the witness' testimony, leading,
                                                               8
9 Boulevard, that's how you were storing cars at this time
                                                               9
                                                                   predicate.
    in 1980, the last 30 to 40 feet of the property?
                                                               10
10
                                                                            You can answer the question.
11
             MR. REISS: Objection to the form -- objection
                                                               11
                                                                            THE WITNESS: I had a place -- I had a place on
   to form, leading, predicate, mischaracterizes the
                                                               12
                                                                   8020 North Miami Avenue that we -- we put some cars.
12
13
    witness' testimony.
                                                               13 BY MR. BUCKNER:
                                                              14
14
             You can answer the question.
                                                                        Q. Okay. I want to talk just now about 1349 Dade
15
             THE WITNESS: What's he saying?
                                                               15 Boulevard.
    BY MR. BUCKNER:
                                                              16
                                                                        A. Right.
16
17
         Q. You can answer it. You don't have to --
                                                              17
                                                                        Q. I understand you had other places.
             MS. RIBERO-AYALA: Answer whatever you
                                                              18
18
                                                                        A. Yes.
    remember, if you remember.
                                                               19
19
                                                                        Q. I just want to talk about 1349 Dade. Okay?
2.0
             THE WITNESS: I don't remember this whole
                                                               2.0
                                                                        A. Okav.
21 meeting, to tell you the truth.
                                                               21
                                                                        Q. So the statement you made to the commission in
22 BY MR. BUCKNER:
                                                               22 1980 was that you were storing cars in the last 30 to 40
23
         Q. Right. Yeah, I understand you don't remember
                                                               23
                                                                   feet of the 200 feet of the property at 1349 Dade
   the meeting. I am actually trying -- I am actually
                                                                  Boulevard.
                                                               24
25 trying to get at the stuff that was said at the meeting.
                                                               25
                                                                        A. Yeah.
                                                   Page 47
                                                                                                                  Page 49
         A. At that time -- at that time I was the only --
                                                                        Q. What I am asking you is is it your recollection
2 I think I was the only one that was towing. Maybe
                                                                   that as of that time in 1980, you were storing cars at
3 Fernandez was doing AAA because I gave up AAA to do the
                                                                   1349 Dade Boulevard only on the back 30 to 40 feet of
 4 towing, and I had spots all over -- I had cars all over
                                                                   the property?
    the place. I used my place, I used -- I didn't have --
                                                                            MR. REISS: Objection to the form, misleading,
6 I had a place down on 5th Street. I don't remember when
                                                                   predicate, mischaracterizing the witness' testimony,
                                                               7
    it was Mancraft or Mancraft something owned the
                                                                   leading.
    property. There were -- they installed, they went into
                                                               8
                                                                            You can answer the question.
9
    a hotel and did commercial stuff for them, you know.
                                                               9
                                                                            MS. RIBERO-AYALA: Go ahead.
10
             But I don't remember. I don't remember -- I
                                                               10
                                                                            THE WITNESS: What's that?
11 don't even remember -- I don't even remember going to the
                                                              11
                                                                            MS. RIBERO-AYALA: Go ahead. Go ahead.
12 board, to tell you the truth.
                                                               12
                                                                            THE WITNESS: If I could remember when I sold
13
         Q. No. I understand. I am trying to ask you
                                                                   the property on 1349 -- I mean on Collins Avenue, I
14
   something more specific and, again, only if you
                                                                   could tell -- but I don't remember.
```

specifically where you said here to the board, "If you'd 17 look at this piece of property, the 135 by 200" --18 A. We are talking about Collins Avenue. Q. No. 1349 Dade Boulevard. 19 20 A. Oh, oh, 13 -- yeah, go ahead. 21 Q. Okay. "If you'd look at this piece of property 22 is 135 by 200." Is that your recollection about roughly 23 the size --24 A. I don't know. 25 Q. Okay. It says, "And the last 30 to 40 feet of

remember, not so much about this meeting but

15

15 BY MR. BUCKNER: Q. Okay. A. I could figure what I had to do to put the cars. I think they took some to Miami, because I had a piece of property -- I still had a piece of property up there, but I don't remember -- in fact, I don't even remember the meeting, to tell you the truth. Q. No. I understand, and, like I said, we're going to -- you can remember what you can remember. I am not asking you to --A. I am trying to.

16

17

22

Vincent Festa November 10, 2017

	November		, 2017 50 to 53
	Page 50		Page 52
1	Q. Let me ask you some more general stuff maybe	1	Vincent J. Festa, I think.
2	first. Let's just talk about 1349 Dade Boulevard for	2	Q. Okay. And at some point then you transferred
3	the moment.	3	1349 Dade Boulevard into the Festa Trust?
4	A. Okay.	4	A. Yeah, when I retired, yes.
5	Q. Who owns that property today?	5	Q. Okay. So and I think you told me you
6	A. Me.	6	retired in 1983?
7	Q. Okay. You own it	7	A. Yes.
8	A. The trust.	8	Q. Right. Okay. So from sometime in the '70s
9	O. The trust does. So this is the Festa Trust?	9	until 1983, you owned 1349 Dade Boulevard in your own
10	A. Festa Trust.	10	name?
11	O. The Festa Trust.	11	A. Yes.
12	Okay. And that's the other that's the Festa	12	Q. And then in 1983 you transferred 1349 Dade
13	Trust that's one of the defendants in this case, is that	13	Boulevard into the Festa Trust?
14	correct?	14	A. All my properties.
15	A. Yes.	15	Q. All your properties including 1349 Dade
16	MR. REISS: Objection; calls for a legal	16	Boulevard?
17	conclusion, predicate, form.	17	A. Oh, yeah.
18	THE WITNESS: I guess it is because that's the	18	Q. Okay. And 1349 Dade Boulevard has remained in
19	name of the property, Festa Trust.	19	the Festa Trust since 1983 to the present?
20	BY MR. BUCKNER:	20	A. With all the other properties, yes.
21	Q. Okay. So the Festa Trust today owns 1349 Dade	21	Q. Okay. In 19 whenever it was in the 1970s
22	Boulevard, correct?	22	well, let me step back. Strike that.
23	A. Yes.	23	Did you start Beach Garage, or did you buy that
24	Q. How long has the Festa Trust owned 1349 Dade	24	company from someone else?
25	Boulevard?	25	A. No. I started it.
1		1	
1	Page 51	1	_
1	A. Maybe 15, 16 years. I don't know the date. I	1	Q. Okay.
2	A. Maybe 15, 16 years. I don't know the date. I could find out.	2	Q. Okay. A. I started, like I told you, I started with the
2 3	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely.	2 3	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we
2 3 4	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade	2 3 4	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police
2 3 4 5	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it?	2 3	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job
2 3 4 5 6	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that?	2 3 4 5 6	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue,
2 3 4 5 6 7	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it?	2 3 4 5 6	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job
2 3 4 5 6	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that?	2 3 4 5 6	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So
2 3 4 5 6 7	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade	2 3 4 5 6	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them.
2 3 4 5 6 7 8	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well	2 3 4 5 6 7 8	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So
2 3 4 5 6 7 8	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that?	2 3 4 5 6 7 8	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know
2 3 4 5 6 7 8 9	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well	2 3 4 5 6 7 8 9	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of
2 3 4 5 6 7 8 9 10	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo.	2 3 4 5 6 7 8 9 10	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there.
2 3 4 5 6 7 8 9 10 11 12	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in	2 3 4 5 6 7 8 9 10 11 12	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to
2 3 4 5 6 7 8 9 10 11 12	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct?	2 3 4 5 6 7 8 9 10 11 12 13	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have
2 3 4 5 6 7 8 9 10 11 12 13 14	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79?	2 3 4 5 6 7 8 9 10 11 12 13	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79? Q. I think it was '75.	2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at what point did you well, let me step back.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79? Q. I think it was '75. A. Okay.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at what point did you well, let me step back. Does Beach Garage at some time become at
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79? Q. I think it was '75. A. Okay. Q. Whatever you remember.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at what point did you well, let me step back. Does Beach Garage at some time become at some point in time become Beach Towing?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79? Q. I think it was '75. A. Okay. Q. Whatever you remember. A. I don't I thought it was '79. I don't remember.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at what point did you well, let me step back. Does Beach Garage at some time become at some point in time become Beach Towing? MR. REISS: Form, predicate. THE WITNESS: I don't know if it was when Mark
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Maybe 15, 16 years. I don't know the date. I could find out. Q. That's okay. I don't need to know precisely. Before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. What's that? Q. I said before the Festa Trust owned 1349 Dade Boulevard, who owned it? A. Gulf the Citgo station was that? Q. Well A. I bought it from Citgo. Q. You bought it from Citgo. So that was about in 1975, correct? A. Was it '79? Q. I think it was '75. A. Okay. Q. Whatever you remember. A. I don't I thought it was '79. I don't remember. Q. Okay. Sometime in the 1970s you bought 1349	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. A. I started, like I told you, I started with the one on Collins Avenue, which was the Gulf station, we started with the AAA and did towing, and then the police department didn't have anybody to tow. So I got the job because I was there on the Collins on Collins Avenue, and we started doing towing for them. Q. Okay. So A. And there was no one else. I don't know somebody had to come from out of state. I don't know of anybody else that was doing towing there. Q. Okay. So one of the so I don't want to cover ground we have already covered because we have covered this, but with regard to Beach Garage, so at what point did you well, let me step back. Does Beach Garage at some time become at some point in time become Beach Towing? MR. REISS: Form, predicate. THE WITNESS: I don't know if it was when Mark Festa came. I don't know if he changed it. I am not
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	Vincent Festa				
	November	10), 2017 54 to 57		
	Page 54		Page 56		
1	it was in the business of being a repair garage, in	1	did towing, we did repairs mostly for our own trucks		
2	part, correct?	2	too. I don't remember selling gas there, but nothing is		
3	MS. RIBERO-AYALA: Object to form.	3	impossible.		
4	MR. REISS: Form, leading, predicate.	4	BY MR. BUCKNER:		
5	THE WITNESS: Ask the question again.	5	Q. Okay. And I'm not suggesting you did, by the		
6	BY MR. BUCKNER:	6	way. I am asking you. But just to be clear, as you sit		
7	Q. I said it was called Beach Garage because it	7	here today, you don't recall ever selling gasoline at		
8	was in the business of repairing cars, correct?	8	1349 Dade Boulevard, correct?		
9	A. We did some of that.	9	A. No, no.		
	MR. REISS: Form, leading, predicate.	10	Q. Okay. Do you recall that the tanks were, the		
10					
11	BY MR. BUCKNER:	11	underground tanks were removed from 1349 Dade		
12	Q. So was the answer to the question yes?	12	A. Yes.		
13	A. Yes, we did.	13	Q Boulevard?		
14	Q. And	14	A. Yeah. I wanted them out of there in case they,		
15	A. We did mostly for our own trucks really.	15	you know I wanted them out.		
16	Q. Okay. So Beach Garage obviously was in the	16	Q. Right. And is that because you were worried		
17	business of being a tow truck company, correct, in part,	17	about them leaking?		
18	is that right?	18	A. Just in case, yeah.		
19	A. Yes.	19	Q. Do you recall roughly, and, again, you may not,		
20	Q. And it was also a garage company, correct?	20	but do you recall roughly when the underground tanks		
21	MR. REISS: Objection to form, predicate,	21	were removed from the 1349 Dade Boulevard?		
22	misleading, leading.	22	A. If I am guessing but I think I don't		
23	You can answer the question.	23	think I was there. I think I was in California at that		
24	THE WITNESS: What do I do after that?	24	time.		
25	MS. RIBERO-AYALA: You can answer.	25	Q. Okay. We'll go through some more documents,		
	Page 55		Page 57		
1	BY MR. BUCKNER:	1	we'll see.		
2	Q. You can answer. He is just making objections	2	So one of the other businesses strike that.		
3	for the record. Don't worry I mean, I am not telling	3	One of the other uses of the property at 1349		
4	you to ignore him, but you can basically ignore him.	4	Dade Boulevard was a storage lot for cars, correct?		
5	It's just for the record. He's not talking to you; he's	5	A. Yes.		
6	talking to me.	6	MS. RIBERO-AYALA: Object to form.		
7	MS. RIBERO-AYALA: And for the record, I am	7	MR. REISS: Form.		
8	going to adopt all of Mr. Reiss' objections.	8	THE WITNESS: You mean storage? We didn't		
9	THE WITNESS: Okay.	9	store cars. We what we if you use the word		
10	BY MR. BUCKNER:	10	loosely, we stored the towed cars there. That's all.		
11	Q. So Beach Garage was also a garage company,	11	BY MR. BUCKNER:		
12	correct? It was repairing cars?	12	Q. Okay.		
13	A. Yes	13	A. We didn't have people come in and store their		
14	MR. REISS: Predicate, leading, form	14	car there.		
15	THE WITNESS: it was a garage	15	Q. Got it.		
16	MR. REISS: mischaracterizing the witness'	16	A. It was just towed cars that we towed.		
17	to at impart	17	O Cot it Olress And I know I called this before		

17 testimony. Q. Got it. Okay. And I know I asked this before, 17 18 MS. RIBERO-AYALA: Wait. Hang on. 18 and I am not sure I got -- I am not sure you and I got 19 MR. REISS: You can answer the question. 19 to the same place. I want to make sure I did. 20 MS. RIBERO-AYALA: Wait. As you sit here now, do you know at what point THE WITNESS: Oh, I'm sorry. 21 in time the name of the business changes from Beach 21 22 BY MR. BUCKNER: 22 Garage to Beach Towing? A. No, I don't, but I left for California in 1983, 23 Q. Go ahead. 24 MS. RIBERO-AYALA: Okay. Go ahead. and maybe Mark, my nephew, may have done it. I don't

THE WITNESS: We did -- we had a garage. We

25

25 know. I don't remember.

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November 10, 2017
                                                                                                           58 to 61
                                                   Page 58
                                                                                                                  Page 60
                                                                        A. I still own it.
         Q. Okay. Let me talk to you a little about that
1
                                                                1
2
    transition in 1983 because that may help me a little.
                                                                2
                                                                            MR. REISS: Form.
3
    When you retired -- you said you -- strike that.
                                                                3 BY MR. BUCKNER:
 4
             You said you retired in 1983, correct?
                                                                         Q. Okay. I want to make sure I am clear on this.
5
         A. I retired to California, but I was still the
                                                                5
                                                                   I am not talking about the property at 1349 Dade
     owner of the property.
                                                                    Boulevard; I am talking about the company.
 6
7
                                                                7
                                                                         A. Well --
         Q. Okay. And when you say "the property," 1349
    Dade Boulevard?
                                                                8
                                                                            MR. REISS: Form, predicate, argumentative,
8
9
                                                               9
         A. Right.
                                                                   misleading, confusing.
         Q. Okay.
                                                                            You can answer if you understand the question.
10
                                                               10
         A. Yes.
                                                                   BY MR. BUCKNER:
11
                                                               11
12
         Q. When you retired in 1983, did you still have
                                                               12
                                                                         Q. Okay. 1349 Dade Boulevard we've established
                                                                   the Festa Trust still owns that property, correct?
13 any kind of an ownership stake in Beach Garage or Beach
                                                               13
14
    Towing?
                                                               14
                                                                         A. Yes.
15
         A. Well -- well, Beach Garage is Beach Towing.
                                                               15
                                                                         Q. Okay. So put aside the property for a second.
16
         Q. Okay. Well, then if I refer to it as Beach
                                                               16
                                                                        A. Right.
    Towing, we'll know I'm referring to both Beach Garage
17
                                                               17
                                                                         Q. I just want to talk about the company that you
    and Beach Towing --
                                                                   knew as Beach Garage. Okay?
18
19
                                                               19
         A. Okay. Fine.
                                                                         A. Right.
2.0
         Q. -- is that okay with you?
                                                               20
                                                                         Q. Okay. Do you still own any part of Beach
21
         A. Sure.
                                                               21
                                                                   Garage?
                                                               22
22
         Q. Yeah, I don't want to confuse you. That's
                                                                        A. Yeah, I am the owner.
    the --
23
                                                               23
                                                                         O. You are still the owner of Beach Garage?
24
                                                                        A. Uh-huh.
         A. Well, I am confused about the Beach Garage,
                                                               24
25 Beach Towing.
                                                               25
                                                                         Q. Are there any other owners of Beach Garage?
                                                   Page 59
                                                                                                                  Page 61
         Q. Okay. Are you more comfortable referring to it
                                                                         A. Well, I took partners. What had happened was
    as Beach Garage?
                                                                   when I was retiring, I -- Mark came to me from New York
3
         A. I don't know what came first, to tell you the
                                                                   and wanted a job. So I said, of course, I will give you
 4
    truth. Was it Beach Garage first or was it Beach
                                                                    a job.
     Towing? I don't remember.
                                                                             So when I wanted to retire maybe a year later or
 6
         Q. Okay. How about this: When you operated it,
                                                                  less, I don't remember, I said okay. Here's what we will
7
    do you remember operating it as Beach Garage?
                                                                    do. I am the owner of Beach Garage, Beach Towing,
8
         A. I don't remember.
                                                                   whatever you want to say, and I will -- Mark, you will
9
         Q. Okay. I will make it even easier. I will
                                                                    get 24 percent of the business, Pete Knight, who worked
    refer to it as Beach Garage, and we will both know that
                                                                    for me as a mechanic for many, many years -- I am closing
```

- we are talking about the three operations that we talked 12 about before on Collins, Alton and Dade Boulevard. 13 A. Okay. 14 Q. We are clear on that? 15 A. Yes. 16 Q. Perfect. Okay.
- MR. REISS: Objection to the form. BY MR. BUCKNER: Q. When you retired in 1983 to California, did you retain any ownership interest in Beach Garage? A. I was the owner. MR. REISS: Form. BY MR. BUCKNER: 23 Q. Okay. But when you retired, did you continue to own Beach Garage?

17

18

19

20

21

22

24

my eyes because I can think better -- and I said I want to give Pete 24 percent of the business, and I -- we used a fellow that was -- I am trying to remember, I can't 14 remember his name, but it was -- he used to do a lot of towing -- Morejon, his last name was Morejon. I can't remember his first name. And he wanted Morejon to -- to do the towing with him. I said okay. You are going to run it. So you do what you want. Okay. Three months later, four months later they caught him, Morejon, the towing, stealing, and they bought him out. They had to pay him 12,000 or 14,000 in those days, I don't remember, they had to pay him. Pete Knight passed away, and so that left just

17

18

19

23

24

me and Mark.

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Page 62
                                                                                                                   Page 64
             Now, am I taking too long?
                                                                1 doing over here? Okay. So he says okay. Why don't we
1
2
          Q. No. You're okay.
                                                                    just take both our names off, but we are still the
3
          A. Okay. 12 -- 12 -- 24 percent, 24 percent, 24
                                                                3 owners. We are still the owners, but we are taking our
    percent and I had the difference. They were supposed to
                                                                4 name off the property so we don't, you know, after the
                                                                5 big lawsuit that he lost because of the -- one of the
5
    give me $15,000 whenever he made some money, there is no
    pressure, whenever you make it, to become a partner. It
                                                                    drivers. I said okay. That's a good idea. We will do
7
    was just cheaper enough to get into a business at 15,000
                                                                    that.
    as long as you are loyal, which I found out he wasn't.
                                                                8
                                                                             And that's what -- that's the -- that's the best
9
                                                                9
                                                                   I can think of.
             And so here we are, we got Morejon was caught
    stealing. They got rid of him, had to pay him off. Pete
                                                                    BY MR. BUCKNER:
10
                                                               10
    Knight died. And now it was just Mark and me.
11
                                                                11
                                                                         Q. Okay. So Beach Garage becomes Beach Towing.
12
          Q. And just so I am clear, Mark is Mark Festa?
                                                                    Today your understanding is that you and Mark Festa are
         A. Mark Festa.
13
                                                                    the owners of that company, correct?
          Q. Okay. And that -- what is the ownership of
                                                                             MS. RIBERO-AYALA: Objection; leading.
14
                                                               14
    Beach Towing -- I am sorry, strike that.
15
                                                               15
                                                                             MR. REISS: Objection to the form,
16
             What is the ownership of what you -- the company
                                                                    mischaracterizes the witness' testimony, predicate --
                                                               16
                                                               17
                                                                             THE WITNESS: I'm still --
17
    you know as Beach Garage today?
                                                                             MR. REISS: -- confusing, leading.
         A. The ownership?
                                                               18
18
19
          O. Yes.
                                                               19
                                                                             You can answer the question.
2.0
             MR. REISS: Objection to the form,
                                                               20
                                                                             THE WITNESS: I'm still supposed to be -- I'm
21 mischaracterizes the witness' testimony, misleading,
                                                                   still supposed to be the top owner because it was my
                                                                21
22
    predicate.
                                                                22 business. They got in there for nothing, no price, no
23
             You can answer the question.
                                                                    nothing. They didn't buy it. They were supposed to pay
24
             THE WITNESS: What do I do?
                                                                   me. They never paid me. I never got a penny from any
25
             MS. RIBERO-AYALA: You can answer.
                                                                   one of them, but I can see why I didn't get a penny from
                                                   Page 63
                                                                                                                   Page 65
             THE WITNESS: Okay. Let me have it again.
                                                                   Pete Knight because he died, and he was a terrific guy.
    BY MR. BUCKNER:
                                                                   So I don't care. But the guy that stole -- stole from
3
          Q. Sure. I said what is your understanding of the
                                                                    them when I wasn't there, I never got anything from him
 4
    ownership of Beach Garage today?
                                                                    either. So -- I never got 15,000 from Mark either, but
5
          A. Beach Garage? Okay.
                                                                    I am not holding it against him.
 6
             MR. REISS: Objection to the form, predicate,
                                                                             So that's how I answer that.
7
     confusing.
                                                                    BY MR. BUCKNER:
8
             You can answer the question.
                                                                         Q. Okay. I want to go through some more of this
9
             THE WITNESS: I am the property owner.
                                                                9
                                                                    again to see how much you remember.
    BY MR. BUCKNER:
                                                               10
                                                                         A. Go ahead.
10
11
          Q. Right.
                                                               11
                                                                         Q. We have been going, like, an hour. Do you want
12
          A. Oh, property owner. Okay. You want to keep
                                                               12
                                                                   to take a break?
                                                                         A. No --
    that separate from Beach Garage?
                                                               13
14
          Q. Right. We have already established that you
                                                               14
                                                                         Q. You're okay?
15
    own 1349 Dade Boulevard through the trust. I am just
                                                                         A. -- while I am thinking. I get lapse. You
16
     talking about the business of --
                                                                    know, I am 90 years old. So I get lapse once in awhile.
                                                                         Q. You are doing fine. You remember more -- I
                                                               17
17
         A. Okay. All right.
                                                                    can't remember what I did yesterday. You are doing
18
             MR. REISS: Form.
             THE WITNESS: About ten years ago, I am
                                                               19
19
                                                                   better than I.
20
    guessing, ten years ago one of Mark's workers, drivers,
                                                               20
                                                                             Do you recall -- I know you can't recall this
    got into a fight with somebody that wanted to pick up
                                                                    commission meeting --
    their car, didn't want to pay for the towing and
                                                               22
                                                                         A. No, I really can't.
   threatened to fight the guy. The guy hit him or
                                                               23
                                                                         Q. -- we are talking about Exhibit 2.
    something, and the thing went to a lawsuit. Okay?
                                                                24
                                                                         A. I really can't.
25
             After the lawsuit, I said Mark, what are we
                                                                         Q. Do you recall whether there were any conditions
```

```
Page 66
                                                                                                                   Page 68
1 that were imposed on Beach Towing with regard to the
                                                                         A. Yes.
                                                                1
    physical facility at 1349 Dade Boulevard?
                                                                         Q. -- do you have any recollection of limiting the
         A. No.
3
                                                                3 storage of cars at 1349 Dade Boulevard to just a certain
 4
             MR. REISS: Form.
                                                                   part of the property at any point in time?
5 BY MR. BUCKNER:
                                                                         A. No, because that was the main business.
6
         Q. So, for example, if there is a note in here
                                                                6
                                                                             MR. REISS: Form.
    that Beach Towing was required to construct a masonry
                                                                   BY MR. BUCKNER:
7
    wall on the property, do you have any recollection of
                                                                         Q. Okay. Do you recall as a result of this
                                                                8
9
                                                                9
                                                                   commission meeting or any other basis a requirement that
    that?
10
         A. In what year?
                                                                   you put a certain amount of landscaping on the property
11
             MR. REISS: Form, predicate.
                                                                   at 1349 Dade Boulevard?
             THE WITNESS: When I was talking to them?
12
                                                               12
                                                                         A. Landscaping?
13 BY MR. BUCKNER:
                                                               13
                                                                         Q. Yeah.
                                                               14
14
         Q. 1980, yeah. Does that ring a bell?
                                                                             MR. REISS: Form, predicate.
                                                               15
15
         A. No.
                                                                             THE WITNESS: No. Is that like a wall, we put
16
             MR. REISS: Form, predicate. Form, predicate.
                                                               16 a wall?
17
             THE WITNESS: No, I don't remember that.
                                                               17 BY MR. BUCKNER:
18 BY MR. BUCKNER:
                                                               18
                                                                         Q. Well, I asked you about a wall before. Do you
19
         Q. Okay. Do you remember a condition being
                                                                    remember having to put up a wall?
  imposed by the city commission that you could only store
                                                                             MR. REISS: Form.
                                                               20
21 cars on a certain part of the 1349 property?
                                                               21
                                                                             THE WITNESS: No, I don't remember that. I
                                                                   just remember that we had a light up there that the city
22
         A. Definitely not.
23
         Q. Okay.
                                                                   wanted down, and we took it down, but I don't
                                                                  remember -- I don't remember if we had a wall or did
24
             MR. REISS: Form, predicate, leading.
25 ///
                                                               25 they have? I don't remember. They don't have a wall or
                                                   Page 67
                                                                                                                   Page 69
    BY MR. BUCKNER:
                                                                   we had, we put up the wall, I don't remember that.
 2
         Q. Doesn't ring a bell?
                                                                   BY MR. BUCKNER:
         A. No, because I was the only one that was doing
                                                                         Q. Okay.
 4
    the towing at the time until -- what's the name of the
                                                                         A. On Dade Boulevard I am talking about.
5
     towing?
                                                                         O. Let me do this: --
 6
         Q. Tremont.
                                                                         A. Gee, I wish I was younger, I could answer it
7
         A. I keep forgetting.
                                                                7
                                                                   better.
8
         Q. That's okay.
                                                                8
                                                                         Q. You're fine, really.
9
         A. What is it?
                                                                9
                                                                             MS. RIBERO-AYALA: You're doing better than I
10
         O. Tremont.
                                                                   would have done.
11
         A. Tremont came in and started doing some -- took
                                                               11
                                                                             THE WITNESS: Get out of here.
12 some of the load.
                                                               12
                                                                             MS. RIBERO-AYALA: I promise.
13
             Like I say, we were towing cars all over the
                                                               13
                                                                             MR. BUCKNER: Allan, I am going to mark as
14
    place, and there was nobody else.
                                                                   Exhibit 3 an aerial photograph of 1349 Dade Boulevard.
15
         Q. Okay. So you don't have any recollection, as
                                                                   It should be on your -- I mean, you know what it looks
   you sit here today, of reducing the footprint of the
                                                               16 like but --
    cars stored on the 1349 Dade Boulevard property?
                                                               17
17
                                                                             MR. REISS: I have two aerial photos --
18
         A. Write that down.
                                                               18
                                                                             MR. BUCKNER: No, no, no, no, no. I am not
         Q. Sure.
19
                                                                   talking about aerial photos of the whole area. There is
20
             MR. REISS: Form, predicate.
                                                                   a close-up just of 1349 Dade Boulevard.
21
             MR. BUCKNER: I am going to restate it.
                                                               21
                                                                             (Exhibit No. 3 marked.)
22
             MR. REISS: Form, predicate.
                                                               22
                                                                             THE WITNESS: This is Dade Boulevard, isn't it?
23
             MR. BUCKNER: Allan, I am going to restate it.
                                                                             MS. RIBERO-AYALA: Well, let's go on what you
24 BY MR. BUCKNER:
                                                               24 recognize, yeah.
25
                                                               25
                                                                   ///
         Q. I said as you sit here today --
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Vincent Festa November 10, 2017

Page 70 Page 72 1 BY MR. BUCKNER: 1 drawings. So I would object. 2 Q. I don't know either, honestly. I am not And I think that you would be well within your 3 familiar enough with Miami Beach to tell you that I know 3 right, Mr. Festa, if you don't want to not to have to which street is which. make drawings, circle things or write anything. You're 5 A. It has to be Dade Boulevard. This is Bay Road. 5 there to answer questions only. So that was -- yeah. This went into -- yeah. BY MR. BUCKNER: 7 7 Q. Okay. Do you recognize Exhibit 3? Q. Would you -- would you take that pen, sir, and A. Do I recognize it? you just marked where you -- the wall you were talking 8 9 MR. REISS: Objection to form. 9 about a moment ago, would you just put your initials 10 THE WITNESS: Yeah, I quess I do. next to that for me just so we know --11 It's been 30 years since I've been there. 11 MR. REISS: Same objection. BY MR. BUCKNER: THE WITNESS: Okay. Like I say, I think. 12 12 13 13 BY MR. BUCKNER: Q. Oh, so you -- have you not been back to 1349 Dade Boulevard since you retired? 14 14 Q. Okay. No. That's all I am asking. You think --15 A. Once. My son had a motorcycle convention in --15 where was it? It's past Miami. Where is that --16 A. Yeah, because we used to have a big -- a Citgo 16 17 Daytona Beach. 17 sign up here that went real high. So we finally had to Q. Daytona. Okay. get rid of that right here. 18 19 A. That was about 30 something years ago. That's 19 Q. And do you recall why you got rid of it? 2.0 the last time I was there. A. Well, it was a nuisance because of -- the city 20 21 Q. That was the last time you were at 1349 Dade didn't want it and we didn't have -- what do you call 21 it -- to comply with the city, we had to take it -- we 22 Boulevard? 23 A. I guess that -- I guess that that's Dade -- if 23 took it down. 24 I remember, that's Dade Boulevard, and this is the 24 Q. Okay. 25 street I'm on. 25 A. But I think Mark did that, had that done. Page 71 Page 73 Do you have a question on it? Q. And was it also the case that you took it down MR. REISS: Objection to -- objection to form. because you weren't selling gasoline there? There is no question pending. Move to strike. MR. REISS: Objection to form, leading, 4 BY MR. BUCKNER: predicate. Q. I gave you this because I wanted to see if this THE WITNESS: I don't remember selling gas at 6 helped refresh your recollection about any of the things 6 all here. That's what I am saying. 7 I am asking you about. BY MR. BUCKNER: Looking at this, do you recall ever Q. Okay. That's fine. 9 constructing any kind of a masonry wall on this property MS. RIBERO-AYALA: And I am objecting to lack 10 anywhere? of predicate on this photo because we don't know when it 11 MR. REISS: Objection to form, predicate, 11 was taken or how it was taken or who took it or the time 12 mischaracterizing the witness' testimony. He just 12 period. testified he hasn't been there in 30 years. BY MR. BUCKNER: 14 THE WITNESS: I'm not sure, but I think we are 14 Q. Let me ask you this, Mr. Festa: Looking at 15 the ones that put this wall here. 15 Exhibit 3, that photo, do you recognize it? 16 BY MR. BUCKNER: 16 MR. REISS: Form. 17 THE WITNESS: I could -- I could say yes, I 17 Q. Okay. Would you do me a favor? I'm going to recognize it, yeah. I recognize the roof. 18 give you my pen --A. It's on Dade -- on Dade Boulevard? 19 BY MR. BUCKNER: 19 20 Q. -- would you mark -- you just indicated with 20 Q. Okay. And what do you recognize that to be a 21 your hand. Would you mark what wall you are talking photograph of?

22

23

24

25

A. What's that?

BY MR. BUCKNER:

MR. REISS: Form, predicate.

Q. What do you recognize that to be a photograph

22

23

about?

MR. REISS: I object to the witness writing

24 anything. I think under the Rules of Civil Procedure,

25 this witness is there to answer questions and not make

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Page 74
                                                                                                                  Page 76
1 of?
                                                                1 picture.
2
         A. Okay. I --
                                                                2 BY MR. BUCKNER:
             MR. REISS: Form, predicate.
                                                                        Q. So in terms of, like -- if I -- well, strike
 3
    BY MR. BUCKNER:
                                                               4 that.
                                                               5
5
         Q. I don't mean specifically. I mean just
                                                                            So if I asked you what you did to gather
    generally, what is that a photograph of?
                                                               6 documents related to this lawsuit, have you done
7
         A. 1349 Dade Boulevard.
                                                                  anything to look for or gather documents related to this
8
             MR. REISS: Form, predicate.
                                                               8
                                                                   lawsuit?
9 BY MR. BUCKNER:
                                                               9
                                                                        A. No.
         Q. Let me ask you a little, just before we go into
                                                               10
10
                                                                            MR. REISS: Form, predicate, hypothetical.
11 more of these documents; I don't know how much they will
                                                               11
                                                                            You can answer.
                                                                            THE WITNESS: No, I didn't.
12 help your memory or not. So we will see, but I want to
                                                               12
    ask you some general things.
                                                               13 BY MR. BUCKNER:
13
             Tell me, what did you do to prepare for your
14
                                                               14
                                                                        Q. Okay. Have you talked to your -- well, strike
    deposition today?
                                                               15
                                                                   that.
15
16
         A. What's that?
                                                               16
                                                                            Vincent -- strike that.
17
         Q. What did you do to prepare for your deposition?
                                                               17
                                                                            Mark Festa is your nephew, correct?
                                                               18
                                                                        A. Right.
18
         A. Nothing.
19
         Q. Did you meet with your lawyer?
                                                               19
                                                                        Q. Have you talked --
2.0
         A. I saw her yesterday. She just said we were
                                                               20
                                                                        A. My sister's son.
21 going to go ahead.
                                                               21
                                                                        Q. Your sister's son.
22
             In fact, I am confused, I will tell you. I
                                                               22
                                                                            Okay. And have you had any conversations with
23 thought she was coming to do the deposition at my house
                                                               23
                                                                   Mark Festa about this lawsuit?
                                                                        A. No. Only --
24 on -- today, and she came yesterday, and it's a good
                                                               24
                                                                            MR. REISS: Form.
25 thing I had my pants on. I was really shocked, and I
                                                               25
                                                   Page 75
                                                                                                                  Page 77
1 said I thought it was tomorrow. No, no. We're going
                                                                            THE WITNESS: -- only that he is being sued and
2 to -- the deposition is tomorrow. Well, I am not -- I am
                                                                  we are being sued. And I said how am I involved?
3 not too hip on depositions. I thought they are done the
                                                                3 And --
    same day. I'm not sure.
                                                                  BY MR. BUCKNER:
5
         Q. Okay. Did you review any documents to prepare
                                                                        Q. And what did he say?
    for today?
                                                                        A. He said well, because you are the owner.
7
         A. Did I review? No. We just talked for a
                                                                        Q. Okay. And do you understand what this lawsuit
    minute. No, I haven't.
                                                                  is about?
9
         Q. Okay. Prior to getting ready for your
                                                               9
                                                                        A. Not -- not 100 percent. I didn't ask
    deposition, did you gather any documents in response to
                                                                   questions.
11
    any request for documents in this case?
                                                               11
                                                                        Q. What is your understanding about what this
12
         A. No, because I -- I was going to say -- I was
                                                               12
                                                                  lawsuit is about?
13
    going to tell what I know.
                                                               13
                                                                        A. Well, I found out either yesterday or today
14
         Q. Right.
                                                                   something about -- and I thought that they -- see how
15
         A. And I don't -- you know, what I know I know.
                                                                   far I'm out of it. I thought they had the building up
16
   What I don't --
                                                                   already, and she told me no. It's still flat where
17
         Q. Sure. Do you have any documents related to
                                                               17
                                                                   there is -- I thought they had built the building and
    1349 Dade Boulevard or Beach Towing in your possession?
                                                                   then they were going to need some space for the -- for
                                                                   their parking, and well, she refreshed my memory. She
19
             MR. REISS: Form, predicate.
20
             THE WITNESS: No. What kind of documents?
                                                               20 said no, no. There is -- they didn't build anything.
21
    BY MR. BUCKNER:
                                                               21 So I said what is the lawsuit for?
                                                               22
22
         Q. Any kinds of documents.
                                                                            MS. RIBERO-AYALA: Right. Okay.
         A. No. I don't even --
                                                               23 BY MR. BUCKNER:
23
             MR. REISS: Form.
24
                                                               24
                                                                        Q. And I don't want you to go into -- I should
             THE WITNESS: -- I don't even have that
                                                                  have said this; it's my fault. I don't want you to tell
```

78 to 81

		_	
1	Page 78 me what you and Ms. Ayala Ribero-Ayala talked about.	1	Page 80 there.
2	Other people, fine but	2	Q. Are you thinking of Giant Motors?
3	A. Okay. Because this is my first deposition.	3	A. Giant Motors.
4	Q conversations with her no, no. It's not	4	Q. Yeah, that's a different piece of property.
5	your fault. It's my fault. It's not your fault.	5	That's
6	Let me ask	6	A. Yeah, but wasn't it adjacent to it?
7	A. I excuse you.	7	Q. It is, you are right.
8	Q. I appreciate that.	8	A. That's it. I rented that for many years.
9	You were talking about those lots being flat.	9	Q. Okay.
10	Let me ask you	10	A. And leased it.
11	A. What, the lots	11	Q. Okay. So who did you lease that property from,
12	Q. The lots being flat, so there is nothing built	12	do you recall?
13	on them. We are talking about the lot that's across the	13	A. The owner. I don't remember the name.
14	street on Purdy Avenue and Bay Road. Those are the lots	14	Q. Okay. And you leased it from him to park cars
15	you are referring to?	15	that you had towed there?
16	A. Oh, where they where the company bought	16	A. Yeah, because I had an overabundance of cars.
17	for to put their building up?	17	Q. Okay. So there wasn't enough room at 1349 Dade
18	0. Yes.	18	Boulevard, you parked it on
19	A. Yeah. What about it?	19	A. Right across the street
20	Q. Yeah. Well, you said they were still flat.	20	0 the other lot?
21	Those are the properties	21	A and then I also had the property on
22	A. Well, no. I thought they I thought they put	22	79th 8020 North Miami Avenue.
23	the building up already.	23	Q. Okay. But just talking about those pieces of
24	Q. Right. Okay.	24	property there, Giant Motors
25	A. I never got involved in that stuff, but go	25	A. That's okay. I am not going to take it.
23	ii. I lievel got ilivolved ili dide bedil / bat go	23	ii. Had b oldy. I did not going to call it.
		1	
	Page 79		Page 81
1	Page 79 ahead. So I don't know. I didn't know.	1	Page 81 (Discussion off the record.)
1 2	_	1 2	_
	ahead. So I don't know. I didn't know.		(Discussion off the record.)
2	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more	2	(Discussion off the record.) BY MR. BUCKNER:
2 3	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps.	2 3	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a
2 3 4	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here	2 3 4	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used
2 3 4 5	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay	2 3 4 5	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many
2 3 4 5 6	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road.	2 3 4 5 6	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I
2 3 4 5 6 7	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay.	2 3 4 5 6	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased
2 3 4 5 6 7 8	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property?	2 3 4 5 6 7 8	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay.
2 3 4 5 6 7 8	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop	2 3 4 5 6 7 8	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years.
2 3 4 5 6 7 8 9	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that.	2 3 4 5 6 7 8 9	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how
2 3 4 5 6 7 8 9 10 11	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay.	2 3 4 5 6 7 8 9 10	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off.
2 3 4 5 6 7 8 9 10 11 12	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that?	2 3 4 5 6 7 8 9 10 11 12	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay.
2 3 4 5 6 7 8 9 10 11 12	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop.	2 3 4 5 6 7 8 9 10 11 12 13	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that.
2 3 4 5 6 7 8 9 10 11 12 13 14	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop.	2 3 4 5 6 7 8 9 10 11 12 13 14	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties
2 3 4 5 6 7 8 9 10 11 12 13 14 15	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those	2 3 4 5 6 7 8 9 10 11 12 13 14	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street
2 3 4 5 6 7 8 9 10 11 12 13 14 15	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in the piece of property that Mark sold to them.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years. Q. Okay. Do you know how Mark Festa acquired the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in the piece of property that Mark sold to them. Q. Okay. And when you say "them," you are talking	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years. Q. Okay. Do you know how Mark Festa acquired the property over there that he acquired?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in the piece of property that Mark sold to them. Q. Okay. And when you say "them," you are talking about the three parcels we just talked about that Mark	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years. Q. Okay. Do you know how Mark Festa acquired the property over there that he acquired? A. How did he acquire it?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in the piece of property that Mark sold to them. Q. Okay. And when you say "them," you are talking about the three parcels we just talked about that Mark sold some years ago, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years. Q. Okay. Do you know how Mark Festa acquired the property over there that he acquired? A. How did he acquire it? Q. Yeah. Do you know who he bought it from?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ahead. So I don't know. I didn't know. Q. Okay. Let me ask you then, let me be even more specific perhaps. Did you ever the properties that we are here on are 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road. A. Okay. Q. Are you familiar generally with that property? A. Yeah, it used to be a what kind of a shop where they fix broken fenders and stuff like that. Q. Okay. A. What do you call that? Q. Body shop. A. Body shop. Q. Right. Okay. So did you ever own any of those properties? A. No, but I leased them. I leased one. I had so many cars that were parked there, I parked the cars in the piece of property that Mark sold to them. Q. Okay. And when you say "them," you are talking about the three parcels we just talked about that Mark sold some years ago, correct? A. Well, I don't know how many how many parcels	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	(Discussion off the record.) BY MR. BUCKNER: Q. I want to talk about those parcels for a second, the ones across the street there where you used to store cars when you had too many A. When I was there, it was an empty lot that I leased Q. Okay. A many years. Q. Got it. Do you know how A. I am turning this off. Q. That's okay. So as you sit strike that. So you never owned any of those properties across the street A. Leased it. Q. Leased it but not owned? A. Many, many years. Q. Okay. Do you know how Mark Festa acquired the property over there that he acquired? A. How did he acquire it? Q. Yeah. Do you know who he bought it from? A. Didn't acquire it. I had an option.

82 to 85

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

Vincent Festa November 10, 2017

	NOVCILIDET		•
	Page 86		Page 88
1	BY MR. BUCKNER:	1	Q. That's okay. So with the Collins Avenue
2	Q. Do you remember when you stopped operating at	2	location, I understand that you owned that location?
3	the Alton location?	3	A. I owned it, yes.
4	A. No, I don't, really.	4	Q. And there also we talked before about the
5	Q. Okay. Did Mark Festa ever have any role at the	5	filling station that you had there, right?
6	Alton location?	6	A. Right.
7	A. No.	7	Q. And you were also doing vehicle repair there,
8	Q. And okay. And then the Collins location you	8	correct?
9	did own, correct?	9	A. Yes.
10	A. I did own that.	10	Q. Do you recall when you stopped operating the
11	Q. Right.	11	Collins Avenue location?
12	MR. REISS: Form, predicate	12	A. I sold the property, I don't remember when, I
13	BY MR. BUCKNER:	13	sold the property, and they put condos up.
14	Q. And you owned it	14	Q. Okay. But you don't remember what year?
15	MR. REISS: leading.	15	A. No.
16	BY MR. BUCKNER:	16	Q. And what, if any, involvement did Mark Festa
17	Q. And you owned it through Beach Garage, correct?	17	have with that?
18	A. And I owned Beach Garage.	18	A. Nothing. He wasn't he was still in New York
19	MR. REISS: Form, predicate, leading.	19	working for my brother.
20	BY MR. BUCKNER:	20	Q. Okay. So at some point in time, you were no
21	Q. That location on Collins, did Beach Garage own	21	longer operating strike that.
22	the property, or did you own the property independently	22	At some point in time, Beach Garage was no
23	and Beach Garage just operated it?	23	longer operating at Alton or at Collins but it still had
24	A. Mark wasn't even involved.	24	1349 Dade Boulevard?
25	MR. REISS: Form, predicate.	25	A. Correct, plus 8020
	Page 87		Page 89
1	THE WITNESS: He was working for my brother in	1	MR. REISS: Form, leading, predicate.
2	New York.	2	THE WITNESS: Plus 8020 North Miami Avenue.
3	BY MR. BUCKNER:	3	BY MR. BUCKNER:
4	Q. Right. I am not I am not actually asking	4	Q. Okay. And okay. Are you still okay?
5	about Mark Festa right now; I am just asking about you.	l -	A. Sure.
6		5	11. Date.
	A. Oh, okay. And what was the question?	6	Q. You want to keep going?
7	A. Oh, okay. And what was the question? Q. At the Collins Avenue location		
7 8		6	Q. You want to keep going?
	Q. At the Collins Avenue location	6 7	Q. You want to keep going? A. Yeah, go ahead.
8	Q. At the Collins Avenue location A. Yes. Okay. What is it?	6 7 8	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles
8 9	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct?	6 7 8 9	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of
8 9 10	Q. At the Collins Avenue locationA. Yes. Okay. What is it?Q that was also part of Beach Garage, correct?A. Right.	6 7 8 9 10	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this.
8 9 10 11	 Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. 	6 7 8 9 10 11	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this?
8 9 10 11 12	 Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. 	6 7 8 9 10 11 12	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but
8 9 10 11 12 13	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER:	6 7 8 9 10 11 12 13	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going
8 9 10 11 12 13 14	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that	6 7 8 9 10 11 12 13 14	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them.
8 9 10 11 12 13 14 15	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate	6 7 8 9 10 11 12 13 14 15	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay.
8 9 10 11 12 13 14 15 16	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage?	6 7 8 9 10 11 12 13 14 15 16	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.)
8 9 10 11 12 13 14 15 16 17	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form	6 7 8 9 10 11 12 13 14 15 16 17	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the
8 9 10 11 12 13 14 15 16 17 18	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form THE WITNESS: I was Beach Garage	6 7 8 9 10 11 12 13 14 15 16 17	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the notice of his videotaped deposition, Allan.
8 9 10 11 12 13 14 15 16 17 18	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form THE WITNESS: I was Beach Garage MR. REISS: predicate.	6 7 8 9 10 11 12 13 14 15 16 17 18	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the notice of his videotaped deposition, Allan. MR. REISS: Yes.
8 9 10 11 12 13 14 15 16 17 18 19 20	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form THE WITNESS: I was Beach Garage MR. REISS: predicate. THE WITNESS: or Beach Towing. Okay? I	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the notice of his videotaped deposition, Allan. MR. REISS: Yes. BY MR. BUCKNER:
8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form THE WITNESS: I was Beach Garage MR. REISS: predicate. THE WITNESS: or Beach Towing. Okay? I owned I didn't own Collins Avenue. I owned Collins	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the notice of his videotaped deposition, Allan. MR. REISS: Yes. BY MR. BUCKNER: Q. You don't have to study it. I'm only going to
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. At the Collins Avenue location A. Yes. Okay. What is it? Q that was also part of Beach Garage, correct? A. Right. Q. Okay. MR. REISS: Leading, form, predicate. BY MR. BUCKNER: Q. Did Beach Garage own the real estate that that that was on, or did you own the real estate independently of Beach Garage? MR. REISS: Form THE WITNESS: I was Beach Garage MR. REISS: predicate. THE WITNESS: or Beach Towing. Okay? I owned I didn't own Collins Avenue. I owned Collins Avenue, and I owned Beach Garage which was on	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. You want to keep going? A. Yeah, go ahead. Q. Okay. I am going to be able to these piles look daunting, but I am not going to go through most of this. A. What's this? Q. They look daunting, these piles of paper, but we have covered some of it already. So I am not going to go through all of them. A. Okay. (Exhibit No. 4 marked.) MR. BUCKNER: I am handing the witness the notice of his videotaped deposition, Allan. MR. REISS: Yes. BY MR. BUCKNER: Q. You don't have to study it. I'm only going to ask you do you understand you are here today pursuant to

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                                                                                                           90 to 93
                                                   Page 90
                                                                                                                  Page 92
                                                                            MR. BUCKNER: No. That was a different sale
         A. Yes.
1
                                                                2 you're talking about, Susy. That was the sale to Mark.
2
         Q. If we -- Mr. Festa, if we needed you to come to
                                                                   This is the sale from Mark.
3 Miami for the trial in this case to testify, is that
    something you'd be able to do, or are you still able to
                                                                4
                                                                            MS. RIBERO-AYALA: Okay.
5
                                                                5
                                                                            MR. BUCKNER: If he does, he does. If he
    travel?
6
         A. If I -- if I -- if my health takes care -- as
                                                                   doesn't, he doesn't.
                                                                7
                                                                            MS. RIBERO-AYALA: Right.
7
    good as it is today; I have been having a rough time. I
    have prostate cancer and stuff like that --
                                                                8
                                                                   BY MR. BUCKNER:
8
9
                                                                9
         Q. I am sorry.
                                                                        Q. I'm going to -- again, what you know -- you
         A. -- but I will try to make it.
                                                                   know, only what you know, sir. It's okay if you don't
10
                                                                   recall or don't know.
11
         Q. Okay.
                                                               12
12
         A. I don't get to go first class, do I?
                                                                            Have you ever seen this warranty deed before?
             MS. RIBERO-AYALA: You should.
13
                                                               13
                                                                        A. Is this a warranty deed? No, I don't -- what
    BY MR. BUCKNER:
                                                                   is it? Lots -- is this the property that he bought?
14
15
         Q. You should. Why wouldn't you? Susy will tell
                                                               15
                                                                        Q. This is the property that Mark sold in 2003
    you all about it.
                                                                   that we were talking about before.
16
                                                               16
17
         A. I don't do that stuff.
                                                               17
                                                                        A. Okay.
             Did we do all that?
                                                               18
18
                                                                        Q. Okay.
19
         Q. We did. I told you, it's not as bad as it
                                                               19
                                                                        A. I know nothing about it.
2.0
   looks. It looks worse than it is.
                                                                        Q. Okay. And that's all I am trying to get to the
                                                               20
21
              (Exhibit No. 5 marked.)
                                                               21 bottom of, sir.
   BY MR. BUCKNER:
                                                                        A. I know nothing about it. I didn't know he
22
                                                               22
                                                               23
23
         Q. I am going to hand you, sir, Exhibit 5.
                                                                   bought anything. All I know is, like I said, I had the
         A. Do you want these back?
24
                                                                   first option on it.
25
         Q. No, no. You hang onto those. We are going to
                                                               25
                                                                        Q. Okay. Did Mark Festa ever talk to you about
                                                   Page 91
                                                                                                                  Page 93
1 eventually give them to the court reporter. They are
                                                                   selling this property when he sold it?
2 sort of like bar mitzvah gifts. You know, at the end of
                                                                        A. No. I didn't know he had it.
                                                                        Q. Okay.
    the bar mitzvah, they give you stuff. It's kind of like
     that. Yeah, not really.
                                                                        A. I thought we were still -- I thought we were
5
             Exhibit 5 is a --
                                                                   still putting our cars there.
 6
             MS. RIBERO-AYALA: I thought those gifts were
                                                                6
                                                                        Q. Okay. And when you say "our cars," you mean
7
    better.
                                                                7
                                                                   Beach Towing's cars?
8
             MR. BUCKNER: They usually are. I hope so
                                                                8
                                                                        A. Beach Towing, yeah.
9
    anyway. A good bar mitzvah they would be.
                                                                        Q. Okay. In the middle of this page there is a
10
     BY MR. BUCKNER:
                                                                   restrictive covenant that says, "This property is being
11
         Q. I am handing you Exhibit 5, sir.
                                                                   conveyed by the grantor to the grantee subject to the
12
             MR. BUCKNER: Allan, Exhibit 5 is the warranty
                                                                   grantee agreeing that the property will not be used as a
13
    deed.
                                                                   parking lot, storage yard facility or for a garage or
14
             MR. REISS: Okay.
                                                               14
                                                                   tow truck company. This covenant shall run with the
15
             THE WITNESS: Are these the same?
                                                               15
                                                                   land."
16
    BY MR. BUCKNER:
                                                               16
                                                                            Did Mark Festa ever tell you why he included
17
         Q. They are. One of them is the exhibit, and one
                                                               17
                                                                   that in this deed?
```

THE WITNESS: Is this the sale? 25

testified that he didn't know anything about this sale.

23 him being asked questions about this. He's already

Q. She gets a copy too. Like I said, it's like a

MS. RIBERO-AYALA: And I'm going to object to

18

19

20

22

is just Susy's copy.

A. Okay.

bar mitzvah.

Q. Okay.

A. I didn't know anything about the -- the sale.

A. I didn't know anything about the sale until I

Q. You are talking about somebody at Giant Motors?

think somebody at the -- what was the -- the shop next

could he buy it? I had the -- okay. Go ahead.

door told me that Mark had bought it. I said what? How

18

19

20

23

24

		_	
	Page 94		Page 96
1	Q. That was back when Mark bought it?	1	Q. Do you see there at the bottom of the page it
2	A. Yeah, I know.	2	starts, "Affirmative Defenses"?
3	Q. Okay. But in terms of when he sold it, do you	3	A. Right.
4	know anything about	4	Q. Okay. And that goes on for until page 13.
5	A. I didn't know I didn't know he bought it, I	5	I am just going to ask you a very general question about
6	didn't know he sold it.	6	these.
7	Q. Got it.	7	Other than what's written here as your
8	(Exhibit No. 6 marked.)	8	affirmative defenses in this case, do you have any
9	MR. BUCKNER: Exhibit 6, Allan, is Mr. Festa	9	information beyond what's on this document?
10	and the Festa Trust Answer and Affirmative Defenses.	10	A. I know nothing about it.
11	MR. REISS: Thank you.	11	MR. REISS: Form, calls for a legal conclusion,
12	MR. BUCKNER: Uh-huh.	12	predicate.
13	THE WITNESS: What is this?	13	You can answer.
14	BY MR. BUCKNER:	14	(Discussion off the record.)
15	Q. I am going to ask you. Do you recognize	15	MS. RIBERO-AYALA: I think we are about ready
16	Exhibit 6?	16	for a restroom break.
17	THE WITNESS: What is this?	17	MR. BUCKNER: No, no. Absolutely. No. I kept
18	(Discussion off the record.)	18	going because he wanted to keep going.
19	THE WITNESS: I don't know what it is.	19	Let's take a break.
20	BY MR. BUCKNER:	20	THE WITNESS: I know. I just wanted to go to
21	Q. You don't recognize Exhibit 6, Mr. Festa?	21	the little boys room.
22	A. No.	22	THE VIDEOGRAPHER: We are off the record at
23	Q. Okay. So Exhibit 6 is entitled, "Defendant	23	11:45 a.m.
24	Vincent J. Festa and the Festa Trust's Answer and	24	(Recess.)
25	Affirmative Defenses to Second Amended Complaint."	25	THE VIDEOGRAPHER: We are back on the record at
_			
	Page 95		Page 97
1	Page 95 Mr. Festa, do you recall ever reviewing this	1	Page 97 12:08 p.m.
1 2		1 2	_
	Mr. Festa, do you recall ever reviewing this		12:08 p.m.
2	Mr. Festa, do you recall ever reviewing this document prior to today?	2	12:08 p.m. BY MR. BUCKNER:
2 3	Mr. Festa, do you recall ever reviewing this document prior to today? A. Repeat that.	2 3	12:08 p.m. BY MR. BUCKNER: Q. All right. Mr. Festa, we are back on the
2 3 4	Mr. Festa, do you recall ever reviewing this document prior to today? A. Repeat that. Q. Certainly. Do you recall ever reviewing	2 3 4	12:08 p.m. BY MR. BUCKNER: Q. All right. Mr. Festa, we are back on the record, and you understand you are still under oath,
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2 3 4 5 6	Mr. Festa, do you recall ever reviewing this document prior to today? A. Repeat that. Q. Certainly. Do you recall ever reviewing Exhibit 6 prior to today? A. No.	2 3 4 5 6	12:08 p.m. BY MR. BUCKNER: Q. All right. Mr. Festa, we are back on the record, and you understand you are still under oath, correct? A. Thank you.
2 3 4 5 6 7	Mr. Festa, do you recall ever reviewing this document prior to today? A. Repeat that. Q. Certainly. Do you recall ever reviewing Exhibit 6 prior to today? A. No. Q. Do you recall ever seeing Exhibit 6 prior to	2 3 4 5 6 7	12:08 p.m. BY MR. BUCKNER: Q. All right. Mr. Festa, we are back on the record, and you understand you are still under oath, correct? A. Thank you. Q. Great. We were talking before about Beach
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			<u> </u>	
	Page 98			Page 100
1	other conversations you have had with Mark Festa about	1	A. No.	
2	Beach Towing in the last ten years?	2	Q. Any knowle	edge about it?
3	A. Well, I don't I don't get to talk to him too	3	A. No.	11 1 0 5 0 5 0
4	often really.	4		called Goofe, G-o-o-f-e, Partners,
5	Q. Okay. As part of your ownership of Beach	5		ou know what that is?
6	Towing, do you get an annual distribution or dividend or	6	A. No.	
7	profits of any kind?	7	Q. Do you hav	re any involvement with it?
8	MR. REISS: Form, predicate	8	A. No.	
9	THE WITNESS: Rentals.	9	Q. Do you kno	ow anything about it?
10	MR. REISS: mischaracterizes the witness'	10	A. No.	
11	testimony.	11		nue Properties, Incorporated, do you
12	BY MR. BUCKNER:	12	know what that is?	
13	Q. Is that are you talking about rental payment	13	A. Miami Aver	nue?
14	for the 1349 property?	14	Q. Miami Aver	nue Properties, Incorporated.
15	A. Yeah, you know, the monthly rent. They pay the	15	A. Is that	is that an empty a lot? Is that
16	rent.	16	a lot?	
17	Q. I got it. Okay. Other than whatever amount of	17	Q. Honestly,	I don't know.
18	money you get from Beach Towing for the rental of 1349	18	A. Okay. Tha	at's the only thing I would if it
19	Dade Boulevard, do you receive any other profits or	19	was Northwest 7th A	Avenue, somewhere in that area, that's
20	dividends from Beach Towing?	20	the only thing I wo	ould know about it.
21	MR. REISS: Form, predicate, mischaracterizes	21	Q. Okay. But	other than that, do you know
22	the witness' testimony.	22	anything else about	Miami Avenue Properties,
23	THE WITNESS: No.	23	Incorporated?	
24	BY MR. BUCKNER:	24	A. No.	
25	Q. No?	25	Q. Do you hav	re any involvement with it?
	Page 99			Page 101
1	A. No.	1	A. Nothing.	_
2	Q. Okay. Is it your understanding that at	2	Q. 1718 Bay F	Road Corporation, do you know anything
3	present, you and Mark Festa are the only two owners of	3		
4	Beach Towing?	1	about that?	
l -	20001 10,1119.	4	about that? A. No.	
5	MR. REISS: Form, predicate, calls for a legal	4 5	A. No.	ve any involvement with it?
6			A. No.	ve any involvement with it?
	MR. REISS: Form, predicate, calls for a legal	5	A. No. Q. Do you hav A. Uh-ugh.	we any involvement with it?
6	$\ensuremath{MR}.$ REISS: Form, predicate, calls for a legal conclusion.	5 6	A. No. Q. Do you hav A. Uh-ugh.	
6 7	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else	5 6 7	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No.	
6 7 8	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved.	5 6 7 8	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No.	ow any facts about it? at was a no?
6 7 8 9	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER:	5 6 7 8 9	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No. Q. Okay. The A. I am sorry	ow any facts about it? at was a no?
6 7 8 9	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach	5 6 7 8 9	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No. Q. Okay. The A. I am sorry	ow any facts about it? at was a no? 7, no. company called Festa Transport and
6 7 8 9 10 11	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about	5 6 7 8 9 10	A. No. Q. Do you have A. Uh-ugh. Q. Do you kno. A. No. Q. Okay. That A. I am sorry Q. Okay. A co	ow any facts about it? at was a no? 7, no. company called Festa Transport and
6 7 8 9 10 11 12	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is	5 6 7 8 9 10 11 12	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No. Q. Okay. The A. I am sorry Q. Okay. A of Storage, Incorporat A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and
6 7 8 9 10 11 12 13	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct?	5 6 7 8 9 10 11 12 13	A. No. Q. Do you hav A. Uh-ugh. Q. Do you kno A. No. Q. Okay. The A. I am sorry Q. Okay. A of Storage, Incorporat A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded
6 7 8 9 10 11 12 13 14	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right.	5 6 7 8 9 10 11 12 13	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A c Storage, Incorporat A. No. Q do you A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded
6 7 8 9 10 11 12 13 14 15	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading.	5 6 7 8 9 10 11 12 13 14 15	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A c Storage, Incorporat A. No. Q do you A. No.	ow any facts about it? at was a no? ompany called Festa Transport and sed know what that is? No?
6 7 8 9 10 11 12 13 14 15 16	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other	5 6 7 8 9 10 11 12 13 14 15 16	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. The A. I am sorry Q. Okay. A construction A. No. Q do you A. No. Q. Do you have A. No.	ow any facts about it? at was a no? ompany called Festa Transport and sed know what that is? No?
6 7 8 9 10 11 12 13 14 15 16 17	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with.	5 6 7 8 9 10 11 12 13 14 15 16 17	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. The A. I am sorry Q. Okay. A construction A. No. Q do you A. No. Q. Do you have A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded know what that is? No? The any involvement with it?
6 7 8 9 10 11 12 13 14 15 16 17 18	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER:	5 6 7 8 9 10 11 12 13 14 15 16 17	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A construct A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded know what that is? No? The any involvement with it?
6 7 8 9 10 11 12 13 14 15 16 17 18	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER: Q. Okay. Well, let me ask you about those, and I	5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A construct A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded know what that is? No? We any involvement with it? Ow any facts about it? chow this is repetitive.
6 7 8 9 10 11 12 13 14 15 16 17 18 19	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER: Q. Okay. Well, let me ask you about those, and I am just going to go through them. I think I probably	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A c Storage, Incorporat A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No. Q. Okay. I knot A. It's okay.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ded know what that is? No? We any involvement with it? Ow any facts about it? chow this is repetitive.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER: Q. Okay. Well, let me ask you about those, and I am just going to go through them. I think I probably know the answer, but let me just see.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A c Storage, Incorporat A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No. Q. Okay. I knot A. It's okay.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ced know what that is? No? 7e any involvement with it? 8ow any facts about it? 8mow this is repetitive. 9 Hey. 10 Called Corona Storage, LLC, do you
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER: Q. Okay. Well, let me ask you about those, and I am just going to go through them. I think I probably know the answer, but let me just see. Are you aware of a company called Consolidated	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. That A. I am sorry Q. Okay. A company A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No. Q. A company	ow any facts about it? at was a no? 7, no. company called Festa Transport and ced know what that is? No? 7e any involvement with it? 8ow any facts about it? 8mow this is repetitive. 9 Hey. 10 Called Corona Storage, LLC, do you
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. REISS: Form, predicate, calls for a legal conclusion. THE WITNESS: Yeah. There is nobody else involved. BY MR. BUCKNER: Q. Okay. And when we are talking about Beach Towing, the Beach Towing we have been talking about today, that's Beach Towing Services, Incorporated, is that correct? A. Right. MR. REISS: Form, leading. THE WITNESS: But he has he has some other businesses that I am not involved with. BY MR. BUCKNER: Q. Okay. Well, let me ask you about those, and I am just going to go through them. I think I probably know the answer, but let me just see. Are you aware of a company called Consolidated Storage Yards, Incorporated?	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. No. Q. Do you have A. Uh-ugh. Q. Do you knot A. No. Q. Okay. The A. I am sorry Q. Okay. A co Storage, Incorporat A. No. Q do you A. No. Q. Do you have A. No. Q. Do you knot A. No. Q. Do you knot A. No. Q. Okay. I knot A. It's okay. Q. A company know anything about A. No.	ow any facts about it? at was a no? 7, no. company called Festa Transport and ced know what that is? No? 7e any involvement with it? 8ow any facts about it? 8mow this is repetitive. 9 Hey. 9 called Corona Storage, LLC, do you

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102 to 105

	NOVEILIDET		•
	Page 102		Page 104
1	A. No.	1	BY MR. BUCKNER:
2	Q. Do you know any kind of facts about it?	2	Q. Sure.
3	A. No.	3	A you want to reword that?
4	Q. Do you know anything about we were talking	4	Q. I'm happy to.
5	earlier today about the properties across from Beach	5	1759 Purdy Avenue, 1747 Purdy Avenue and 1738
6	Towing on Bay Road and on Purdy where you used to store	6	Bay Road, were those the properties that you were
7	cars when you had too many to fit at 1349 Dade	7	storing cars on you were leasing to store cars on?
8	Boulevard. Do you recall that?	8	A. If that's I don't remember the
9	A. Say that again.	9	MR. REISS: Form, leading.
10	Q. Sure. You were talking earlier about there	10	THE WITNESS: I was leasing them.
11	were some properties on Purdy and on Bay Road there	11	BY MR. BUCKNER:
12	A. When I was leasing?	12	Q. Okay.
13	Q. The ones you were leasing, right.	13	A. And I don't remember the numbers or whatever
14	A. Yeah. What about it?	14	number you have there.
15	Q. Okay. Do you know anything about how those	15	Q. Okay. So but we were talking before about
16	properties are being used today?	16	the properties you were leasing to store cars on.
17	A. No.	17	A. That's it
18	Q. Do you know anything about any illegal uses on	18	Q. Right.
19	those properties today?	19	A but I don't remember the lot, the number or
20	A. I don't know anything	20	anything like that. All I know, it was next to Giant
21	MS. RIBERO-AYALA: Can we be more specific	21	Motors.
22	about the address?	22	Q. Right. Okay. And you were that's the place
23	THE WITNESS: Yeah, I don't know anything about	23	where you would store cars that were towed by Beach
24	it.	24	Towing
25	///	25	A. Right.
	Page 103		Page 105
1	Page 103 BY MR. BUCKNER:	1	Page 105 Q when you didn't have enough room at 1349
1 2	_	1 2	=
	BY MR. BUCKNER:		Q when you didn't have enough room at $1\overline{3}49$
2	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The	2	Q when you didn't have enough room at 1349 Dade Boulevard
2 3	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724	2 3	Q when you didn't have enough room at 1349 Dade Boulevard A. Right.
2 3 4	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask	2 3 4	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right?
2 3 4 5	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724	2 3 4 5	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes.
2 3 4 5 6	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road?	2 3 4 5 6	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those
2 3 4 5 6 7	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No.	2 3 4 5 6 7	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today?
2 3 4 5 6 7 8	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue?	2 3 4 5 6 7 8	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No.
2 3 4 5 6 7 8	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No.	2 3 4 5 6 7 8	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant
2 3 4 5 6 7 8 9	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old	2 3 4 5 6 7 8 9	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today?
2 3 4 5 6 7 8 9 10	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those	2 3 4 5 6 7 8 9 10	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No.
2 3 4 5 6 7 8 9 10 11	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right?	2 3 4 5 6 7 8 9 10 11 12	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old
2 3 4 5 6 7 8 9 10 11 12 13	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the	2 3 4 5 6 7 8 9 10 11 12 13	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach
2 3 4 5 6 7 8 9 10 11 12 13 14	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes.	2 3 4 5 6 7 8 9 10 11 12 13	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations?
2 3 4 5 6 7 8 9 10 11 12 13 14 15	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy	2 3 4 5 6 7 8 9 10 11 12 13 14	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation? A. No, I don't know.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct? A. Yes. MS. RIBERO-AYALA: Object to form.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation? A. No, I don't know.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct? A. Yes. MS. RIBERO-AYALA: Object to form. MR. REISS: Form, leading.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation? A. No, I don't know. Q. Okay. Are you familiar with a company called
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure — there are five — well, let me — let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old — those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct? A. Yes. MS. RIBERO-AYALA: Object to form. MR. REISS: Form, leading. BY MR. BUCKNER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation? A. No, I don't know. Q. Okay. Are you familiar with a company called Touch of Class Body Shop?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	BY MR. BUCKNER: Q. Sure. Well, I can give you the addresses. The reason I haven't given them to you is I'm not sure there are five well, let me let me actually ask you this: Are you familiar with the property at 1724 Bay Road? A. No. Q. Okay. 1743 Purdy Avenue? A. No. Q. Okay. Those are the old those are the old Giant Motors lots. That's the actual addresses of those lots. You remember where Giant Motors was, right? A. Yes. Oh, that I know. I remember the building, yes. Q. Okay. And then 1759 Purdy Avenue, 1747 Purdy Avenue and 1738 Bay Road, those were the properties you were leasing to store cars on, correct? A. Yes. MS. RIBERO-AYALA: Object to form. MR. REISS: Form, leading. BY MR. BUCKNER: Q. Is that right?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q when you didn't have enough room at 1349 Dade Boulevard A. Right. Q right? A. Yes. Q. Okay. Do you know anything about how those properties are being used today? A. No. Q. Do you know anything about how the old Giant Motors properties are being used today? A. No. Q. Do you know how any of the uses of the old Giant Motors property is in any way impacting Beach Towing or its operations? A. No. Q. Do you know if the property you used to lease for storage of cars, do you know how the present uses of those properties are impacting Beach Towing's operation? A. No, I don't know. Q. Okay. Are you familiar with a company called Touch of Class Body Shop? A. No.

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

a copy in one second. Excuse me. MR. BUCKNER: Exhibit 7, I don't know how it's

23 Mr. Festa -- and, Allan, Exhibit 7 is -- I will give you

Q. Handing you what's been marked as Exhibit 7,

(Exhibit No. 7 marked.)

(Discussion off the record.)

19

20

21 BY MR. BUCKNER:

Q. Okay. But that was the brand of gasoline that

A. We -- I finally came up with a name. Did I

Q. You did. You mentioned it. That was the

19 that was --

company --

21 say, mention it once?

20

22

```
Page 110
                                                                                                                 Page 112
1 was being sold --
                                                                         Q. You don't remember having one or --
                                                                1
2
         A. Right.
                                                                         A. I don't remember. I don't even remember
 3
         Q. -- at 1349 when you bought it, correct?
                                                                   selling gas from there, to tell you the truth.
 4
         A. No.
                                                                         Q. No. I am asking about Beach Garage, the
5
             MR. REISS: Form, predicate, mischaracterizes
                                                                5
                                                                   company.
    the witness' testimony.
                                                                             MR. REISS: Form, predicate.
                                                                6
7
    BY MR. BUCKNER:
                                                                    BY MR. BUCKNER:
                                                                7
8
          Q. And looking at this picture, I see what I
                                                                8
                                                                         Q. So Beach Garage, the company --
9 think, looking at the top set of drawings, there's what
                                                                9
                                                                         A. Yes.
    looks to be a roll-up garage door there.
                                                               10
                                                                         Q. -- did --
10
             Is that your recollection of the building of
                                                               11
                                                                             MR. REISS: Form, predicate.
11
                                                                             MR. BUCKNER: I am going to ask the question
12 1349 that it has roll-up doors for putting cars in
                                                               12
13 there?
                                                               13
                                                                   first, Allan, and then you can object.
14
                                                               14
                                                                             MR. REISS: Okay. I thought you were done, but
         A. We used to call those bays.
15
             MR. REISS: Form.
                                                               15 there is nothing in the record that there was ever a
   BY MR. BUCKNER:
                                                                   company called Beach Garage.
16
                                                               16
17
                                                                             Go ahead.
         Q. Bays. Okay.
                                                               17
         A. There was two bays.
                                                               18 BY MR. BUCKNER:
18
19
         Q. At 1349 Dade Boulevard?
                                                               19
                                                                         Q. Well, let's do this. Go back to Exhibit 1 with
2.0
         A. Right.
                                                               2.0
21
         Q. And what did you use those bays for?
                                                               21
                                                                             If you turn with me 1, 2, 3, 4, 5 -- actually,
         A. Well, we did --
                                                                   these pages are numbered. Do you see there is a number
22
                                                                    in the lower right-hand corner --
             MR. REISS: Form, predicate.
23
             THE WITNESS: -- we did some mechanical work in
24
                                                                             MS. RIBERO-AYALA: Yeah.
                                                               25 ///
25 there, and we did storage of some -- say, if a Cadillac
                                                  Page 111
                                                                                                                 Page 113
1 came in, brand-new Cadillac. We would put it in there
                                                                    BY MR. BUCKNER:
    to protect it so nobody touches it or anything.
                                                                         Q. -- 6, page 6? Do you see there at the top it
    BY MR. BUCKNER:
                                                                    says, "Planning Division Report, conditional use
 4
         Q. Got it. And when you say you did mechanical
                                                                   request, Beach Garage, 1349 Dade Boulevard"? Do you see
    work, are you talking about repair of cars?
                                                                    that?
 6
         A. We had lifts in there, too.
                                                                6
                                                                         A. Yes.
                                                                7
7
          Q. Lifts for cars?
                                                                             MR. REISS: Form, predicate, hearsay.
8
         A. No. For trucks, for our trucks.
                                                                   BY MR. BUCKNER:
9
          Q. For your trucks. Okay.
                                                                         Q. And Beach Garage was a company that operated at
10
             So you were doing mechanical work on your
                                                               10
                                                                   1349 Dade Boulevard, correct?
11
    trucks too?
                                                                             MR. REISS: Form, leading, predicate,
12
         A. Of course, that's mostly.
                                                               12
                                                                  mischaracterizes the witness' testimony.
13
          O. Okay.
                                                                    BY MR. BUCKNER:
14
             MS. RIBERO-AYALA: What exhibit number is this,
                                                               14
                                                                         Q. You can answer.
15 7?
                                                               15
                                                                         A. Tell me again.
16
             MR. BUCKNER: That was 7.
                                                               16
                                                                         Q. I said Beach Garage was a company that operated
17
    BY MR. BUCKNER:
                                                               17
                                                                   at 1349 Dade Boulevard, correct?
18
          Q. Did Beach Garage ever have an agreement or a
                                                                         A. Beach Garage, Beach Towing.
                                                                             MR. REISS: Leading, form, predicate,
19
    contract with the Shell Oil Company to purchase gasoline
                                                               19
20
     from Shell?
                                                                    mischaracterizes the witness' testimony, misleading;
21
             MR. REISS: Form, predicate.
                                                                    you're showing him a document he already told you he
22
             THE WITNESS: I don't remember that.
                                                               22 doesn't remember.
23 BY MR. BUCKNER:
                                                               23
                                                                             But you can answer.
24
         Q. You don't remember it?
                                                               24
                                                                             THE WITNESS: Ask me again.
         A. No.
                                                               25
                                                                   ///
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Page 114
                                                                                                                 Page 116
1 BY MR. BUCKNER:
                                                                             THE WITNESS: I -- I don't know if that was a
2
         Q. I said Beach Garage was a company that operated
                                                                2 stipulation, but I was more interested in towing than
   at 1349 Dade Boulevard, correct?
                                                                   gas.
4
         A. Yes, it was Beach Garage --
                                                                4 BY MR. BUCKNER:
                                                                5
5
             MR. REISS: Leading, form, predicate --
                                                                         Q. Okay.
6
             THE WITNESS: -- it was Beach Garage, Beach
                                                                         A. I was tired of gas because I -- we had a gas
7
                                                                    war going on, and we also had rationing.
    Towing.
8
             MR. REISS: -- mischaracterizes the record.
                                                                8
                                                                         Q. Okay. Further in that paragraph it talks
9
    He's already said he doesn't recognize the document.
                                                                9
                                                                   about -- and the only reason I am showing you this is
    BY MR. BUCKNER:
                                                                   because I want to know -- I want you to know I am not
10
11
                                                                    just pulling this out of the air.
         Q. And that was a company that you owned, right?
12
         A. I own, yeah.
                                                               12
                                                                         A. Okay.
13
         Q. And you still own it, correct?
                                                               13
                                                                         Q. Further in that paragraph it talks about Shell
                                                                   Oil Company, and I had asked you before -- well, strike
14
         A. Right.
15
         Q. Okay. And here it says, "The applicant,
                                                               15
                                                                   that.
16 Vincent Festa, owner of Beach Garage, "correct? You
                                                               16
                                                                             Do you recall having any kind of an agreement
17
    were the owner of Beach Garage, correct?
                                                               17
                                                                   or contract or arrangement to purchase gasoline from the
             MR. REISS: Form, predicate.
                                                                   Shell Oil Company for 1349 Dade Boulevard to sell there?
18
19
             THE WITNESS: At what time?
                                                               19
                                                                         A. I don't remember. Did we get it?
20 BY MR. BUCKNER:
                                                               20
                                                                             MR. REISS: Form, predicate --
21
         Q. This is -- the date on this document, you can
                                                               21
                                                                             THE WITNESS: I don't know.
                                                                             MR. REISS: -- leading, mischaracterizes the
22 see at the bottom, is June 4th, 1980.
                                                               22
             MR. REISS: Form, predicate.
23
                                                               23
                                                                   document, hearsay, move to strike your statement as to
             THE WITNESS: Yes, I owned it.
                                                                   why you're showing it to him.
24
                                                               24
25 ///
                                                               25
                                                                             He can answer.
                                                  Page 115
                                                                                                                 Page 117
    BY MR. BUCKNER:
                                                                             MS. RIBERO-AYALA: Where is the reference to
         Q. Okay. And then if you go further down, it
                                                                   Shell Oil?
3
    says, do you see "Past Use"? There is a paragraph that
                                                                             MR. BUCKNER: If you are in Past Use, the last
     says, "Past Use"?
                                                                   sentence.
5
             MS. RIBERO-AYALA: Here.
                                                                5
                                                                             MS. RIBERO-AYALA: Okay. Here.
 6
             MR. REISS: Form, hearsay, predicate.
                                                                             THE WITNESS: I don't remember.
                                                                   BY MR. BUCKNER:
7
             THE WITNESS: Go ahead.
8
    BY MR. BUCKNER:
                                                                         Q. Okay. So -- and I am not -- again --
9
         Q. Okay. Why don't you take a second and read it.
                                                                9
                                                                         A. I understand, I understand, I understand.
    Again, if you don't remember, it's fine.
                                                               10
                                                                         Q. But as you sit -- I just want to make sure the
11
         A. I don't.
                                                               11 record is clear.
12
         Q. Take a second and read it.
                                                               12
                                                                             As you sit here now, do you have any
13
             MR. REISS: Form, predicate, hearsay.
                                                                   recollection of any kind of a contract or an agreement
14
             THE WITNESS: Okay. It's telling me that I
                                                                   to purchase gasoline from the Shell Oil Company to sell
15 couldn't buy their gasoline for five years; is that what
                                                               15
                                                                    at 1349 Dade Boulevard?
16
    they're saying?
                                                               16
                                                                         A. I don't remember.
    BY MR. BUCKNER:
17
                                                               17
                                                                         Q. You don't remember whether you had a contract
18
         Q. Well, that's what this says. I am going to ask
                                                                   or you don't remember --
19
   you some questions.
                                                               19
                                                                         A. No. I don't remember even having gas there.
20
             Do you recall having any kind of a restriction
                                                               20
                                                                   That's --
   from City Services, City Services Oil Company, that you
                                                               21
                                                                         Q. Okay.
```

22

23

24

25

A. -- that's weird. I mean, that's weird.

A. No, no, no.

Q. I am just trying to --

Q. By the way, Mr. Festa, I am not saying you did.

22

23

24

25

the property?

couldn't buy their gas for five years after you bought

A. I don't know if that was a stipulation --

MR. REISS: Form, predicate.

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Page 118
                                                                                                                Page 120
         A. I am talking to myself. I'm saying, you know,
                                                                1 but --
2 I remember a lot of things, but I just don't remember
                                                                2
                                                                            MR. REISS: Is it called survey? Is that what
3
    those things -- that thing.
                                                                3 it is?
4
         Q. Okay.
                                                                            MR. BUCKNER: Survey?
5
         A. Because there was no money in gas. I didn't
                                                               5
                                                                            MS. RIBERO-AYALA: No.
    want gas except for the trucks. A few pennies that you
                                                               6
                                                                            MR. BUCKNER: It's not called a survey, but
7
    made, and it wasn't worth the trouble.
                                                                  open it and see if that's it. There is nothing -- I
8
             Now, I remember that at -- on Collins Avenue, we
                                                                  don't think there is anything --
9 did a lot of business because I remember making credit
                                                               9
                                                                            MR. REISS: At the top, Orange Dade Oil
    cards out, you know.
10
                                                               10
                                                                   Company?
11
         Q. A lot of gasoline business?
                                                               11
                                                                            MR. BUCKNER: Yeah, you got it. You got it.
12
         A. Gasoline business, but I don't remember gas --
                                                                  You got it. You got it.
                                                              12
13 I honest don't.
                                                                            We made this Exhibit 8, right?
                                                              14
                                                                            MR. REISS: Thank you.
14
             MS. RIBERO-AYALA: Okay.
                                                               15
15
             (Exhibit No. 8 was marked.)
                                                                            THE WITNESS: Are they saying that I -- they
16 BY MR. BUCKNER:
                                                              16 okayed the gas?
17
                                                              17 BY MR. BUCKNER:
         Q. I am going to hand you what's been marked as
18 Exhibit 8.
                                                              18
                                                                        Q. I am only going to ask you what you remember.
19
             MR. BUCKNER: Allan, Exhibit 8 is -- here,
                                                               19
                                                                            MS. RIBERO-AYALA: I can't tell you.
20 Susy, that's your copy -- it's one of the attachments to
                                                                  BY MR. BUCKNER:
                                                               2.0
21 the report. I can't remember which one it is. It's
                                                               21
                                                                        Q. I am only going to ask you what you remember.
22 the -- I want to say it's -- I think it's called a
                                                               22
                                                                            MS. RIBERO-AYALA: Right.
23 permit card, but I'm not sure.
                                                               23 BY MR. BUCKNER:
24
             Do you know what I am talking about? It looks
                                                                        Q. Okay. So let's start on the first page.
25 like a series -- it looks like a -- I don't know what to
                                                               25 Earlier today I had asked you about Orange State Oil
                                                 Page 119
                                                                                                                Page 121
1 call it. I think it's -- hang on a second. I'll tell
                                                                1 Company.
    you.
                                                                            Do you have any recollection about that company
             I think it's Exhibit A, Allan, to that thing. I
                                                               3 at all?
    think it's called a building card or a permit card.
             MR. REISS: There is no A in the documents that
                                                                        Q. And, by the way, I'll -- if you look in the
   I was given.
                                                                  upper right-hand corner, you see that it says, "1349
7
             MR. BUCKNER: I know it's in there. I just
                                                                  Dade Boulevard"?
    don't know which one it is. It's the one that --
                                                                        A. Uh-huh. I see it.
9
             MR. REISS: What does it look like?
                                                                        Q. Okay. And below that, a little bit -- five or
10
             MR. BUCKNER: It's arranged -- it's ranged in
                                                                  six lines down, it says, "Use, service station and
                                                                   display building." That's what 1349 Dade Boulevard was
11 landscape style, not -- you know, long ways, not tall,
12 and it's got, like, all the different permitting
                                                                   when you bought it, correct?
    approvals that, you know, as permit -- as inspectors
                                                               13
                                                                            MR. REISS: Objection; form, hearsay.
14 sign off on stuff for, like, air-conditioning or
                                                               14
                                                                            MS. RIBERO-AYALA: Okay. Here.
15 mechanical or electrical or plumbing or whatever for
                                                               15
                                                                  BY MR. BUCKNER:
16 1349 Dade Boulevard.
                                                                        Q. That's the use the 1349 Dade Boulevard property
17
             THE WITNESS: Are they saying I was selling
                                                              17
                                                                   was being used for when you bought it, correct?
18
    gas?
                                                              18
                                                                        A. Right.
19
                                                              19
             MS. RIBERO-AYALA: Let him ask the question.
                                                                            MR. REISS: Form, predicate, hearsay.
20
             MR. REISS: I don't think I have that.
                                                               20
                                                                            THE WITNESS: But I don't -- I don't know if we
21
             MR. BUCKNER: It's in there.
                                                                  were selling gas -- they were selling gas at that time.
22
             MR. REISS: Are you sure that's in the
                                                               22 BY MR. BUCKNER:
                                                               23
23 documents?
                                                                        Q. When you bought it?
24
             MR. BUCKNER: Yeah, because we scanned my
                                                               24
                                                                        A. Yes. I don't remember.
                                                                        Q. It's okay. If you don't remember --
25 entire set before I came out. So you definitely have it
                                                               25
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November 10, 2017
                                                                                                      122 to 125
                                                 Page 122
                                                                                                                Page 124
         A. That's why I don't remember if we even had
                                                               1 removed?
1
 2 pumps there. I mean, we had pumps, but we just --
                                                               2
                                                                        A. I don't think so, no. I think Mark had those
 3
    that's what I remember.
                                                                  removed.
4
         Q. And if you go to the second page down at the
                                                                        Q. Would that have been after you retired?
5 bottom where it says, "Planning Board Public Hearing,"
                                                               5
                                                                        A. I think so. It would have to be. It would
    April 24th, 2000 -- I am sorry, "April 24th, 1980,
                                                                   have to be after 1983 December.
                                                               7
7
    Vincent J. Festa," and then you see "Thereafter, June
                                                                        Q. I'm sorry, I am not ignoring you. I'm just
    4th, 1980, city commission approved with conditions:
                                                                   trying to see what else I got to cover.
                                                               8
9
                                                               9
    One, the storage area shall be decreased in size and a
                                                                        A. Of course.
10 masonry wall at least six feet in height shall be
                                                                        Q. We were talking before about the properties
                                                              10
                                                                   across the way where you used to store cars when you had
11
    constructed around the storage area to conceal vehicles
12 from public view; two, all stored vehicles wrecked or
                                                              12
                                                                   excess cars. Do you remember that?
13 otherwise shall be placed wholly within the storage
                                                              13
                                                                        A. Yeah.
14
    area; three, additional landscaping shall be provided on
                                                              14
                                                                        Q. Okay. I am not going to use the numbers
    the property, and such landscaping shall be properly
                                                                   because I know you don't know them by the numbers, but
15
16 irrigated. A landscape plan shall be approved by the
                                                                   you understand that the plaintiff in this case now owns
17
    planning division prior to issuance of a building permit
                                                              17
                                                                   those properties, correct?
                                                                            MS. RIBERO-AYALA: Objection; form.
18 or city license; four, the triangular metal sign shall
                                                              18
19 be removed and a new sign shall be erected which is in
                                                              19
                                                                            THE WITNESS: You're talking about the people
20
   compliance with the zoning ordinance; five, the curb cut
                                                                   that bought them from Mark?
                                                              20
21 on Dade Boulevard closest to the intersection of North
                                                               21
                                                                   BY MR. BUCKNER:
22 Bay" -- it actually continues two pages later, "Road
                                                              22
                                                                        Q. Well, they didn't buy them from Mark, but the
23 shall be closed and landscaped; six, vehicles waiting
                                                               23
                                                                   plaintiff in this case is Sunset Land Associates.
                                                                        A. I am not familiar with that.
24 for gasoline shall be permitted to line up on Dade
                                                              24
                                                              25
25 Boulevard" -- I am sorry, "no vehicles waiting for
                                                                        Q. Okay. You understand, though, that the reason
                                                 Page 123
                                                                                                                Page 125
   gasoline shall be permitted to line up on Dade
                                                                   why we are here is that my client, the plaintiff, wants
    Boulevard." And then it has some other conditions.
                                                                   to build a building on that property. You understand
3
             Do you have any recollection of any of these
                                                                   that, right?
 4
    conditions at all?
                                                                        A. That part I know.
5
         A. Not at all.
                                                                        Q. Got you.
```

6 MR. REISS: Form, hearsay, predicate. 7 BY MR. BUCKNER: 8 Q. And do you have any recollection as to whether any -- whether the property at 1349 Dade Boulevard has 10 ever complied with any of these conditions? 11 A. No --12 MR. REISS: Form, predicate, hearsay. 13 THE WITNESS: -- I don't remember -- I don't 14 remember even selling gasoline there, to tell you the 15 truth. 16 BY MR. BUCKNER: 17 Q. But my question was more specific. Has Beach

22 THE WITNESS: Don't remember. BY MR. BUCKNER: 23 24 Q. Were you present at 1349 Dade Boulevard when the gasoline -- the underground gasoline tanks were

Towing or the property at 1349 Dade Boulevard ever

complied with any of those conditions, as far as you

MR. REISS: Form, predicate, hearsay.

19

20

21

know?

6 A. Okay. I knew that all the time, but I didn't 7 understand about the parking. 8 Q. Got it. I understand. 9 Do you have any concerns about them building a building on that property? 11 MR. REISS: Form. 12 THE WITNESS: I have a few concerns. BY MR. BUCKNER: 14 Q. And what is that? A. Well, if they are going to have parking there, it's going to congest it more than it is now. I am 17 having tough times on building in -- the trucks that are towing cars have enough trouble getting in there, and if it's going to be saturated with cars, multiple cars, it's going to -- it's going to hinder my parking or waiting for -- especially if we get a call from the -what do they call that, the convention center where they are going to haul away 40 cars. How am I going to do

that with just me and -- what do you call it -- if I

have to worry about cars coming in and out? So

	NOVERIBEL		7, 2017 120 00 127
	Page 126		Page 128
1	that's that would be my my worry.	1	A. But I have eight units on North Miami 56th
2	Q. Anything else?	2	Street, and she tells me a lot that's going on.
3	A. I don't think so.	3	Q. Who is she?
4	MR. REISS: Form.	4	A. The one that's taking care of my apartments.
5	BY MR. BUCKNER:	5	Q. I'm sorry, what's her name?
6	Q. Have you seen any traffic studies that have	6	A. Maria Ricardo.
7	been done of the	7	Q. Okay. And those apartments, I'm sorry, are
8	A. No.	8	where?
9	Q with regard to that property	9	A. 159-165 NE 56th Street.
10	A. No.	10	Q. How and, forgive me, I am not that familiar
11	Q or the area around Beach Towing?	11	with Beach Towing, but how far is that from Beach
12	A. No.	12	Towing?
13	Q. Do you know how well, let me ask you	13	A. Well, that's in Miami.
14	something: You haven't actually been to the area around	14	Q. Oh, it's not in Miami Beach?
15	Beach Towing in, like, 30 years, correct?	15	A. No.
16	A. Twenty-five or something. I don't remember	16	Q. Okay. So I am asking you when you are talking
17	when we went down to Daytona for my son's motorcycle	17	about congestion in the area, traffic congestion in the
18	convention or whatever they call that.	18	area around Beach Towing, you haven't seen that area in
19	Q. Okay. So what do you know about the traffic in	19	over 30 years, correct?
20	the area today? Have you seen it?	20	A. Well, I guess I guess I could go online and
21	A. Well, there's a lot of traffic that's coming	21	see I don't know. Can you see it on the line?
22	off of Dade Boulevard, if I remember, because I'm on a	22	Q. Have you?
23	corner lot, right? So they'd have to go past to get	23	A. I saw something, but I'm not sure.
24	into Bay Road and that's that will probably be one of	24	Q. Okay. What I am trying to get at, sir, is what
25	the first exits from Alton Road.	25	the basis is for your assertion that there is going to
		1	
	Page 127		Dage 120
1	Page 127 Q. Okay.	1	Page 129 be more congestion around Beach Towing. If you haven't
1 2	=	1 2	
	Q. Okay.		be more congestion around Beach Towing. If you haven't
2	Q. Okay. A. Alton Road.	2	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more
2 3	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid	2 3	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing?
2 3 4	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct?	2 3 4	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know
2 3 4 5	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there.	2 3 4 5	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay,
2 3 4 5 6	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or	2 3 4 5 6	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading.
2 3 4 5 6 7	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from	2 3 4 5 6 7	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer.
2 3 4 5 6 7 8	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct?	2 3 4 5 6 7 8	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So
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2 3 4 5 6 7 8 9	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much	2 3 4 5 6 7 8 9	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it
2 3 4 5 6 7 8 9 10 11	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic.	2 3 4 5 6 7 8 9 10	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway that Dade Boulevard goes into
2 3 4 5 6 7 8 9 10 11 12	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic. BY MR. BUCKNER:	2 3 4 5 6 7 8 9 10 11 12	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway? Is that it?
2 3 4 5 6 7 8 9 10 11 12	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic. BY MR. BUCKNER: Q. Okay. So in terms of what you know about	2 3 4 5 6 7 8 9 10 11 12 13	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway that Dade Boulevard goes into Venetian Causeway? Is that it? BY MR. BUCKNER:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic. BY MR. BUCKNER: Q. Okay. So in terms of what you know about traffic and congestion in the area around Beach Towing, you haven't personally seen it in 30 years, correct? A. Yeah. MR. REISS: Form. BY MR. BUCKNER: Q. Right. So anything you know somebody else would have had to have told you about it, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway that Dade Boulevard goes into Venetian Causeway? Is that it? BY MR. BUCKNER: Q. I am going to embarrass myself if I answer because I am not sure. A. Okay. It's one of those causeways anyway. So a lot of traffic has to come from Alton Road or any part of Miami to get on the Venetian Causeway. So there would be a real traffic jam. Q. Okay. Well, let me ask you this: Are you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic. BY MR. BUCKNER: Q. Okay. So in terms of what you know about traffic and congestion in the area around Beach Towing, you haven't personally seen it in 30 years, correct? A. Yeah. MR. REISS: Form. BY MR. BUCKNER: Q. Right. So anything you know somebody else would have had to have told you about it, correct? MR. REISS: Form, leading.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway that Dade Boulevard goes into Venetian Causeway? Is that it? BY MR. BUCKNER: Q. I am going to embarrass myself if I answer because I am not sure. A. Okay. It's one of those causeways anyway. So a lot of traffic has to come from Alton Road or any part of Miami to get on the Venetian Causeway. So there would be a real traffic jam. Q. Okay. Well, let me ask you this: Are you familiar with a building called Lofts?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Okay. A. Alton Road. Q. But you haven't you haven't actually laid eyes on those streets in 30 years, correct? A. I wasn't there. Q. Right. So whatever you know about traffic or traffic patterns or congestion today you have heard from other people, correct? MR. REISS: Form. THE WITNESS: If I I haven't heard much because nobody talked to me about traffic. BY MR. BUCKNER: Q. Okay. So in terms of what you know about traffic and congestion in the area around Beach Towing, you haven't personally seen it in 30 years, correct? A. Yeah. MR. REISS: Form. BY MR. BUCKNER: Q. Right. So anything you know somebody else would have had to have told you about it, correct? MR. REISS: Form, leading. THE WITNESS: Not per se, anybody from Beach	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	be more congestion around Beach Towing. If you haven't been there, who is telling you that there is more congestion around Beach Towing? A. Well, because I know MR. REISS: Objection to the form, hearsay, argumentative, predicate, leading. You can answer. THE WITNESS: I know what's happening here. So I know Miami is building up, and so more cars are coming, and is it the Venetian I don't know. Is it at the Venetian Causeway that Dade Boulevard goes into Venetian Causeway? Is that it? BY MR. BUCKNER: Q. I am going to embarrass myself if I answer because I am not sure. A. Okay. It's one of those causeways anyway. So a lot of traffic has to come from Alton Road or any part of Miami to get on the Venetian Causeway. So there would be a real traffic jam. Q. Okay. Well, let me ask you this: Are you familiar with a building called Lofts? A. No.

130 to 133

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Page 130
                                                                                                                  Page 132
         A. Which --
                                                                         A. -- and that's going to affect the tow truck
1
2
             MR. REISS: Form.
                                                                   coming in and out too.
             THE WITNESS: Which -- now, which building are
 3
                                                                         Q. Okay. Well, let me ask you this: The tow
 4
    you talking about?
                                                                    trucks coming in and out, they are also obviously
                                                                    traffic and congestion, right?
    BY MR. BUCKNER:
5
6
          Q. The Lofts.
                                                                         A. Correct.
                                                                         Q. So --
7
                                                                7
             MR. REISS: Form, predicate.
8
             THE WITNESS: The Lofts, you mean the --
                                                                8
                                                                             MR. REISS: Form, argumentative.
9
                                                                9
                                                                    BY MR. BUCKNER:
    BY MR. BUCKNER:
10
         Q. The Lofts, a building called The Lofts.
                                                                         Q. So -- by the way, do you know when a tow truck
                                                               10
11
          A. I don't know what that is.
                                                                   from Beach Towing brings a car to 1349 Dade Boulevard,
             MR. REISS: Form.
12
                                                                    you're aware it has to back up down the street to back
13 BY MR. BUCKNER:
                                                                    the car into the Beach Towing lot, correct?
14
                                                               14
                                                                             MS. RIBERO-AYALA: Object to form.
         Q. So as you sit here today, you don't know what
                                                               15
15
   The Lofts is?
                                                                             MR. REISS: Form, predicate.
16
         A. I don't know what The Loft is.
                                                               16
                                                                             THE WITNESS: I don't know.
17
                                                               17
          Q. And you don't know whether the --
                                                                   BY MR. BUCKNER:
         A. I thought that the building was up already, to
18
                                                               18
                                                                         Q. When -- back when you were operating Beach
    tell you the truth.
                                                                    Towing --
19
                                                               19
2.0
                                                               20
                                                                         A. We could pull right in.
         Q. Okay.
21
         A. I just found out that it still hasn't been
                                                               21
                                                                         Q. You could pull right in then. Okay.
                                                                         A. Same as the -- and same as the lot across the
22 started.
                                                               22
23
          Q. Okay. So in terms of what may be happening
                                                                23
                                                                    way, just pulled it in.
   with congestion around Beach Towing, you don't have any
                                                                         Q. The lot across the way where you --
                                                                24
                                                                25
                                                                         A. Where I used to lease.
25 firsthand knowledge of that, do you?
                                                  Page 131
                                                                                                                  Page 133
             MR. REISS: Form.
                                                                         Q. Right. Okay. But in terms of what's happening
             THE WITNESS: I don't know firsthand, but, I
                                                                    today, do you have any idea how Beach Towing pulls cars
    mean, I may not remember a lot, but I know that when
                                                                   that it's towed into 1349 Dade Boulevard?
    there's construction going on and there's parking of
                                                                         A. No, but I think Mark had mentioned something
    cars going on, it's going to be congested because that
                                                                    about they had put a lip. They reconstructed Dade
    street is not that wide --
                                                                   Boulevard. So they added a little lip. And that means
    BY MR. BUCKNER:
7
                                                                    the tow trucks have to come in a little slower. They
8
         0. So --
                                                                    don't want to damage a 10, 20, $30,000 car. They may
9
          A. -- coming off Dade Boulevard.
                                                                    have to drop it because of the lip. So I was told that.
10
          Q. So would you object to any development of any
                                                               10
                                                                         Q. Okay. And that would mean that the tow truck
11 properties in that area because they might increase the
                                                                    and the car it was towing would be on the street even
12
    number of people coming there?
                                                                    longer than before there was a lip, correct?
13
          A. I would have to -- I would have to -- each -- I
                                                               13
                                                                         A. Possible.
14
    would have to see what the situation is.
                                                               14
                                                                             MR. REISS: Leading, form, hypothetical.
15
          Q. Okay. Well, what have you done -- what have
                                                               15
                                                                    BY MR. BUCKNER:
   you done to see what the situation is with regard to the
                                                               16
                                                                         Q. And that too could back up traffic, right?
                                                               17
17
    property improvement that my clients have proposed?
                                                                             MR. REISS: Leading, form, hypothetical.
                                                                             THE WITNESS: I don't think so because we are
18
         A. Well, if you're going to park --
                                                               18
19
                                                                   off -- we are off Dade Boulevard. We are on -- what's
             MR. REISS: Form, predicate, hypothetical.
20
             THE WITNESS: -- if there's going to be a
                                                               20 the name of the street I am on?
    garage, it's going to have cars --
                                                               21
                                                                    BY MR. BUCKNER:
    BY MR. BUCKNER:
22
                                                               22
                                                                         Q. I don't know what street you are referring to.
23
         Q. Right.
                                                               23
                                                                         A. Where my shop is, my business.
24
         A. -- in and out --
                                                                24
                                                                         Q. You are talking about Beach Towing?
```

A. Yeah, Beach Towing, Beach Towing.

25

Q. Right.

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                                                                                                      134 to 137
                                                 Page 134
                                                                                                                Page 136
         Q. So let me ask you, do you know what street
                                                                            THE WITNESS: Dade Boulevard, you mean bringing
1
                                                                1
2 Beach Towing utilizes to pull cars into its property
                                                                2 it into the shop?
                                                                3 BY MR. BUCKNER:
3
    today when it tows them?
4
         A. It depends where it's coming from. If it's
                                                                4
                                                                        Q. Yes.
5 coming from a shopping center where they had to tow a
                                                                5
                                                                        A. Yeah, it's possible if the traffic is not too
    car because they are illegally parking or a house that
                                                                   bad on Dade Boulevard.
                                                               7
7
    somebody parked it there and took off to the beach or
                                                                        Q. Okay. So it could be both Dade Boulevard and
    something, and it came in from Dade Boulevard or from
                                                               8
                                                                  Bay Road --
9
    the other side of -- I even forgot what the name of the
                                                               9
                                                                            MR. REISS: Leading, form.
    street I am on.
                                                                   BY MR. BUCKNER:
10
                                                               10
11
                                                               11
                                                                        Q. -- is that right?
         Q. Okay. I don't know. Sorry.
                                                                        A. I think so --
12
         A. Yeah, I should know.
                                                               12
         Q. No. I don't know -- are you talking about -- I
                                                                            MR. REISS: Leading, form.
13
                                                              13
14 don't know which one it is. I mean, I am not sure what
                                                                            THE WITNESS: -- it would be out of the way,
                                                               14
15
    you are referring to.
                                                               15
                                                                 but I think maybe they could do it.
16
                                                                   BY MR. BUCKNER:
             So as you sit here today, you think that there
                                                              16
17
   are two entrances to Beach Towing to pull cars onto 1349
                                                              17
                                                                        Q. Okay. What effect -- well, what do you know
                                                                   about changes in the roads in the area around Beach
    Dade Boulevard after they tow them?
18
19
                                                                   Towing in the last years? What construction has
             MR. REISS: Hearsay, form, predicate --
                                                               19
2.0
             THE WITNESS: Say that again.
                                                                   happened to those roads, do you know?
                                                               20
21
             MR. REISS: -- leading.
                                                                        A. I know Dade Boulevard has a lot of construction
                                                               21
22 BY MR. BUCKNER:
                                                                   and that they, like I said, I mentioned to you a few
23
         Q. I said as of today, it's your understanding
                                                                   minutes ago was that they brought the -- the curb up a
   that when Beach Towing tows a car from somewhere, it can
                                                                   little higher. So it's a little harder for us to bring
25 enter the 1349 Dade Boulevard property from two
                                                                  a car in so not to destroy the bumper or the tailpipe or
                                                 Page 135
                                                                                                                Page 137
    different locations, one --
                                                                   the gas -- gas tank.
2
             MR. REISS: Form, leading.
                                                                        Q. So it's -- the car has got to be brought in
    BY MR. BUCKNER:
                                                                   more slowly?
 4
         Q. -- one is on Dade Boulevard and the other is
                                                                        A. Not only slowly but carefully.
    another street, correct?
                                                                        Q. And that means that the car being towed into
 6
         A. Well, the street I am on.
                                                                  the Beach Towing property is going to be out on the
7
             MR. REISS: Form, leading.
                                                                   street just a little longer as it's pulled in slowly and
    BY MR. BUCKNER:
                                                                   carefully into the Beach Towing --
```

- 9 Q. But am I right about that, there is two entrances? 10
- 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.

- 9 MR. REISS: Leading, hypothetical.
- 10 THE WITNESS: That's possible.
- 11 BY MR. BUCKNER:
- 12 Q. Do you recall ever having any conversations
 - with an individual named Brad Colmer?
- 14 A. Brad Colmer, that sounds familiar.
 - Q. Do you remember having conversations with him?
 - A. Brad Colmer. Was he interested in buying my
- 17 property? I don't know.
 - 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?

15

16

18

21

23

- A. There was somebody that offered me 13,500,000,
- 22 but was it -- that was about two years ago.
 - Q. Okay.
 - A. I don't know if that was the name. It doesn't
- sound familiar, Brad Colmer, but I don't know.

	Noveliber		130 00 141
	Page 138		Page 140
1	Q. All right. So	1	Q. Okay. But even after you got papers, has Mark
2	A. I get offers all the time.	2	Festa asked you to do anything with regard to this
3	Q. Okay. As you sit here, do you you don't	3	lawsuit?
4	recall any specific conversations with Mr. Colmer?	4	A. What could he tell me? Nothing.
5	MR. REISS: Leading.	5	Q. Okay. Have you had any conversations with
6	THE WITNESS: I don't know. I don't know if	6	Ralph Andrade about this lawsuit?
7	that's his name. It doesn't sound familiar, but and	7	A. Not at all. I met I met Ralph, it feels
8	then it doesn't not sound familiar, but it doesn't	8	like a hundred years ago, and we just went for pizza,
9	sound familiar. You know what I am saying?	9	and Mark didn't show up that day, and Ralph took me out
10	BY MR. BUCKNER:	10	for pizza. That's what I remember. And we had a nice
11	Q. That's okay. Do you recall anything at all	11	conversation.
12	about Brad Colmer, Bradley Colmer?	12	Q. Was it about this case or
13	A. I'd have to I'd no, I don't remember.	13	A. No. This was this was how many years ago?
14	It's been a long time.	14	Many, many years ago. But Mark did not show up. I
15	Q. That's okay.	15	remember that.
16	A. But if that's the same fellow, he offered me	16	Q. Other than your lawyer
17	\$13 and a half million for the property.	17	A. What's that?
18	Q. And the property is 1349 Dade Boulevard?	18	Q. I said other than your lawyer
19	A. Exactly.	19	A. Yes.
20	Q. Did you have any other conversations with him	20	Q Ms. Ribero-Ayala, have you spoken to anybody
21	that you can recall?	21	else about this lawsuit
22	A. I told him I couldn't do anything because I	22	A. Not at all.
23	am I have a it's my nephew, and I have a contract	23	Q or about the facts underlying this lawsuit?
24	with him.	24	A. I don't know anything.
25	Q. And what is the and what is the nature of	25	Q. Okay.
	Page 120		Dama 141
1	Page 139 that contract?	1	Page 141 A. I didn't get anything from her either.
1 2	_	1 2	_
	that contract?		A. I didn't get anything from her either.
2	that contract? A. That he could stay there.	2	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been
2 3	that contract? A. That he could stay there. Q. And that nephew is Mark Festa?	2 3	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she
2 3 4	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son.	2 3 4	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest.
2 3 4	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son. Q. But going back to that conversation, are you	2 3 4 5	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest. Do you know are you well, strike that.
2 3 4 5 6	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son. Q. But going back to that conversation, are you are you certain that that conversation was with Brad	2 3 4 5 6	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest. Do you know are you well, strike that. I don't have any further questions. Thank you,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son. Q. But going back to that conversation, are you are you certain that that conversation was with Brad Colmer, or do you know? MR. REISS: Form. THE WITNESS: I don't remember. It's been a long time. I know that I told I told my kids that I have an offer, but I can't do anything. But I have quite a few offers. BY MR. BUCKNER: Q. So other people have offered to buy the 1349 Dade Boulevard property from you over the years? A. Oh, yeah. Q. And the reason you haven't sold is because of your agreement with Mark Festa? A. Hey, my sister. Q. So that's a yes? A. Don't want to break up the family.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest. Do you know are you well, strike that. I don't have any further questions. Thank you, Mr. Festa. A. Thank you. MR. REISS: All right. I have a few. THE WITNESS: Tell him can he wait because I have prostate trouble. MR. REISS: All right. Mr. Festa, can you hear me? MR. BUCKNER: Hang on. Allan, he needs to use the bathroom. We're going to take a break so he can use the bathroom. MR. REISS: Okay. THE VIDEOGRAPHER: We are off the record at 12:55 p.m.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son. Q. But going back to that conversation, are you are you certain that that conversation was with Brad Colmer, or do you know? MR. REISS: Form. THE WITNESS: I don't remember. It's been a long time. I know that I told I told my kids that I have an offer, but I can't do anything. But I have quite a few offers. BY MR. BUCKNER: Q. So other people have offered to buy the 1349 Dade Boulevard property from you over the years? A. Oh, yeah. Q. And the reason you haven't sold is because of your agreement with Mark Festa? A. Hey, my sister. Q. So that's a yes? A. Don't want to break up the family. Q. Has Mark Festa asked you to do anything with regard to this lawsuit?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest. Do you know are you well, strike that. I don't have any further questions. Thank you, Mr. Festa. A. Thank you. MR. REISS: All right. I have a few. THE WITNESS: Tell him can he wait because I have prostate trouble. MR. REISS: All right. Mr. Festa, can you hear me? MR. BUCKNER: Hang on. Allan, he needs to use the bathroom. We're going to take a break so he can use the bathroom. MR. REISS: Okay. THE VIDEOGRAPHER: We are off the record at 1:08 p.m. EXAMINATION
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	that contract? A. That he could stay there. Q. And that nephew is Mark Festa? A. Yes. That's my sister's son. Q. But going back to that conversation, are you are you certain that that conversation was with Brad Colmer, or do you know? MR. REISS: Form. THE WITNESS: I don't remember. It's been a long time. I know that I told I told my kids that I have an offer, but I can't do anything. But I have quite a few offers. BY MR. BUCKNER: Q. So other people have offered to buy the 1349 Dade Boulevard property from you over the years? A. Oh, yeah. Q. And the reason you haven't sold is because of your agreement with Mark Festa? A. Hey, my sister. Q. So that's a yes? A. Don't want to break up the family. Q. Has Mark Festa asked you to do anything with	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. I didn't get anything from her either. Q. Believe me, you're not alone. I have been trying to get information from her forever, and she plays it very close to the vest. Do you know are you well, strike that. I don't have any further questions. Thank you, Mr. Festa. A. Thank you. MR. REISS: All right. I have a few. THE WITNESS: Tell him can he wait because I have prostate trouble. MR. REISS: All right. Mr. Festa, can you hear me? MR. BUCKNER: Hang on. Allan, he needs to use the bathroom. We're going to take a break so he can use the bathroom. MR. REISS: Okay. THE VIDEOGRAPHER: We are off the record at 1:55 p.m. (Recess.) THE VIDEOGRAPHER: We are back on the record at 1:08 p.m.

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Page 142
                                                                                                                 Page 144
1 you hear me okay?
                                                                1 sitting across from you, Mr. Buckner, on behalf of his
2
         A. Yes, Allan.
                                                                   client, Sunset Land Associates, LLC, claims that Beach
                                                                   Towing Services, LLC --L -- Beach -- strike that.
 3
         Q. Okay. I represent Mark and Maureen Festa and
 4 Beach Towing in this litigation. I have a few
                                                                             Are you aware that the attorney sitting across
    questions.
5
                                                                5
                                                                   from you, Mr. Buckner, on behalf of his client, Sunset
             First, I think you testified, and correct me if
                                                                   Land Associates, has filed papers in this case claiming
6
7
    I am wrong, that when you left Miami, it was around
                                                                   that Beach Towing Services, Inc., is illegally
    1983, right? I think you said November or December --
                                                                   conducting towing business at 1349 Dade Boulevard?
9
                                                                9
         A. Yeah, December.
                                                                         A. Yeah, I guess so, because contrary to -- he
         Q. -- you retired to California, is that right?
                                                                   seems like a nice guy to me. I know he is just doing a
10
                                                               10
         A. -- yeah, if I remember, December, yeah, right,
                                                                    job for somebody. So --
11
                                                               11
12
   December '83, correct.
                                                               12
                                                                         Q. Okay.
13
         Q. Okay. And you -- when you left, I think you
                                                               13
                                                                         A. -- if I needed legal help, I think I'd hire
    said you left Beach Towing Services, Inc., with all the
                                                               14
                                                                   him.
                                                               15
15
    contracts with the City of Miami Beach; do you remember
                                                                             MS. RIBERO-AYALA: What about me?
16 that?
                                                                             THE WITNESS: You, I got. But anyway -- but
                                                               16
17
         A. Right, yeah --
                                                               17 anyway --
         Q. Right --
                                                               18
                                                                   BY MR. REISS:
18
19
                                                               19
         A. -- everything -- everything was taken care of,
                                                                         Q. As far as -- as far as you're concerned, when
2.0
   because --
                                                                   you left Miami in 1983, Beach Towing Services, Inc., had
21
                                                                   all the permission it needed from the City of Miami
         Q. Right. So when -- I'm sorry, go ahead.
22
         A. No. Go ahead, because, you know, Mark was new,
                                                               22
                                                                   Beach to conduct towing services at 1349 Dade Boulevard,
23 and I wanted to make sure we had all the contracts that
                                                               23
                                                                   is that correct?
24 I had with the City for a long time.
                                                               24
                                                                        A. Correct. I was one of the few --
25
                                                                             MR. BUCKNER: I'm sorry. I got to make my
         Q. Right. And so Beach Towing Services, Inc., was
                                                               25
                                                                                                                 Page 145
                                                  Page 143
1 the entity that was running the towing service at 1349
                                                                   objection.
    Dade Boulevard when you left, right?
                                                                             Objection; leading, calls for a legal
3
         A. Right.
                                                                3 conclusion.
 4
         Q. And you left -- left Beach Towing Services,
                                                                             Go ahead.
    Inc., with a contract -- strike that.
                                                                             THE WITNESS: Yes. The only other person that
 6
             You left Beach Towing Services, Inc., with a
                                                                   was towing was Tremont.
7
    permit issued by the entire city commission and the
                                                                7
                                                                   BY MR. REISS:
    mayor for conducting towing services for the City of
                                                                8
                                                                         Q. Okay. You mean towing for the City of Miami
9
    Miami Beach at 1349 Dade Boulevard, correct?
                                                                    Beach?
10
             MR. BUCKNER: Objection; leading, speculation.
                                                               10
                                                                         A. Exactly, prior to --
11
             THE WITNESS: Should I answer?
                                                                         Q. Anybody could tow, anybody could call AAA on
12
             MR. BUCKNER: You can answer.
                                                                   the beach and get towed from point A to point B, right?
13
             THE WITNESS: Yes, I wasn't going to leave --
                                                                    They can tow on the beach, right?
14 Mark was new even though Pete Knight knew everything,
                                                               14
                                                                             MR. BUCKNER: Objection; leading.
15
    and so did John Morejon, because they were in the
                                                               15
                                                                             THE WITNESS: Clarify yourself on that. I
16 business for a while. They knew everything. So I
                                                               16
                                                                   don't understand that.
17
    checked with them, we talked about it and I went down to
                                                               17
                                                                    BY MR. REISS:
18 City Hall and got everything they need -- I needed. I
                                                                         Q. Well, you were talking about the only other
    wasn't --
                                                                   company that was towing on the beach that was on behalf
19
   BY MR. REISS:
20
                                                                   of the City of Miami Beach, right? That's what you were
21
         Q. And --
                                                                   referring to?
22
         A. -- going to -- I wasn't going to leave these
                                                               22
                                                                         A. Oh, yeah, Tremont --
23
   two -- these new owners -- not -- yeah, well, they were
                                                               23
                                                                             MR. BUCKNER: Leading.
24
    owners. They were 24 percent owners.
                                                               24
                                                                             THE WITNESS: -- and Beach Towing.
                                                               25 ///
```

25

Q. Okay. And are you aware that the lawyer

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Page 146
                                                                                                                 Page 148
1 BY MR. REISS:
                                                                         Q. Okay. And you referred --
                                                                1
2
         Q. Other companies do towing on Miami Beach, just
                                                                2
                                                                         A. And we did --
                                                                         Q. -- to that as City Hall, right?
3 not for the City, correct?
4
             MR. BUCKNER: Leading.
                                                                         A. Excuse me, what was that?
                                                                         Q. That was called City Hall, right?
5
             THE WITNESS: Not for the City, and I didn't
                                                                5
   see too many because we did Triple A too. So there was
                                                                         A. City Hall Garage, right.
7
    no need for anybody to come on the beach to do it unless
                                                                         Q. Right. And now today when Mr. Buckner asked
8 a person knew somebody was in the towing business and
                                                                  you about Alton and Collins and the 1349 property, you
9 called them.
                                                                9
                                                                   called them all Beach Garage, right?
                                                                         A. They were all \operatorname{\mathsf{--}} the City Hall garage was the
10 BY MR. REISS:
11
         Q. Okay. But the business being operated -- the
                                                                   name of the garage that I bought, but it was still
12 business being operated at 1349 Dade Boulevard when you
                                                                   Beach --
                                                               12
                                                               13
13 left was Beach Towing Services, Inc., correct?
                                                                         Q. Okay.
         A. I'm confused on that. Beach Towing -- I'm
                                                                         A. -- Towing was doing the towing and plenty of it
14
                                                               14
15 getting confused now on Beach Towing, Beach Garage and
                                                                   because at that time I was the only one that was doing
    whatever they are coming up with. I don't know.
                                                                   all the towing for Beach Police Department.
16
17
         Q. All right. So you don't -- you're not -- you
                                                               17
                                                                         Q. Okay. And then -- well, do you know what the
    don't know one way or the other because --
                                                                   name of the entity is that had the permit in 1983 with
18
19
         A. I'm confused.
                                                               19
                                                                   the City of Miami Beach to do towing at 1349 Dade
                                                                  Boulevard?
2.0
         Q. -- it's been a lot of years? Huh?
                                                               20
21
         A. I'm confused.
                                                               21
                                                                         A. I don't understand the question. Excuse me, go
22
         Q. All right. And were you confused when you were
                                                               22 ahead. Ask it again.
23 answering Mr. Buckner's questions and referring to Beach
                                                               23
                                                                         Q. Isn't it true that the entity that had the
    Garage as well?
                                                                   permit from the City of Miami Beach in 1983 to do towing
24
25
             MR. BUCKNER: Objection; leading.
                                                                  for the City was called Beach Towing Services, Inc.?
                                                  Page 147
                                                                                                                 Page 149
             THE WITNESS: Yeah. I am still confused.
                                                                             MR. BUCKNER: Objection; leading.
2 Beach Garage I thought was the same as Beach Towing.
                                                                             THE WITNESS: Okay. Mark may have changed it
3
    BY MR. REISS:
                                                                3 or what. I don't know. I wasn't there.
 4
         Q. Okay. But you're not sure?
                                                                4 BY MR. REISS:
5
             MR. BUCKNER: Objection; leading.
                                                                         Q. You don't know one way or the other?
 6
             THE WITNESS: Well, if you asked me thirty
                                                                         A. No, I don't, really.
7
    years ago, I'd say yeah, sure, or I'm not sure, but
                                                                         Q. All right. So and then let me ask you this:
    right now --
                                                                   Beach Towing Services, Inc., never applied for a
    BY MR. REISS:
9
                                                                    conditional use to install gas pumps at 1349 Dade
10
         O. Okay.
                                                               10
                                                                   Boulevard, did it?
11
         A. -- I'm telling you that I thought it was.
                                                               11
                                                                             MR. BUCKNER: Objection; leading --
12
         Q. All right. Are you -- are you confused about
                                                               12
                                                                             THE WITNESS: I --
13
    that?
                                                               13
                                                                             MR. BUCKNER: -- calls for speculation.
14
             MR. BUCKNER: Objection; leading, asked and
                                                               14
                                                                             THE WITNESS: I don't remember pumps. I swear,
15 answered.
                                                                   I don't remember the pumps on the 1349. I know on -- on
16
             THE WITNESS: Am I confused about Beach Towing
                                                               16 Collins Avenue at City Hall Garage and also at -- let's
                                                                    see, on Alton Road Gulf station. I also had -- I also
17 and Beach Garage?
                                                               17
18 BY MR. REISS:
                                                                  had property on 5th Street that I put cars in. It was a
                                                                   big Mancraft -- they used to do big displays for
19
         Q. Yes, sir.
20
         A. Well, as far as I'm concerned, it's the same
                                                                    conventions, and they had this big property they got rid
21
    thing.
                                                                    of. I rented it for a long time. So we put a lot of
22
         Q. Okay. Have you ever -- let me ask you this:
                                                               22 cars down there too.
                                                               23 BY MR. REISS:
23 When you did business at 1150 Collins, you had a -- you
24 had -- what business did you have there?
                                                               24
                                                                         Q. Okay. As far as you can recall, Beach Towing
```

A. It was a gas station and towing.

Services, Inc., never applied to the City to install gas

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

```
Page 154
                                                                                                                Page 156
1 BY MR. REISS:
                                                                            MR. BUCKNER: Objection; leading.
                                                               1
2
         Q. 1977.
                                                                            THE WITNESS: -- I'm sure a lawyer did. I
 3
                                                               3 didn't do it, but I'm sure I had a lawyer do it.
         A. Okay.
                                                               4 BY MR. REISS:
         Q. Is that correct?
 5
         A. I guess so. If you got it -- if you got it
                                                               5
                                                                        Q. And that was a separate company from Alton Gulf
    written down, it's -- I guess so. I don't remember.
                                                                  Service, right?
7
                                                               7
         Q. Is that consistent with your recollection that
                                                                            MR. BUCKNER: Objection; leading.
   you formed Alton Gulf Service, Inc., in about 1973?
                                                                            THE WITNESS: No. Do we have to -- it was
8
                                                               8
9
         A. Yes, I remember that. It was a Gulf station,
                                                               9
                                                                  all -- it was all one company. I owned everything
10 Alton Road, that's right, and we did AAA towing and
                                                              10 there. I owned that --
11 towing from Miami Beach. I remember that. And we did
                                                              11 BY MR. REISS:
12 not buy it. We did not buy it.
                                                              12
                                                                        Q. All right.
13
         Q. All right. And about three years later, you
                                                              13
                                                                        A. I didn't own --
14 formed a separate company called Beach Towing Services,
                                                              14
                                                                        Q. So in your mind --
15 Inc., in 1977, correct?
                                                              15
                                                                        A. -- Alton Road. I owned City Hall Garage and
16
             MR. BUCKNER: Objection; leading, asked and
                                                                 Beach Garage.
                                                              16
17 answered.
                                                              17
                                                                        Q. All right. So in your mind, even though they
             THE WITNESS: Okay. All right. If you say so,
                                                                  were all separate companies, since you owned them all,
18
                                                              18
19 if that's true -- I don't remember. I'm sure I did. If
                                                                   they were all one company, is that correct?
                                                              19
20 it's on paper, I did it, I guess.
                                                              2.0
                                                                            MR. BUCKNER: Objection; leading.
21 BY MR. REISS:
                                                              21
                                                                            THE WITNESS: Definitely, definitely, one
22
         Q. Okay. Is it consistent with your recollection
                                                              22 company.
23 that you formed Beach Towing Services, Inc., about three
                                                              23
                                                                            MR. BUCKNER: Objection; leading.
24 years after Alton Gulf Services, Inc.?
                                                              24 BY MR. REISS:
25
             MR. BUCKNER: Objection; leading.
                                                              25
                                                                        Q. All right. Even though they were formed as
                                                 Page 155
                                                                                                                Page 157
             THE WITNESS: Say it again.
                                                               1 separate corporations, since you owned them all, you
2 BY MR. REISS:
                                                                  considered them the same, all one company?
         Q. Is it consistent with your recollection that
                                                                            MR. BUCKNER: Objection; leading.
 4 you formed Beach Towing Services, Inc., about three
                                                                            THE WITNESS: If the attorney said to do it
    years after Alton Gulf Services, Inc.?
                                                                  this way, I did it. What did I know about it?
6
             MR. BUCKNER: Objection.
                                                               6 BY MR. REISS:
                                                               7
7
             THE WITNESS: Okay. What year was that?
                                                                        Q. Okay.
    BY MR. REISS:
                                                                        A. Okay?
9
         Q. Alton Gulf Service, Inc., was 1973.
                                                                        Q. All right. So you don't know the difference
10
         A. Yeah, but when -- when did I sign the new thing
                                                                  between a separate company and various companies that
11 you're saying?
                                                                  you own, is that correct?
12
             MR. BUCKNER: I'm going to object. Just
                                                                            MR. BUCKNER: Objection; leading, misstates
13 because he says it --
                                                                  testimony.
14 BY MR. REISS:
                                                              14
                                                                            THE WITNESS: No, I don't.
15
         Q. Is it consistent with your recollection that
                                                              15
                                                                 BY MR. REISS:
   you formed Beach Towing Services, Inc., in 1977?
                                                                        Q. If you own them, they are all the same company
17
         A. I don't know. I don't remember that.
                                                              17
                                                                   in your mind, correct?
18
         Q. Was it a few years after Alton Gulf?
                                                              18
                                                                            MR. BUCKNER: Objection; leading.
                                                              19
                                                                            THE WITNESS: Yes.
19
         A. I don't remember. I mean -- I guess.
20
         Q. Okay. You did form -- you do remember forming
                                                              20
                                                                  BY MR. REISS:
   Beach Towing Services, Inc., right?
                                                              21
                                                                        Q. All right. So you don't really know the
22
         A. Say that again.
                                                                 difference between Beach Garage and Beach Towing
23
         Q. You do remember forming Beach Towing Services,
                                                              23
                                                                  Services, Inc., do you?
                                                                        A. No --
24 Inc., correct?
                                                              24
25
         A. Yeah, I'm sure I did --
                                                              25
                                                                            MR. BUCKNER: Objection; leading.
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             THE WITNESS: -- I don't. I thought it was all
                                                                1 records -- the only one I found was a Beach Garage that
1
2 one all these years.
                                                                2 was formed in, like, 1952. So I don't know what -- what
    BY MR. RETSS:
3
                                                                3 you're referring to. That's what I am trying to figure
 4
         Q. All right. Okay. But they could be separate,
                                                                   out.
                                                                5
5
    distinct companies, correct?
                                                                        A. 1952? I wasn't even in Miami until '55.
6
             MR. BUCKNER: Objection; leading.
                                                                         Q. Right. So my question is do you know if there
7
             THE WITNESS: Well, no, because I own both.
                                                                   was ever a legal entity formed called Beach Garage?
    BY MR. REISS:
                                                                8
                                                                        A. I don't know. No, I don't know. I don't know.
8
9
                                                                9
                                                                         Q. So when you -- when you used the words "Beach
         Q. Okay. Do you know when you formed any company
    called Beach Garage?
                                                                   Garage, " you were really referring to Vincent Festa,
10
                                                               10
11
         A. It's all the same, Beach Garage, Beach Towing,
                                                                    correct?
                                                               11
   Beach -- it's all the same. Okay? I don't know --
                                                               12
12
                                                                            MR. BUCKNER: Objection; leading.
13
         Q. Do you know if there ever --
                                                               13
                                                                            THE WITNESS: Yeah, I am Vincent Festa, yes.
         A. -- I don't know if Mark changed it while I was
                                                                   BY MR. REISS:
14
                                                               14
   gone. Don't forget now, I was gone 40 years -- more,
                                                               15
                                                                         Q. No. But my question is when you use the term
15
    30 -- since 1985 -- '83.
                                                                   "Beach Garage," you're referring to Vincent J. Festa,
16
                                                               16
17
                                                               17
         Q. Do you -- so in your mind, Beach Garage is the
                                                                   correct?
   same as Alton Gulf Service, Inc., is that correct?
                                                               18
18
                                                                        A. Well, yeah, at the time I owned it. I owned it
19
         A. Forget -- forget about Alton Gulf, Inc. Alton
                                                                   with Steve Venezia who passed away. Okay? We both
20 Gulf was released, and I didn't -- I didn't -- it was
                                                                   owned it, we both owned all the places, and I wanted to
21 owned by Gulf station. I got out of that place, went to
                                                                   retire, and I gave him notice. I wanted to retire to go
                                                               21
22
   City Hall Garage and then Beach Garage.
                                                                   to California, and he says well, I am going to retire
23
         Q. Okay. And City Hall is the same as Beach
                                                               23 first. So I had to buy him out. So I bought him out on
                                                               24 all the stuff.
24
    Garage?
25
                                                               25
         A. Same. It's all one. Now, I don't know what
                                                                            So as for the -- what's the word, the correct
                                                           59
                                                                1 wording of companies from one to another, it wasn't a
                                                                2 shelter or anything like that. It was -- I thought it
                                                                   was Beach Garage, Beach Towing was the same thing.
                                                                         Q. You thought it was Vincent J. Festa?
                                                                            MR. BUCKNER: Objection; leading --
```

	Page 15
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
l	

A. What year was Beach Garage formed?

Q. Well, I don't know. I found in the public

23

24

Q. Sure.

```
THE WITNESS: Yeah, but I never --
             MR. BUCKNER: -- mischaracterizing the
    testimony, form.
             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:
         Q. Right, but you always considered them the same
   as Vincent Festa because you owned them, right?
         A. Exactly. I wish you had asked me 30 years ago.
   I'd give you better answers.
         Q. Your memory was better 30 years ago about
   events that happened in 1983, correct?
         A. Right.
         Q. Is that correct, sir?
         A. What's that? What's the question?
         Q. Your memory about events that happened 30 years
   ago were -- was better 30 years ago, right?
             MR. BUCKNER: Objection; leading.
             THE WITNESS: That's a definite. I think --
```

13

17

19

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23

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25

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November 10, 2017
                                                                                                       162 to 165
                                                 Page 162
                                                                                                                Page 164
1 yeah. It was better yesterday too.
                                                                1 would call us, and we'd have to tow 30 cars, 40 cars
2
    BY MR. REISS:
                                                                2 away. Okay? And we had to put them somewhere. So I put
3
                                                                   them where it was legal to put them.
         Q. I hear you.
 4
             Now, at the -- at the -- at 1150 Collins Avenue
                                                                            Now, Gulf may not thought it was legal there,
5
    were there cars parked there --
                                                                5
                                                                   but, you know, it didn't happen every 24 hours. I did it
6
         A. Excuse me?
                                                                   when I could.
 7
                                                               7
                                                                   BY MR. REISS:
         Q. -- when you operated that business?
8
         A. Excuse me?
                                                               8
                                                                        Q. Okay. And when you operated Beach Towing at
9
                                                               9
                                                                  1349 Dade Boulevard, there was cars parked there too,
         Q. When you operated the business -- I am sorry.
    When you operated the business --
                                                                   right?
10
                                                               10
11
         A. You are coming in broken.
                                                               11
                                                                        A. Definitely, and across the street I had leased
                                                                   out a big lot across the street, and I also had on 8020
12
         Q. I'm sorry. Let me try again.
                                                               12
13
             When you operated the business at 1150 Collins
                                                                   North Miami Avenue I had a big lot, actually, six lots
                                                                   there on -- off 79th Street and Miami Avenue, and I
14
    Avenue, were there cars stored there?
15
         A. Yes, all over. I was all over.
                                                                   could park them there too, and they weren't -- the
16
         Q. I am sorry?
                                                                   police weren't worried about it. They just wanted them
17
         A. I was all over the place. I was the only one
                                                              17
                                                                   out of the convention center.
   that was towing. That's before -- before Tremont came
                                                              18
                                                                        Q. All right. Do you remember, you said that
18
19
                                                                   Beach Towing Services, Inc., when you left in 1983 had
    in.
                                                               19
2.0
         Q. Right. And when you operated the business at
                                                                   the city permit for the city tows? Do you remember we
                                                               20
21
   1150 Collins Avenue, was there cars parked there?
                                                               21
                                                                   talked about that?
22
         A. Cars? Yeah, inside --
                                                               22
                                                                            MR. BUCKNER: Objection; leading.
                                                                            THE WITNESS: Yeah, we -- of course, we had the
         O. Yeah.
23
                                                               23
                                                                  towing. I didn't leave -- I wouldn't leave without
24
         A. -- on my property and everything, yes.
25
         Q. Okay. And when you operated the -- when you
                                                                   getting the permits before --
                                                 Page 163
                                                                                                                Page 165
    leased at the Alton Gulf, did cars get parked there?
                                                                   BY MR. REISS:
2
         A. Well, that's before -- that's before we went
                                                                        Q. How many years when you left in 1983 had Beach
    heavy into -- into towing because it wasn't --
                                                                   Towing Services, Inc., had the city permit for towing
 4
         Q. But there was cars parked -- there was cars
                                                                   vehicles with respect to the property located at 1349
    parked there as part of the business, right?
                                                                   Dade Boulevard?
 6
             MR. BUCKNER: Objection; leading.
                                                               6
                                                                            MR. BUCKNER: Objection; leading.
7
             THE WITNESS: Yeah. We towed -- we towed from
                                                                            THE WITNESS: I don't understand that question.
    everywhere and parked them on there. Even Gulf -- Gulf
                                                                   Say it again.
```

10

13

14

17

20

21

25

used to say to us you can't park those cars there. I said well, they're going to pick them up in 15 minutes. 11 Why are you getting nervous? As long as people can get 12 to the pumps and get the Gulf gas or --13 BY MR. REISS: 14 Q. So you parked cars -- you parked cars -- I am 15 sorry. 16 A. Excuse me? 17 Q. So you parked cars at the Alton station as 18 well, correct? 19 A. Every place --20 MR. BUCKNER: Leading. 21 THE WITNESS: -- every place I could find a 22 spot. 23 Now, don't forget, when there used to be a

24 convention at the convention center, the fire department

would call the police department, the police department

BY MR. REISS: Q. For how many years before your departure in 1983 did Beach Towing Services, Inc., have the city permit for towing on behalf of the City of Miami Beach? MR. BUCKNER: Objection; leading. THE WITNESS: Forever, since I bought the -since I bought the property -- I got to think a minute even though I mentioned it today -- was it '79 I bought the property? That's what I bought the property for. 18 I didn't buy it to sell gas. I bought the property to 19 park cars there and the rental lot across the way. BY MR. REISS: Q. And do you remember when you first obtained the permit from the City of Miami Beach for Beach Towing Services, Inc., to conduct towing services on behalf of the City of Miami Beach at 1349 Dade Boulevard? MR. BUCKNER: Objection; leading.

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                                                                                                                 Page 168
1
             THE WITNESS: As soon -- as soon as I towed one
                                                                1 don't even remember when I signed up with Alton Gulf,
2 car, I did it.
                                                                2 the Gulf station. I don't remember that. But I know it
3 BY MR. REISS:
                                                                3 had to be -- it had to be in the '70s, I think. I'm not
 4
         Q. Beach Towing --
                                                                4 sure.
                                                                5 BY MR. REISS:
5
         A. I wasn't going to do anything -- what was your
                                                                         Q. I think you said that when Beach Towing
6
    question?
7
                                                                   Services, Inc., repaired vehicles at 1349 Dade
         Q. Beach Towing Services, Inc., had the permit,
                                                                   Boulevard, that was mostly its own trucks. That's your
8
    correct?
9
                                                                9
                                                                   recollection, correct?
             MR. BUCKNER: Object to form.
             THE WITNESS: Yes, we always had permits.
                                                                         A. Yeah. We, you know, being the only ones that
10
                                                               10
11 BY MR. REISS:
                                                                   would tow, we didn't have time for repairs. I mean,
12
         Q. And you believe that goes back to 1977,
                                                                   maybe we did it for a friend or something or -- or
13 correct?
                                                                    somebody's mother, we would do something like that for
                                                                    people that we know, but, otherwise, we just -- we had
14
             MR. BUCKNER: Objection; mischaracterizes the
    testimony.
                                                                    so many trucks we had to just take care of bring in --
15
16
             THE WITNESS: I think it goes back to earlier
                                                                   bringing the cars in, putting at 1349 and across the
17 than that when I was at Gulf station. We've always had
                                                                    street from 1349 Dade Boulevard, which we had a big lot
                                                               17
                                                               18
18
    the permits.
                                                                    there.
                                                               19
19
                                                                         Q. All right. I'm almost done. Let me take a
             Listen, if I didn't have the permits, they
20 wouldn't let me tow. Okay? They called me. I didn't
                                                                    short break and go over my notes. Give me five minutes.
21 call them.
                                                                    Okay? Everybody take a short five-minute break?
                                                               21
22 BY MR. REISS:
                                                               22
                                                                             THE WITNESS: Sure. Okay.
23
         Q. Now, you were talking to -- today about a
                                                               23
                                                                             MS. RIBERO-AYALA: Okay.
   contract with your nephew, Mark Festa.
                                                                             THE WITNESS: Please, come back.
                                                               24
25
                                                               25
                                                                             THE VIDEOGRAPHER: We are off the record at
             Do you remember those questions and answers
                                                  Page 167
                                                                                                                 Page 169
    today, sir?
                                                                1 1:37 p.m.
2
         A. What kind of a contract?
                                                                             (Recess.)
         Q. That's what I was about to ask you. Do you
                                                                             THE VIDEOGRAPHER: We are back on the record at
   recall those questions and answers about a contract with
                                                                   1:43 p.m.
    your nephew?
                                                                             MR. REISS: Thank you, Mr. Festa. I have no
 6
         A. No. Refresh my memory.
                                                                    other questions at this time.
7
         Q. All right. The Vincent Festa Trust has a lease
                                                                             MS. RIBERO-AYALA: I have no questions.
    with Beach Towing Services, Inc., for the use of the
                                                                8
                                                                             MR. BUCKNER: I have no questions.
9
     property at 1349 Dade Boulevard, right?
                                                                9
                                                                             THE VIDEOGRAPHER: We are off the record.
10
             MR. BUCKNER: Leading.
                                                               10
                                                                             MS. RIBERO-AYALA: You have a right to waive
11
             THE WITNESS: Vincent Festa Trust has a what?
                                                                   reading your deposition or to read it. What would you
12 No. They own the property.
                                                                    like to do? Would you like to read it?
13
    BY MR. REISS:
                                                               13
                                                                             THE WITNESS: Yes. Okay.
14
         Q. Right, and they leased it to Dade -- and
                                                               14
                                                                             MS. RIBERO-AYALA: He will read his deposition.
15
   Vincent Festa Trust leased the 1349 Dade property to
                                                               15
                                                                             (Deposition concluded at 1:45 p.m.)
16
    Beach Towing Services, Inc., correct?
                                                               16
                                                               17
17
         A. Yeah, that was my company.
                                                               18
18
             MR. BUCKNER: Objection; leading.
                                                               19
19
   BY MR. REISS:
20
         Q. Okay. Which has been operating, based on your
                                                               20
    last answer, towing cars for the City at 1349 Dade
                                                               21
```

22

23

24

22

23

24

Boulevard since at least 1977, right?

MR. BUCKNER: Objection; leading.

25 you have to tell me. If you can tell me when I -- I

THE WITNESS: I don't remember the year, but --

	D 150		2 100
1	Page 170 DECLARATION UNDER PENALTY OF PERJURY	1	Page 172 STATE OF CALIFORNIA
2			
		2	COUNTY OF SAN DIEGO)
3	I, VINCENT J. FESTA, do hereby certify under		COUNTY OF SAN DIEGO
4	penalty of perjury that I have read the foregoing	3	
5	transcript of my deposition taken on November 10, 2017;	4	I, Barbra Zucker, a Certified Shorthand
6	that I have made such corrections as appear noted herein	5	Reporter, do hereby certify:
7	in ink, initialed by me; that my testimony as contained	6	That prior to being examined, the witness in
8	herein, as corrected, is true and correct.	7	the foregoing proceedings was by me duly sworn to
9		8	testify to the truth, the whole truth, and nothing but
10	Dated this day of, 20,	9	the truth;
		10	That said proceedings were taken before me at
11	at, California.	11	the time and place therein set forth and were taken down
12			by me in shorthand and thereafter transcribed into
13			typewriting under my direction and supervision;
14		14	I further certify that I am neither counsel
15	- <u></u> -		
	VINCENT J. FESTA		for, nor related to, any party to said proceedings, not
16			in anywise interested in the outcome thereof.
17		17	In witness whereof, I have hereunto subscribed
18		18	my name.
		19	Dated: November 22, 2017
19		20	
20		21	
21		22	
22		23	Barbra Zucker
23			CSR No. 11289
24		24	
25		25	
	D 181		
1	Page 171 DEPOSITION ERRATA SHEET		
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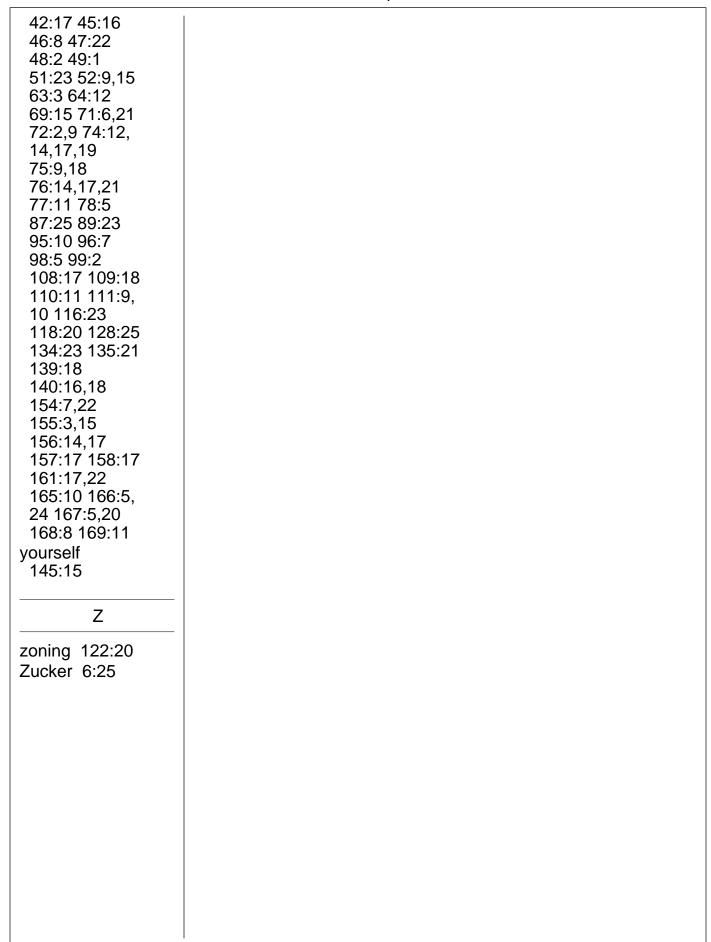
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EXHIBIT "C"

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.

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

	Page 2
1	APPEARANCES:
2	
3	On behalf of the Plaintiff: BUCKNER + MILES 3350 Mary Street
4	Miami, Florida 33133 (305) 964-8003
5	By: DAVID M. BUCKNER, ESQ. By: BRETT E. VON BORKE, ESQ.
6	
7	On behalf of the Plaintiff: HOLLAND & KNIGHT, LLP
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9	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.,
13	Consolidated Storage Yards, Inc., Goofe
14	Partners, Inc., Miami Avenue Properties, Inc., 1718 Bay Road Corporation, Festa Transport and
15	Storage, Inc., and Corona Storage, LLC: LEVINE & PARTNERS, P.A.
16	3350 Mary Street Miami, Florida 33133-5215 (305) 372-1350
17	By: ALLAN S. REISS, ESQ.
18	
19	On behalf of Touch of Class Paint & Body Shop, Inc. and Rudolf Budja Gallery, LLC: BRODSKY, FOTIU-WOJTOWICZ, PLLC
20	169 East Flagler Street Suite 1224
21	Miami, Florida 33131 (305) 503-5054
22	By: BENJAMIN H. BRODSKY, ESQ.
23	
24	
25	

Page 3 1 APPEARANCES: On behalf of Thomas R. Mooney: 3 CITY OF MIAMI BEACH CITY ATTORNEY'S OFFICE 1700 Convention Center Drive 4 4th Floor Miami Beach, Florida 33133 5 (305) 673-7000 6 By: ALEKSANDR BOKSNER, ESO. By: NICK KALLERGIS, ESQ. 7 ALSO PRESENT: 8 9 Daniel Marinberg Bradley Colmer W. Tucker Gibbs, Esq. 10 Rafael E. Andrade, Esq. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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- 1 THEREUPON:
- 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 O 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.
- But those are generally the rules. If you
- 14 want to -- do you understand the rules so far?
- 15 A Yes.
- 16 O 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
- 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.

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August 24, 2018

- 1 O 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 O And who is that?
- 8 A Jimmy Morales.
- 9 O 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 O 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
- 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 O 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 O 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
- 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 O 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 O 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 O 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 O And that consideration as an issue has
- 13 existed continuously from 2003 to the present,
- 14 correct?
- 15 A Correct.
- 16 O 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 O 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.
- 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?
- MR. BUCKNER: Object to form.
- 24 Speculation.
- 25 A I couldn't speculate to that, either.

- 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 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 O Okay. And where did you work before 1998?
- 15 A Before -- or before 1989?
- 16 O 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.

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- O 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 O 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 O That's after --
- 23 A Yes.
- 24 0 -- certification?
- 25 A Yes.

- 1 O 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.
- MR. BUCKNER: Objection.
- 23 MR. REISS: What's the matter with it?
- MR. BUCKNER: The way you asked the
- 25 guestion 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
- 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.
- 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?

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- 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 0 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.
- Q What did you do to prepare for your
- 25 deposition today, if anything? And I don't want to

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- 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.
- 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 O 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?
- 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 O 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
- 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 --
- 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

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- 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.
- 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?
- MR. BOKSNER: Because that's not what was
- said. So you're interpreting that.
- 15 BY MR. REISS:
- 16 O 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 O 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

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- 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
- 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 O 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

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- 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 0 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 O 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?
- 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.
- Q Who was on the phone during that phone
- 25 conversation?

- 1 A Just myself and Commissioner Gongora.
- 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 O I show you Exhibit B.
- 22 MR. REISS: Mr. Boksner. Mr. Buckner.
- 23 MR. BUCKNER: Did you call that 2 or B?
- 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 O 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 O 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.
- 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.
- 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 O 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

- brought that up. 1
- (Defendant's Exhibit C was marked for
- Identification.) 3
- BY MR. REISS:
- 5 I show you Exhibit C. We'll get back to 0
- Do you recognize Exhibit C? 6 В.
- Α Yes.
- Is that a true copy of a letter you wrote? 8 0
- 9 Yes, it is. Α
- And is that your signature on it? 10 0
- 11 Α Yes.
- 12 Did you intend by writing this to mean
- that somehow Beach Towing's use of the 1349 Dade 13
- 14 Boulevard property for towing is illegal?
- 15 Α No.
- 16 When you wrote this letter, did you mean
- 17 to say that towing is not permitted in CD-2?
- 18 Α Yes.
- 19 That's under the current code? Q
- 2.0 Correct. Α
- 21 Because it's not listed as a permitted or
- 22 a conditional use in the code?
- 23 Correct. Α
- 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?
- 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;
- therefore, he will not answer the question.
- 24 You can certify it if you want.
- MR. REISS: I'm not here to argue.

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- 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 O 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 O Okay. Under what circumstances would you
- 22 make a determination upon the application for a BTR
- as to whether the use of the property is a legal
- 24 nonconforming use?
- 25 A If it was requested by the property owner.

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- 1 O 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.
- 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 O 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 O 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?
- MR. BUCKNER: Object to form.
- 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 O 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.

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- 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
- 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 O And what was discussed?

- 1 THE WITNESS: At that meeting Raul was
- 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 O 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 O 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
- 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 O 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.
- 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.
- Q Do you know why?
- 14 A The -- it was determined that --
- MR. BOKSNER: Objection. If you're going
- 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.
- 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?
- MR. BOKSNER: Was Raul Aquila present?
- 13 THE WITNESS: Yes.
- MR. BOKSNER: Okay.
- 15 BY MR. REISS:
- 16 O 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 O Yes.
- 21 A Okay.
- 22 THE WITNESS: Can I answer that?
- MR. BOKSNER: Yes.
- 24 A Okay. The manager.
- 25 Q Mr. Morales?

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- 1 A Yes.
- 2 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
- 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.
- 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
- don't want to have an argument on that.
- MR. BOKSNER: No. I assume you'll do
- whatever you're going to do.
- MR. REISS: Okay. And that's for the
- whole depo, right? We don't have to do any
- 15 back and forth to preserve any --
- 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 0 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?
- 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 O 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

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- 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 O 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

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- 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?
- MR. BUCKNER: Object to form.
- 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 O 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 O Any other reasons?
- 21 A There's none that I'm aware of.
- 22 O 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.
- 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.
- MR. REISS: Mr. Buckner, I'm going to
- 13 slide it. Is that okay?
- MR. BUCKNER: Yes.
- 15 BY MR. REISS:
- 16 O 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 O And you reported to Mr. Morales, the city
- 22 manager, when this Resolution was passed, correct?
- 23 A Correct.
- Q And this, if I understand this permit,
- 25 this is a permit to Beach Towing and Tremont Towing

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- 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,
- 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.

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- 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 0 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 0 "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?
- 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 O 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

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- 1 Receipt, yes.
- 2 (Defendant's Exhibit E was marked for
- Identification.) 3
- BY MR. REISS: 4
- 5 And I show you Exhibit E. 0
- familiar with this Resolution? 6
- This is the first time I've seen it.
- Okay. So the city not only did not revoke 8
- 9 the BTR, the Business Tax Receipt, but it also voted
- and the mayor and the city manager issued a new --10
- 11 and extended Beach Towing's towing permit for towing
- 12 at 1349 Dade Boulevard.
- 13 Okay. Α
- 14 Is that correct? 0
- 15 MR. BUCKNER: Object to form.
- 16 Pursuant to this Resolution, that appears Α
- 17 to be correct.
- 18 And another finding was made on
- February 14, 2018, that at the last "Whereas" clause 19
- on Exhibit E, "Whereas, the permittees are the only 20
- 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
- and Parking Towing Permits, including the 24
- 25 requirement to provide vehicle storage facilities

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- 1 within the city limits." Did I read that correctly?
- 2 A Where is that? I'm sorry.
- 3 O 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 O 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 O 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.
- 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,
- 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?
- 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

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

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- 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 O 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.
- 21 A Yes.
- MR. BUCKNER: Allan, could we take a break
- at some point? You can do whatever you want.
- 24 I just --
- MR. REISS: You need a break?

Page 68 1 MR. BUCKNER: Yes. 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. THE WITNESS: I'm fine whenever you guys 6 want a break. MR. REISS: Okay. 8 9 (There was a recess taken from 10:40 a.m. To 10:56 a.m.) 10 BY MR. REISS: 11 12 You understand you're still under oath, 13 sir? 14 Yes. Α 15 0 Looking at Exhibit D, page -- it's the 16 numbered page 8, but not the eighth page of the 17 exhibit. 18 Okay. Α 19 It's probably 10, 11 or 12. See page 8? Q 20 Is this -- what would the number be on Α 21 that --22 Q Eight. 23 Oh, eight. Α 24 That's what I'm referring to. Page 8 of

the attachment --

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- 1 Α Okay.
- -- entitled --
- 3 Yes. Under "Storage Area/Storage
- Facilities." 4
- 5 It says on the second sentence, 0 Yes.
- "Said storage area will be enclosed in accordance 6
- 7 with applicable zoning requirements." Did I read
- that sentence correctly? 8
- 9 Α Yes.
- And this is referring to Beach Towing's 10 0
- 11 place of operations, 1349 Dade Boulevard, correct?
- 12 Correct.
- And we talked about -- so after this 13
- 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:
- 2.0 You can answer.
- 21 Α Correct.
- 22 And on that same document, Exhibit D, but
- 23 page 3 --
- Under "Competency of Applicants"? 24 Α
- 25 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?
- 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?
- MR. BUCKNER: Object to form.
- 20 A Correct.
- 21 O 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.
- Q And do storage facilities have an impact
- 25 on traffic circulation?

- 1 A Vehicular storage facilities?
- 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 O 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 O 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 O So near public safety buildings efficient
- 24 circulation is even more important than the rest of
- 25 the city?

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- 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.
- 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 O And it relates to public safety, correct?
- 24 A Yes. It doesn't -- I don't see the word
- 25 "towing" in here.

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- 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?
- 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?
- 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
- of its place of business and get to the scene of the
- 25 incident, right?

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- 1 Object to form. MR. BUCKNER:
- Speculation.
- 3 Α Correct.
- 4 So the tow company would need to be able
- to promptly arrive at the scene of an accident to 5
- assist the Police Department under this permit, 6
- 7 correct?
- MR. BUCKNER: Object to form. 8
- 9 Speculation.
- That I couldn't speculate to. 10 Α I don't
- 11 know what the procedures are for the expedited
- 12 removal of vehicles.
- Does it stand to reason as a planning 13
- 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?
- I couldn't answer that on a general basis. 17
- 18 Would you agree with me that the longer
- there's accident vehicles blocking the public 19
- 20 right-of-way, the greater risk there is to public
- 21 safety?
- 22 Yes.
- 23 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

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- 1 Road?
- Α Yes.
- 3 And I believe Tremont Towing also accesses 0
- 4 the streets through Bay Road, right?
- 5 I believe so, yes. Α
- And those are the only two tow companies 6 0
- 7 that provide police and parking towing services to
- the City of Miami Beach, correct? 8
- 9 Α Correct.
- 10 (Defendant's Exhibit G was marked for
- 11 Identification.)
- 12 BY MR. REISS:
- 13 I show you Exhibit G. Have you seen
- 14 Exhibit G before?
- 15 I have not. Α
- 16 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
- question is, when this project -- and you can look 19
- 20 through it. You want a minute to look through it
- 21 and then I'll ask questions?
- 22 Α Sure.
- 23 Go ahead. I'll wait until you look at it. 0
- (Witness reviews document.) 24
- 25 Α Okay.

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- 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?
- 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 O 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

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- 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?
- 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
- on October 1, 1985. Do you see that?
- 25 MR. ANDRADE: First page.

- 1 BY MR. REISS:
- 3 A Yes.
- 4 Q Do you have any reason to believe that's
- 5 not accurate?
- 6 A No.
- 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

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- 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

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- 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 O 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 O And then turning to the page that's marked
- 22 SLA-12456.
- 23 A Okay.
- 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 O Any reason to believe Mr. Festa wasn't
- 10 testifying truthfully that day?
- 11 A No.
- MR. BUCKNER: Object to form. Outside the
- witness' competence.
- 14 BY MR. REISS:
- 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.
- Q Do you have any reason to believe that
- 25 Mr. Festa's statement on June 4, 1980 was not

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- 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.
- 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 O 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?
- MR. BUCKNER: Object to form.
- 25 A No.

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- 1 O And then if you turn to SLA-12462. Let me
- 2 know when you're there.
- 3 A Okay.
- 4 0 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.
- 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 O Do you recognize any of these documents?
- 22 A The front one I don't.
- 23 O You wouldn't know of something I wrote.
- 24 A Let's see.
- 25 Q Or at least I signed.

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- 1 A The attached exhibits I do recognize.
- 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.
- 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.

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- 1 MR. REISS: Guys, I apologize that these
- aren't numbered, but this is how they were
- 3 produced to me.
- 4 BY MR. REISS:
- 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:
- Q Did I mischaracterize the document to your
- 25 knowledge as the planning director?

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- 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."
- MR. REISS: You guys want me to wait a
- 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.
- 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:
- 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?
- MR. REISS: I counted 17, but let me try
- 15 again.
- MR. BUCKNER: No, no, no, no. I'm asking
- 17 you to clarify.
- 18 MR. REISS: I'm sorry.
- 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.
- 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 O 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?
- 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 O 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.
- 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?
- 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 O 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.

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- 1 O 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
- of any facts that that was not a permitted use under
- 12 the then existing code, correct?
- MR. BUCKNER: Object to form.
- 14 A Correct.
- MR. REISS: What's the matter with the
- 16 form?
- 17 MR. BUCKNER: You said based on this. I
- don't know what "this" is.
- 19 MR. REISS: Okay.
- 20 BY MR. REISS:
- 21 O 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,

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- 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 O 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 O 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 O 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 O The one.
- 10 A Oh, the original letter.
- 11 0 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.
- 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.
- 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 Okav.
- 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.
- 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 O And this looks like a conditional use
- 17 application related to the gas pumps, correct?
- 18 A Correct.
- 19 O 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?
- 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
- was in effect from October 1971 through October of
- 13 1989.
- 14 O 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?
- MR. BUCKNER: Object to form.
- 23 A That's my understanding.
- Q And as part of your occupation as the
- 25 planning director, do you have occasion to review

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- 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 O All right. And then looking at page 6.26.
- 22 A Okay.
- 23 O It talks about "C-6 Intensive Commercial
- 24 District." And then it says, "District Purpose.
- 25 This is a utilitarian district characterized by

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- 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 O 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 --
- MR. BUCKNER: Object to form.
- 16 BY MR. REISS:
- 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

- 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 O So it's not excluded in C-6 as a
- 10 conditional use, correct?
- 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
- in C-6 unless it's a conditional use in C-6, right?
- 22 A Pursuant to B-1, that's correct.
- 23 O 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?
- 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
- 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?
- MR. BUCKNER: Object to form.
- 17 BY MR. REISS:
- 18 O 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 O 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 O 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?
- 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 O 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
- 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 O I show you Exhibit N as in Nancy.
- 21 MR. REISS: I'm one short.
- 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 O 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
- 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.
- 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.
- 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 O 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
- if I marked it, it's not a waiver of my work
- 24 product.
- 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 O 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
- 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

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- 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 O 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.
- 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.
- 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 O 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?

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- 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 O 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 0 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
- 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.
- 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.
- 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?
- 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 O 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 O 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.
- MR. REISS: It's your turn, Mr. Buckner.
- 20 Do you want to switch sides to make it easier
- 21 for the court reporter?
- MR. BUCKNER: If you don't mind, can we
- 23 take a break and do that? Because I think it's
- going to be too hard for me to talk over these
- 25 guys.

- 1 MR. REISS: And then we're going to switch
- 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.
- 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.
- MR. BUCKNER: We'll figure it out. A lot
- 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.
- Okay. What's an accessory use?
- 21 A A use that is subordinate to the main
- 22 permitted use.
- 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 O And there's been a lot of different words
- 10 used today. I want to make sure I'm using the right
- 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.
- 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 O 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 O 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.

- O 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.
- 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.
- 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 O 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 0 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 O And there are some set forth as
- 9 conditional uses, correct?
- 10 A That's correct.
- 11 O 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 O 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 O 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.
- Today does the City of Miami Beach still
- 14 approve on occasion conditional uses of property?
- 15 A Yes.
- 16 O 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 O Did they used to require commission
- 22 approval?
- 23 A Under the previous code, City Commission
- 24 approval was required.
- 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.
- 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.
- 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.
- Q Do you know for a fact that the city clerk
- 25 kept a record?

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- 1 A That I don't know.
- 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 O 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
- 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.
- 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 O 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 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 O 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?
- MR. REISS: Form.
- 23 A Yes. That's correct.
- 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
- 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 O 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 O 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?
- 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.
- 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
- don't have copies. I totally forgot. You all
- 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 0 What is it?
- 16 A This is Article 10 of the city code under
- 17 Chapter 118 regarding nonconformances.
- 18 O And --
- 19 A I'm sorry. Article 9.
- 20 O 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 O 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.
- Q Okay. Is part of your job as planning
- 25 director to bring nonconforming uses into

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- 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.
- 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?
- MR. REISS: Predicate. Form.
- 24 A It would be the responsibility of the
- 25 planning director.

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- 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.
- 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 O 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 O 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 O 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 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?

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- 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 --
- 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
- of the land, Section 118-391 governs that; is that
- 16 right?
- 17 A That's correct.
- 18 O 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.

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- 1 O 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
- out to Beach Towing and investigate how they're
- 23 using the land?
- MR. REISS: Form.
- 25 A I will certainly -- I have taken a look at

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- the property. And I will certainly take another 1
- look at the property.
- 3 And having taken a look at the Okay.
- 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.
- That's correct. 8 Α
- 9 And under the towing permit, they're
- 10 required to have space to store up to a hundred
- cars, right? 11
- 12 That I don't know, because I'm not
- 13 familiar enough with the permit.
- 14 Okay. Do you know how many cars they're Q
- 15 required to be able to store at any one time?
- 16 Α No.
- But you would agree with me since you 17
- visited the property that Beach Towing has cars 18
- stored all over the property, not just inside the 19
- 20 building.
- 21 MR. REISS: Form.
- 22 BY MR. BUCKNER:
- 23 Correct? 0
- I have seen cars stored both outside and 24
- 25 inside the building.

- 1 O 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 O 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 O 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 O 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 0 -- 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 O 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?
- MR. REISS: Form.
- 15 A It could mean --
- 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 O Correct?

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- 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.
- 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 O 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
- 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.
- 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.
- 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 O 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.
- 11 longest lasting -- strike that.
- 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 O 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?
- 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 O 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 O 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 revocate 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.
- 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 O 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
- 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 O 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 O No, it does not?
- 6 A No, it does not.
- 7 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 O 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 O 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
- 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 O 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.
- 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 O So it's a specific delineated use?
- 22 A That's correct.
- 23 Q But as Mr. Reiss asked you several times,
- in the pre-1989 code you cannot find the words
- 25 "towing" or "towing use" or "towing services"

- anywhere in there? 1
- That's correct.
- You also, by the way, in the pre-1989 3
- 4 code, if I'm not mistaken, cannot find the term
- 5 "nuclear power plant;" is that correct?
- That's correct. 6 Α
- 7 And you also can't find --
- 8 MR. BUCKNER: Guys. You can whisper.
- 9 BY MR. BUCKNER:
- And like I was asking you before, there 10 0
- 11 are a number of other uses that don't appear in the
- 12 code. That's correct?
- 13 Α That's correct.
- 14 In the pre-1989 code? Q
- 15 Α That's correct.
- 16 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?
- 2.0 MR. REISS: Form. Predicate. Improper
- 21 hypothetical.
- Depending upon the use and depending upon 22
- 23 the property that you wanted to put the use, we
- would have to evaluate whether or not that use would 24
- 25 be consistent with the listed permitted uses.

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- 1 O 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.
- 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
- or more permitted uses, and which would not be
- 15 inappropriate in the district." Did I read that
- 16 right?
- 17 A Yes.
- 18 O 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 O 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.
- 9 Because I want to ask the other stuff first.
- 10 A Okay.
- 11 O 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.
- MR. BUCKNER: Al, I actually have another
- one. Just one.
- MR. BOKSNER: Just one.
- MR. BUCKNER: Just one. I'm going to keep
- apologizing.
- 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 O These are BTR categories, at least some of
- 12 them, in the transportation and warehousing
- 13 category, correct?
- 14 A That's correct.
- 15 O 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
- is storage yard on Exhibit 3. You see that?
- 20 A Yes.
- 21 O And a storage yard is -- what's your
- 22 understanding of what a storage yard is?
- 23 A A place where things are stored.
- Q Is it specifically a place where
- 25 automobiles are stored?

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- 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 O 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.
- 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.
- 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 O Okay. I quess my question -- I'm sorry I
- 6 confused you. These uses are each different uses?
- 7 A On the Exhibit 3 and 4.
- 8 O Yes.
- 9 A Yes.
- 10 Q And, in fact, your Planning Department has
- 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 O 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 O And the determination, and you can read
- 17 through it, but there's -- this is -- this is --
- 18 well, strike that.
- 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?

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- 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 O And "those uses have since become
- 19 nonconforming, "right?
- 20 A Yes.
- 21 O 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.
- 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.
- 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 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 O 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
- 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 O 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 O 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
- of vehicles, and would not permit towing service
- 12 operations, "correct?
- 13 A Correct.
- 14 O 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.
- 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.
- 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.
- 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 O 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 O 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 O 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 O 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 O Now, Mr. Reiss asked you about
- 22 Mr. Larkin's letter. You recall that?
- 23 A Yes.
- 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.
- 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 O You've seen that conditional use permit
- 22 attached to Mr. Larkin's letter, though, correct?
- 23 A I believe so.
- Q Okay. I think it actually was the -- I
- 25 think it's recorded on the building card.

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- 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 O 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
- 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.
- 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.

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- 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 O 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 O 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 O 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 O 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 O 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 O 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?
- MR. REISS: Form. Improper hypothetical.
- 17 Predicate.
- 18 A I'm familiar with how that could
- 19 potentially happen.
- 20 O Right. And if an accessory use expands
- 21 and overtakes the permitted use, that doesn't make
- the accessory use permitted, does it?
- 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.
- MR. BUCKNER: Yes, the two.
- 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.

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- 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 --
- 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:
- 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 0 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
- would be.
- MR. REISS: Good job.
- MR. BUCKNER: I have some marginal level
- of competence.
- 15 And Allan's going to say humor doesn't
- 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 O 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 O 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 O 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 O 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?
- MR. REISS: Form. Predicate.
- 23 Speculation.
- 24 A I don't know.

25

- 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 O And what's the difference between an
- 25 interpretation and a determination?

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- 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 O 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 O 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.
- 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
- of the old, pre-1989 code with regard to these
- 22 issues?
- 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.
- 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 O You don't know what details aren't
- 14 recorded in this transcript, right?
- 15 A Correct.
- 16 O 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 O 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 O 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.
- 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.
- MR. BUCKNER: It's about this thick.
- 11 MR. BOKSNER: I think it's this one right
- here.
- 13 MR. BUCKNER: Yes. The last one, of
- 14 course.
- 15 BY MR. BUCKNER:
- 16 O 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 O You don't know who did?
- 23 A No.
- 24 Q So one of the things -- Mr. Reiss pointed
- out some exhibits in here. For example, he showed

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- 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 O 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.
- Q And from just looking at these codes,
- 25 first of all, do you know whether South Beach

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- 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?
- 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 O Right. And the original issue date of
- 2 this --
- 3 A It says March 14, 1996.
- 4 O 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:

- 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 O Perfect. Okay. I'll do that.
- 23 MR. BUCKNER: I have no further questions.
- Thank you, Mr. Mooney, for your time.
- THE WITNESS: You're welcome.

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- 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 O 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.
- In the pre-1989 City of Miami Beach Code,

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- 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 O 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.
- 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 O 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 O Well, it's different than Exhibit --
- 19 A I believe he said this was the 1980 code.
- MR. BUCKNER: '79 code.
- 21 THE WITNESS: 1979 code. Okay.
- 22 BY MR. REISS:
- 23 O 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,

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- 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?
- 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?

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- 1 O 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.
- 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 0 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"?
- 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 O 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 O 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 O 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 O 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 0 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 O 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 O 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

August 24, 2018

- issuance of a COP for a gas station lead to the 1
- conclusion that the towing was an accessory use?
- 3 MR. BUCKNER: Objection. It seeks
- 4 speculation.
- 5 BY MR. REISS:
- 6 Withdraw the question. 0
- 7 Is there anything in Exhibit 6 that
- indicates to you that towing was an accessory use, 8
- 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 0 You can answer.
- 16 You're talking about the Planning Board, Α
- the conditional use. 17
- Yes, sir. 18
- 19 This appears to apply solely to the Α
- 20 filling station.
- 21 Okay. So nothing in here indicates to you 0
- 22 that towing was an accessory use?
- 23 No. Α
- And do you know who this -- who Vincent 24
- 25 J. Festa was making this application on behalf of,

August 24, 2018

- what entity? 1
- Α No.
- 3 Do you know if it was Beach Towing
- 4 Services, Inc.?
- 5 Α No.
- 6 To the City of Miami Beach, does it matter
- that none of these conditions were ever complied 7
- with, with respect to your analysis as to 8
- whether Beach Towing -- whether -- strike that. 9
- 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
- respect to Exhibit 6, the conditional use permit, 13
- 14 were complied with?
- 15 I don't believe that that's going to be
- 16 germane to our analysis.
- 17 Going to Exhibit 5. Do you remember
- 18 Mr. Buckner asking you about Exhibit 5?
- 19 Α Yes.
- This has to do with a property that's 2.0
- 21 different than 1349 Dade Boulevard, correct?
- 22 That's correct.
- 23 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

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- 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?
- MR. BUCKNER: Object to form.
- 12 A That's correct.
- 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 O 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 O 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.
- 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 O 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 0 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.
- 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.
- 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 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.
- 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 O 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
- 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?
- MR. BUCKNER: Object to form. Outside the
- 17 witness' knowledge.
- 18 BY MR. REISS:
- 20 document is not a correct recitation of who the
- 21 applicant was on 8205?
- 22 A No.
- 23 O 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 O 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.
- MR. REISS: That's all I've got.
- 21 Gentlemen?
- 22 MR. BUCKNER: No. I'm allowed to go home.
- MR. REISS: Read or waive?
- MR. BOKSNER: He's going to read.
- MR. REISS: Thank you, sir.

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 1
               THE WITNESS: All right. Allan, nice to
          meet you.
 3
               MR. REISS: Nice to meet you.
 4
               THE REPORTER: Do you need this
          transcribed?
 5
 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.)
15
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Page 226 1 CERTIFICATE OF OATH 2 3 STATE OF FLORIDA 4 COUNTY OF MIAMI-DADE) 5 6 I, the undersigned authority, certify that THOMAS R. MOONEY personally appeared before me and 7 was duly sworn. 8 9 WITNESS my hand and official seal this 4th 10 day of September, 2018. 11 12 13 14 15 LILLIAN GADOMSKI Notary Public - State of Florida 16 My Commission No. FF186967 Expires: January 4, 2019 17 18 19 20 21 22 23 24 25

Page 227 1 CERTIFICATE 2 3 STATE OF FLORIDA 4 SS: 5 COUNTY OF MIAMI-DADE) 6 7 I, LILLIAN GADOMSKI, Professional Court Reporter and Notary Public, certify that I was 8 9 authorized to and did stenographically report the deposition of THOMAS R. MOONEY; that a review of the 10 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 the action, nor am I financially interested in the 17 18 action. 19 Dated this 4th day of September, 2018. 2.0 21 22 23 LILLIAN GADOMSKI 24 25

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5	THOMAS R. MOONEY	
6		
7		
8	Sworn to and subscribed before me	
9	this day of 2018.	
10		
11	Notary Public - State of	
12	My Commission Expires:	
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Sunset vs. Festa

	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
•	
	Please forward the original signed errata sheet to this office so that copies may be distributed to alparties.
	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:

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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	
The Planning Bo Ordinance. If y them to:	ou have any suggestions on how this Ordinance may be improved, please send Miami Beach Planning Board c/o Director of Planning 1700 Convention Center Drive Miami Beach, Florida 33139
Name	
Suggestion:	
Thank You!!	

ZONING ORDINANCE

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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."

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:

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.
- 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)

- 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, 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.
- 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

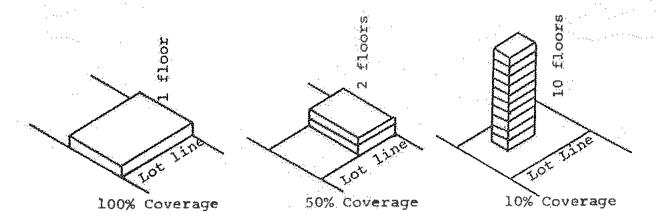
- 34. DORMITORY: A residence or building providing sleeping accommodations for students enrolled in a religious, educational, or business program who occupy rooms on a contractual basis generally corresponding to the length of the curriculum.
- 35. DRIVE-IN: A term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space.
- 36. <u>DWELLING:</u> 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 excusively 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.
- 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.
- 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.
- 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.
- 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.
- 1. 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.
- [. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.
- 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.
- 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.
- 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, lobhies, 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.
- 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 offstreet parking spaces in the computation of required off-street parking spaces.

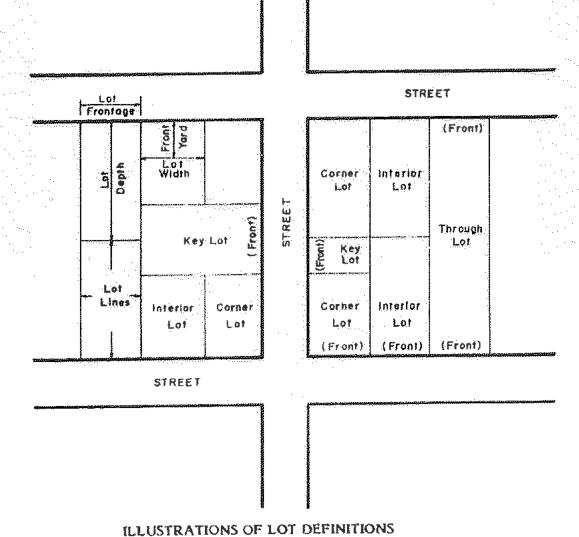
- 68. LOT: A parcel of land of at least sufficient size to meet minimum zoning requirements for use, minimum width, and area, and to provide such yards and other open spaces as are required in the Zoning Ordinance. Such lot shall have frontage on a public street, and may consist of:
 - a. A single lot of record;
 - A portion of a lot of record;
 - 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.



- 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.
- 8[. 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 lot 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 iil, 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
 - 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.
- PARKING LOT, STORAGE: A landscaped at grade all weather surface or 95. grayel 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, 1-1 of this Ordinance. There shall be a minimum five foot landscaped area between the fence or decorative mansonary 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 2% 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.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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)
- 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.

- III. 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.
- 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.
- 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.

- 51GN, 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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, take, 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.
- 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.

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:

SYMBOL	DISTRICT
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-H	Marine District
NH	Nursing Home
R-PSI	Residential Medium-Low Density
R-PS2	Residential Medium-Low Density
R-PS3	Residential Medium-High Density
R-PS4	Residential High Density
C-PSI	Commercial Limited Mixed Use
C-PS2	Commercial General Mixed Use
C-P53	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.
- The boundary line adjacent to Biscayne Bay is the established bulkhead line.
- 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.
- 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.
 - 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.

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 permissable 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 use:
 - 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.

- RS-1 30,000 square feet.
- 2. RS-2 18,000 square feet.
- RS-3 10,000 square feet.
- 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.
- 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.
 - 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:
 - 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.
 - 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.
 - 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.
 - 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.
- 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.
- 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.

PUD: 50 feet.

E. MINIMUM YARDS.

- 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%.

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.
- 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.
 - One- or two-family dwelling.
 - Rooming house.
 - Community garage.
 - 6. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
 - 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.
- 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.
- Publicly owned and operated recreation facility, playground, playfield, park and beach.
- in. 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.
 - Multiple family buildings other than adult congregate living facilities:
 - a. Dwelling Unit Shall have a minimum of 400 square feet.
 - Sleeping Unit Shall have a minimum of 400 square feet.
 - 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.
- 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.
 - Hotel, motel and tourist residence.
 - 4. One- or two-family dwelling.
 - 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.
- Marine dockage.
- k. Municipal buildings and uses.
- I. Private club.
- m. Public and governmental buildings and uses.
- 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.
- 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
- 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:
 - Apartment building and apartment hotel.
 - Group houses.
 - 3. Hotel, motel and tourist residence.
 - One or two-family dwelling.
 - 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.
 - 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.
- 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.
- Temporary use for a period not to exceed 15 days.
- 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
 - Multiple family buildings other than adult congregate living facilities:
 - a. Dwelling Unit Shall have a minimum of 400 square feet.
 - 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.
- 1. 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. <u>DISTRICT PURPOSE</u>. 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.
 - 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.
 - Drug Store
 - Garden shop, florist shop, greenhouse, nursery and landscape office.
 - Grocery Store
 - 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.
 - 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.
 - 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.
- 13. 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.
 - Municipal buildings and uses.
 - g. Undertaking establishment or funeral home.
 - 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.
- Residential use: 5,500 square feet.

D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None.
- Residential use: 50 feet.

E. MINIMUM YARDS.

- 1. Residential use: As provided in Section 8.
- Non-residential uses

- 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
- 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.
- Residential Use: 60 units per acre.

6-9 C-2 General Office District.

- A. <u>DISTRICT PURPOSE</u>. 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:
 - Those uses listed as conditional uses in each of these districts.
 - 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

- I. 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.
 - 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.

- I. 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.
 - Banks, including savings and loan associations.
 - Barber shops.
 - 9. Beauty parlors.
 - 10. Bicycle stores.
 - Book stores.
 - 12. Clothing and costume stores, selling new merchandise or rentals.
 - 13. Club, private.
 - 14. Confectionary or ice cream stores.
 - 15. Dental office.
 - 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.
- Medical offices.
- Messenger service.
- 28. Music stores.
- 29. Newsstands.
- 30. Nite clubs.
- 31. Optical stores
- 32. Photography stores and studios.
- Picture framing shops.
- 34. Pottery shops
- Printing and developing establishments.
- 36. Professional offices.
- 37. Radio or television broadcasting station, studio, and office, but not sending or receiving towers.
- 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.
 - I. Religious institutions.
 - 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.

- 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.
- Sidewalk cases, 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 cases 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.

- I. Non-residential use: None.
- 2. Residential use: 50 feet.

E. MINIMUM YARDS.

- Non-residential use: 10 feet when abutting a residential district; otherwise none.
- Residential Use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 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.

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.
 - Beaches, commercial.
 - e. Bus terminals.
 - f. Churches, synagogue and temple.
 - g. Colleges, junior colleges, or institutions of higher learning.
 - h. Filling station.
 - Institution, educational or philanthropic, including museum and art gallery.
 - i. Marina.

- k. Municipal buildings and uses.
- 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.
- Residential use: 50 feet.

E. MINIMUM YARDS.

- 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
- Residential use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA.

- I. Non-residential use: None.
- 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.

- I. 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 tight 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.
 - Auction parlor.
 - 4. Automobile accessories, new parts and equipment store, including new tires and sale of trade-in tires.
 - 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.
 - 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.
- 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 that 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:
 - 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.
 - 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.
- Temporary use for a period not to exceed 15 days.
- 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.

- I. Non-residential use: None.
- Multiple family Buildings.
 - 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.

MAXIMUM DENSITY.

- 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.
 - 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.
 - 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.
 - 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.
 - Filling station.
 - e. Institution, educational or philanthropic, including museum and art gallery.
 - 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.
 - 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.

H. MAXIMUM FLOOR AREA RATIO, 1.0.

6-14 RH Hospital District.

- A. DISTRICT PURPOSE. This district is designed to accommodate hospital facilities.
- it. 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

HOSPITAL	Front	Rear	Side
St. Francis	25'	401	1.51
Mt. Sinai	25'	40°	1.51
South Shore	20'	20'	151
Heart Institute	20'	20'	151
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. <u>USES PERMITTED</u>. 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 cental 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.
 - 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.
- 1. 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. Flotels 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.
 - Coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries.
 - Accessory off-street parking and loading spaces.
 - 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 more 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. 270 units per acre.

6-13 CCC Convention Center District.

- A. DISTRICT PURPOSE. The general goals of this district include the following specific purposes:
 - 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.
 - Publicly owned and operated recreation facility or park.
 - Public and governmental buildings, services and uses such as governmental
 office, fire station, library, museum, auditorium, garden center.
 - 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.
- Accessory olf-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.
- MAXIMUM DENSITY.
 - 1. Maximum number of hotel guest rooms in this district shall not exceed 3000.
 - Minimum number of guest hotel rooms per hotel will be 500.
 - 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:
 - 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.
 - 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-1 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: 7% 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 minterials 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. <u>DISTRICT PURPOSE</u>. 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:
 - Wet dockage of pleasure craft, not including house boats or house barges.
 Live aboards shall be limited as provided in subparagraph 2 (a) below.
 - 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 existance 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:
 - 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 2% 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:
- 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-1.

6-21 NH Nursing Flome District

- A. <u>DISTRICT PURPOSE</u>. 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. <u>USES PERMITTED</u>. No land, water, or structure may be used, in whole or in part, except for one or more of the following uses:
 - 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.
 - 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, not withstanding 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 esstential 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.
- 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.

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.
- 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.

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

- 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:
 - 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) \$200.00 plus \$0.50 per as described in Sec. 6-4 K.2. mailing address
- 3. Adult Congregate Living Facility \$400.00 plus \$35.00 per bed plus \$0.50 per mailing address
- 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.
- 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.
- 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.
- 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.
- Valet Parking.
- 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.
- 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.
- 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 rentait 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.
- 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.

- 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:
- 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.
- 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.
- 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.

- Storage of office supplies or merchandise normally carried in stock in connection with a permitted office or business use subject to applicable District regulations.
- Accessory off street parking and loading spaces, subject to applicable District regulations.

D. INDUSTRIAL.

- Storage of goods used in or produced by permitted industrial uses or related activities, subject to applicable District regulations.
- 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.

Octave Band	Maximum Permitted Sound Level (Decibels).			
(Frequency, Cycles per second)	Along Property Lines Abutting or within a Residential District	Along Property Lines Within a Business or Industrial District.		
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.
- 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.
- 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.

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.
- 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.
- Porches and Platforms Open, unenclosed porches or platfroms 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

I. 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).
 - 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 ience 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.
- 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.
 - 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 sald court games, shall have the following minimum required yards: Iront 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.

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

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.
- 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.
- 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.
- 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) it., six (6) inches above the sidewalk elevation.
 - d. They maintain any required sound buffering equipment outside the minimum five (5) It. yard area specified in part a. above.
- 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.
- 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.

- 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 filteen (15) feet from their intersection.

8-3 Minimum Yard Regulations for Multiple-Family Zoning Districts.

A. MF DISTRICTS ESTABLISHED.

- 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 I through a include ocean front properties. Districts 5 through 8 include waterway and bayfront properties. Districts 9, 10 and 11 include interior properties.
- Any property located within a multiple-family, FIM, 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	RE	AR	
	MF-1	Sub Ground Pedestal Tower	50 50 50 50	50 50 90 90	+ .4 height**	novemb poly Amphonic
	MF-2	Sub Ground Pedestal Tower	20 20 40 40	50 50 75	height**	
AND THE PROPERTY OF THE PROPER	MF-3	Sub Ground Pedestal Tower	20 20 20 40	50 50 50	height**	
	MF-4	Sub Ground Pedestal Tower	20 20 20 20 20	50 50 50 .33	height**	
	MF-5	Sub Ground Pedestal Tower	20 20 20 20 40	0 10 40 40	:	
***************************************	MF-6	Sub Ground Pedestal Tower	20 20 20 20 20	0 10 20 20		
AND THE PROPERTY OF THE PROPER	MF-7	Sub Ground Pedestal Tower	25 25 25 25 25	0 10 40 40		
	MF-8	Sub Ground Pedestal Tower	20 20 20 20	0 20 20 30		

	DISTRI	CT	LEV	ËL	FRONT	Ri	EAR		· · ·
- 19 40 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950 - 1950	والمهدولين والمهارية والمالة المستدان والمستبد والمهارية والمالة والمالة والمالة والمالة والمالة والمالة والمالة	A COLUMNIA CONTRACTOR OF THE PERSON OF THE P	No s	ubterran	ean area sl	nall b	e allowed	in thi:	s district.
	MF-9		Grou		20	10			
			Pede		20	10			
			Tow	er	20	.3	height**		
· · · · · · · · · · · · · · · · · · ·	 		 	<u>.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>	······································		~~~~~ .		
No subterranean area sh				nall b	e allowed i	in this	district.		
	MF-10		Grou		20	10			
			Pede		20	10	((),		
The second of th			Tow	er	*	.3	height**		
Assessed Assessed	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,					*************************************	
DISTRIC	T LEVEL FRO		ONT REAR		SIDE INTERIOR		SIDE	ST, OR ALLEY	
								······································	
MF-11								10'	-Grade
(815 - 1 1	·			_				**********	
	Sub.	20		.0	.0			0	-Below
	Ground	20	٠.	10	10% or	7.5	Min.		10,
	Pedestal	20		20	10% 0	7.5	Min.		10'
the programme of the contract of				•					

.3 ht.**

.3 ht.**

30

Tower

^{*}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.
 - 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.

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.

 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:

Height of Building	Lot Coverage
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.

 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:
 - 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.
 - Permitted uses are limited to the following: shade structures, sidewalk cases, 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.
- 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 inrisdiction.
- 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 (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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 - 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 twentyfive (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 (I) 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 -

- Single-family detached dwelling 2 spaces.
- Two, three and four-family 1 1/2 spaces for each unit.
- Group House 1 1/2 spaces for each unit.
- Apartment building and apartment-hotel 1 space for each 1 efficiency unit; I 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 I space for each I sleeping unit.
- Motel or motor lodge 1 space per sleeping unit.
- 8. Church, synagogue or temple, auditorium or place of assembly I space per 6 seats, or bench seating spaces in main auditorium.
- 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 I space per 6 seats or bench seating spaces in chapel.
- 4. 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 I space for each 400 square feet of floor area.
- d. Research facility I 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:

- 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 I space per 400 square feet of floor area.
- 20. Nursing homes I space for each 2 beds.
- 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 I 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 I space per 1,000 square feet of floor area.
- 29. Laundry I 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 I space per boat berth.
- 33. Dormitory I space for each 150 square feet of dormitory floor area plus I 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. I above, except as follows:

1. Apartment building and apartment-hotel - I 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 I 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;
- 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.
- 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.

- 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.

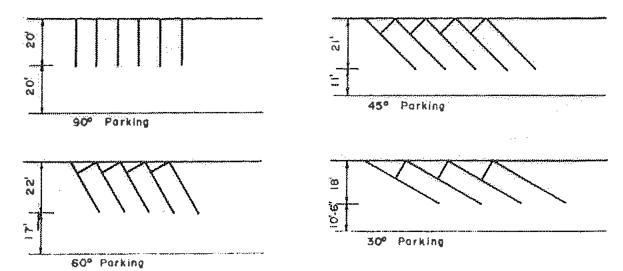
- C. SEPARATION FROM WALKWAYS AND STREETS. Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, or curbing or other approved protective device, as specified by Dade County Ordinance No. 67-75.
- D. ENTRANCES AND EXITS. Location and design of entrances 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 arrangment 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.

450 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 nurked 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.
- 1. 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
 - 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.
 - 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.	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	l 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.

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.

II-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:
 - 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 R5-1, 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.
- it. GENERAL ADVERTISING SIGNS. No general advertising sign shall be constructed, erected, used, operated or maintained in the City of Miamil Beach.

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.
- 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.
- No sign may be a flashing sign, intermittent, moving or revolving.

K. NONCONFORMING USES.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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-I, RS-2, RS-3, RS-4 and RM-14-DISTRICTS

- 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.
- 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.

- 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 (i) 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:

- 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.
- 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.

- 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.
- 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.
- A sign or sign structure erected pursuant to this Section shall by January I 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.
- 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 nonilluminated, 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.
- 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.
- 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.
- 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.
- 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.

1. SIGNS PERMITTED IN THE R-PS 1-4 DISTRICTS

Zoning District	Notes	Awning/ Marquee	<u>Flat</u>	Projecting	Detached (Pole/Pylon)
R-PS i R-PS 2		15 sq. ft.	15 sq. ft.	not permitted	not permitted
R-P5 3 R-P5 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

Zoning District	Notes	Awning/ Marquee	Flat	Projecting	Detached (Pole/Pylon)
C-PS i		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% of wall 70 sq. ft. max.	20 sq. ft.	20 sq. ft.

Zoning District	Notes	Awning/ Marquec	Flat	Projecting	Detached (Pole/Pylon)
C-PS 3	Aggre- gate Sign Area 200 sq. it./ 100' of	15 sq. ft.	15% of wall 100 sq. ft. max.	40 sq. ft.	40 sq. ft.

street frontage

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.

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 cailings: 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:
 - d, , 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 with 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:
 - 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.

- 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;
 - 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.
- 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 alledged 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:

 If a deferment is requested by the applicant, an additional fee shall be assessed as follows:

(a)	Single-Family Residences	\$50
(P)	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.
- 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.

ADMINISTRATION

[4-] 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.
- 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 (I) 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.
- 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.
- 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.

4-4 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.

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.

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:
 - 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 Cierk 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.
- 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:
 - 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.
 - 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.
 - Amendment to the Zoning Ordinance not involving a zoning change. plus newspaper notice.

\$350 per section of the Ordinance requiring language modification

 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.

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.

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.

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.

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.

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.

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.

Zoning Districts

Symbol	Use	Density (U/A)	
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	as specified	
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	O	
RH	Hospital District	Ó	
MR	Marine Recreational	0	
MU	Municipal Use	0	
HM	Hotel-Motel	220	
CCC	Convention Center District	as specified	
MD-I	Marine District	0	
MD-II	Marine District	0	
NH	Nursing Home District	as specified	
R-PS I	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

Symbol	Location	
MF-1 MF-2 MF-3 MF-4 MF-5 MF-6 MF-7 MF-8 MF-9	Ocean Front Ocean Front Ocean Front Ocean Front Ocean Front Bay or Waterway Bay or Waterway Bay or Waterway Bay or Waterway Interior	
MF-11 MF-11	Interior Interior	

C. Explanation of Overlay Zones and Districts.

Symbol	Explanation	
DOD DOZ HOD HOZ HPD	Dune Overlay District Dune Overlay Zone Hotel Overlay District Hotel Overlay Zone Historic Preservation	
POD POZ	District Parking Overlay District 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. <u>BUILDING PERMIT</u> 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. <u>CITY COMMISSION</u> 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 Fia, 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. <u>DEVELOPMENT</u> 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.
- 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.
- 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.
- 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

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			ial-Perform ndards	mance Commercial-I			cial-Performance ndards
		R-PS I	R-PS 2	R-PS 3	R-PS 4	<u>C-PS 1</u>	C-PS 2 C-PS 3
	Residential	p	P	'.P	P	P	p p
	Hotel/Motel	N	N	C	P	С	p p
* *	Commercial	Ń	N	N	N	P	P P
	Office	N	N	N	Ν.	Р	p p
	Institutional	P	p	P	P	P	P
	Accessory	P	P	P	Ρ.	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.
- 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

Residential Subdistricts

Per	formance Standard	R-PS1	R-PS2	R-PS3	R-PS4	
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 Se by 23-6G here		ning Ordinance	e, except as m	odified
12.	Minimum Parking Requirement	Pursuant to Se	ction 9 of Zor	ning Ordinance	e and Section 2	23-6H

13. Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance.

14. Signs

Pursuant to Section 11 of Zoning Ordinance.

C. Table of Commercial Performance Standards

Commercial Subdistricts

Per	formance Standard	C-PS I	C-PS 2	<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)	0.1	2.0	2.5
5.	Maximum Floor Area Ratio (with bonus)	2.0	2.5	3.5
6.	Residential Development	Pursuant to all R-P52 district regula- tions.	Pursuant to all R-P\$3 district regula- tions.	Pursuant to all R-PS4 district regula- tions, except maximum floor area ratio shall be 3.5 and open space ratio shall be .60 measured at or above grade.

^{*}enclosed parking shall meet the requirements set forth in Section 9-5 l of this Ordinance, shall be covered by a roof and shall contain no residential use.

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 23-61 herein.

 Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance

II. 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.

- In order to encourage the aggregation of Performance Standard Bonuses. 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

Res	identi	al Bonus Factors	Maximum Bonus
14	Par	cel 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

Dwelling Unit Size

- a) for each 100 sq.ft increase in minimum average floor area per dwelling unit up to 200 sq. ft. increase
- b) For each 100 sq. ft.
 increase in minimum
 floor area per dwelling
 unit for all units, up
 to 200 sq. ft. increase
- 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:

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)

.1 increase in FAR

.1 increase in FAR

.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

.05 - .15

.05 - .10b) Paying (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 grading (considering slope, drainage, use of ground cover, air movement, use separation, public and private circulation, form and scale, visual interest, space creation, publicprivate transitions and continuity, and architectural integration) .05 -.10 water features (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) .05 signs and graphics (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) .05 f) street furniture (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)

	lighting (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)	.05
	arcades (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, accessi- bility and usability)	.0518
	site planning (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)	.0515
j)	building design (considering scale, height, mass, facade, surface materials, rooftop, aesthetics, integration with urban design features, color, relation— ship to adjacent buildings and	.0525

spaces and continuity with respect

to architectural design)

F. Table of Commercial Performance Standard Bonuses

Commercial Bonus Factors

I. Parcel Aggregation

- a) for each 10,000 sq. ft.
 above minimum lot area, up
 to 40,000 sq. ft.
- b) for each 20,000 sq. ft. above 40,000 sq. ft., up to 80,000 sq. ft.

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:

- 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)
- 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)

Maximum Bonus

.15 increase in FAR

.1 increase in FAR

.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.

Maximum Permissable Bonus Range

.05 - .15

.05 - .10

		9.5
c)	grading (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)	.05
d)	water features (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)	.05 -4.10
e)	signs and graphics (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).	.0510
f)	street furniture (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)	.0510
(g)	lighting (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	.0510

and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)

.05 - .15h) arcades (considering pedestrian access, accommodation of activities, linkage in circulation pattern, relationship to architectural and urban design leatures, shading and cooling effect, protective effect, relationship to public and private spaces, accessibility and usability) .05 - .15 i) site planning (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) .05 - .25building design (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) C-PS 2 Only a) Outdoor cafe (with minimum of 500 square .05 - .15 increase in FAR feet) First Floor Commercial Use (with minimum .05 - .15 increase in FAR b) of 1,000 square feet) 1,000 gross square foot Development Rights Transfer - for each c)

G. Supplementary Yard Regulations

development right

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.

increase in maximum permis-

sible floor area

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 leet 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 23-68 herein and shall be subject in-lieu thereof to a minimum open space ratio of .40.

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 7% 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:

Front 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 with- standing 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.

Rear 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 onehalf 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:
 - 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.

I. 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.

Supplemental Parking Regulations: C-PS3 District

1.25 parking spaces per dwelling unit, I 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:

Parking Angle	Standard Spaces	Compact Spaces
900	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
450	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long
Parallel	9'0" Wide 23'0" Long	7'8" Wide 20'0 " Lo ng
Handicapped	12'0" Wide 18'0" Long	****

Access aisles shall be provided in accordance with the following chart:

Size/Car	Angle of Parking	Width of Aisle: One-Way Traffic Double Loaded	Width of Aisle: Two-Way Traffic Double Loaded	Width of Aisle One-Way Traffic Single Loaded
Standard	900	23,0 feet	23.0 feet	23.0 feet
Standard	60°	11.8 feet	19.3 feet	12,7 feet
Standard	450	9.5 feet	18.5 feet	10.8 feet
Compact	900	20.0 feet	21,0 feet	20.0 feet
Compact	600	9.5 feet	19.0 feet	10.3 feet
Compact	4 50	9.2 feet	18.7 feet	10.6 feet
Standard	Parallel	10.0 feet	20.0 feet	10.0 feet
& Compact	Parking			

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.

8. 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>	Gross Square Foot Increase in Floor Area in Receiving Area
Year 4 Year 5 Year 6 Year 7 Year 8	900 800 700 600 500
Year 9	400
Year 10	300
Year II	200
Year 12	100
Year 13 and afte	er 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 aproval 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.

23-9 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.
- 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 buildhead rear yard setback for oceaniront 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:
 - 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.
 - 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.

3. MEMBERSHIP

- 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
 - American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

- 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.
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 - 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 - Ail 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 YOTING

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:

- Shall find that the Design Review Board acted arbitrarily and capriciously in abuse of its discretionary powers; and
- 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 Mlami 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.
 - 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.
- 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.
 - 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 (7%) 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.

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.
- P. "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.
- 1. "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.
- I. "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(8) 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, Eire 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;
- 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;
- 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.
- 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.

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.

1. 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

- 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
 - 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

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.
- 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 defineated on the City's zoning map.
- 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

- 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.
- 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 written description of the proposed action;
 - b. A site plan as described in Section 14-3(A) of this Ordinance;
 - 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

- 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.
- 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.
- 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.
- 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.
- 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, nothwithstanding 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.

ADULT CONGREGATE LIVING FACILITES

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.
 - 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:
 - Smaller scale (6-16 residents) are encouraged in order to provide a noninstitutional environment.
 - 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.
- 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 surrouding neighborhood.

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 cases, if a permitted use in the applicable district, shall only be considered under the regulations set forth for variances.
 - Uses in the Civic and Convention Center (CCC) District and Hospital (RH) District
- 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
 - 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
 - MR Marine Recreation District
 - 10. MU Municipal Use District
 - 11. HM Hotel Motel District
 - 12. CCC Convention Center District
 - 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 visable 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.
- 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.

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.
- 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 cases 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 impowered 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 exofficio 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 appy 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.

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.

PARKING OVERLAY REGULATIONS

31-1 GENERAL PROVISIONS

A. Purpose

 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.
- 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.
 - 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

 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 compatibility 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.

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:
 - 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;
 - amelioration of the impact of noise and light;
 - 6. Integration of any structures with adjacent body of water; and
 - 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:

- All permits for plumbing, heating, air conditioning, elevators, fire alarms, and extinguishing equipment, and other mechanical and electrical equipment.
- 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:
 - 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;
 - sculptures and water features;
 - 6. outdoor furniture such as benches and outdoor lighting; and
 - paving materials such as concete 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;
 - 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.

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 live (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.

 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.

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.

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. <u>DWELLING UNIT AND SLEEPING UNIT RATIO</u>. The number of dwelling units shall not exceed twenty five (25) percent of the total number of sleeping units provided on the site.
- C. <u>DENSITY AND LOT COVERAGE</u>. None.

D. MINIMUM FLOOR AREA PER UNIT

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.
- 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 (7.50) 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, layatory, and bath, with or without a shower.
- 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

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

When a development is located in a residential district, the following required yards shall apply:

AND REAR	

SIDE

As required by the designated MF District pursuant to Section 8-3B.

As required by Section 8.

2. When a development is located in a commercial district, the following required yards shall apply:

	EDONIT	REAR	
	FRONT		
Subterranean	O ft.	50 ft. except as listed in Section 8-6	
Ground	Offt.	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	Oft.	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 pursuanted 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:
- 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 ADDRESS:

Business Type

Code

#Locations

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

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 5th 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 A

RESUME

JUD KURLAN]CHEEK, AICP 611 OCEAN DR.APT 9-E KEY BISCAYNE, FLORIDA 33149

CELL 305 608 7384

FUNFUN99@AOL.COM

EDUCATION

Graduate

University of Pittsburgh, Pittsburgh, PA 15260

Master's Degree in Urban and Regional Planning

Undergraduate

University of Miami, Coral Gables, FL 33146

B.A. Politics and Public Affairs

Computer Skills

Word, Excel, Powerpoint and Outlook

WORK EXPERIENCE

Personal Mission Statement: The delivery of courteous and expedient service with the highest degree of professionalism and integrity.

To Date:

Retired after 43 years of City Planning and Building services. Part-time planning and zoning consultant.

Sept 1998 to May 15, 2017 Village of Key Biscayne, 88 West McIntyre St, Key Biscayne, Florida 33149 (12,000 population) Building, Zoning, Planning and Public Works Director. Major responsibilities include:

Department Administration: Day to day Administration of a \$1.8 million dollar budget with a 19 member staff including all issues relating to the budget and personnel. Responsible for the administration of the building permit process, zoning and building code compliance, site plan review, current planning (zoning plan review, variances, Site Plan Review and zoning amendments), comprehensive planning (Master Plan and Concurrency), Business Tax Receipts, code enforcement, public works. Administration for the following Committees: Land Acquisition Committee, Special Magistrates, Art in Public Places Board and for the following committees which were sunseted: Noise Ordinance Review Committee, 2020 Vision Plan Committee, Zoning Ordinance Review Committee Dock Regulation Committee, Crandon Boulevard Master Plan Committee, Crandon Boulevard Implementation Committee and Charter High School Committee.

Major Accomplishments:

2020 Vision Plan: established comprehensive, long range vision for the Village working with an 11 member committee and consultant.

Capital Improvements Plan (CIP): Prepared (2010) the first 5 Year Capital Improvements Plan utilizing staff members from several departments to form the CIP Team.

Charter High School: Lead staff to the Charter High School Committee. Coordinated the work of the Committee and consultants.

Civic Center Project Manager (1999-2003): The Center comprises a Village Hall and Police Station (33,000 sq. ft.), Fire Rescue Station (25,000 sq. ft.), Community Center (44,000 sq. ft. plus and 88 space below grade garage), Civic Center Park and two new pedestrian orientated roads. Prepared and administered the architectural and contractor selection process, monitored construction, change orders, and accounting. Prepared amendments to construction agreements and site plans as the project progressed from planning to completion.

New Village Zoning Ordinance (2000 and 2010): Prepared a new zoning ordinance that is consistent with the Village's Master Plan resulting in a reduction in residential density in all multiple family districts. The regulations reduced the size of homes, increased open space, and provided a floor area ratio bonus schedule that resulted in better designed homes. This work occurred over two (2) years and included an extensive citizen participation process involving a Zoning Ordinance Review Committee.

Golf Cart Master Plan: worked with shopping center owners to obtain access their properties from a public road via easements to Crandon Boulevard (the major street in the Village).

Traffic Calming Master Plan: lead staff to a consultant to establish a variety of traffic calming strategies throughout the Village.

Building and Occupational License Fees (2003): Prepared an analysis and ordinance that increased the building, zoning, and planning fees by approximately 75%. The ordinance was unanimously adopted. This was the third review of the fee schedule since the Village adopted fees in 1994. The first two ordinances were not approved. The Building Division is now fully funded from permit fees. Similar work was performed (2003) for Business Tax Receipts which resulted in the first increase in fees since they were originally adopted in 1994.

Crandon Boulevard Streetscape Master Plan (2003-04): Lead staff for the preparation of a Master Plan for a one (1) mile long road in the center of the Village. Obtained funding for the Plan and staff liaison to an 18 member committee. The objective was to change a four (4) lane road with a median (150 ft. right of way) that was designed to expeditiously move traffic to a pedestrian oriented street. The construction budget was \$20 million. Lead staff to this 18 member Committee. The Master Plan was adopted by the Village Council and fully implemented.

Crandon Boulevard Master Plan Implementation Committee: The purpose of this Committee was to assist staff in working with the Miami-Dade County Citizens Independent Transportation Trust (CITT) in the adoption of the Village's Five (5) Year Transportation Plan (2003-2008), assist staff in obtaining approval of the Crandon Boulevard Streetscape Master Plan (AMaster Plan®) by the Miami-Dade County Commission, and monitor the implementation of the Master Plan. Lead to staff to this Committee.

Art in Public Places Board: Advocated the creation of a committee responsible for the placement of permanent and temporary art in the Village. Advocacy included preparation of an ordinance creating the Board, appointment resolution, guidelines for the selection of permanent and temporary art, and bylaws. Lead staff to the Board. To date, this work led to installation of "Monaco Fountains" by artist Sarah Morris, seven (7) terrazzo plazas by Jose Bedia.

Noise Ordinance Review Committee (2003-04): Staff to a committee that was responsible for the review the Noise Ordinance and preparation of amendments that reflect the quality of life in the Village. Lead staff to the Board.

Monitoring of Two Development of Regional Impact (DRI's) \$800 million: assured compliance with DRI requirements.

Staff liaison to the Year 2000 Census Committee. This work resulted in a strategy to publicize the importance of the census. The strategy included assignments to students involving art work and essays with recognition by the Mayor at a Council meeting, the production of a play by the local drama club and the continuous broadcasting on public TV, the development of a multilingual poster that was distributed to stores and apartment/condominiums, and a letter sent by the Mayor to all residents.

Acting Village Manager for four (4) months when the Village Council conducted a search for a new Village Manager.

Feb 1993 City of Hollywood, 2600 Hollywood Blvd., Hollywood, Florida, to Sept 33022 (130,000 population). Department of Development

1998 Administration/Community Planning Division.

Assistant Department Director and Community Planning Division Director August 1997 to September 1998; Community Planning Division Director February 1995 to September 1998; Assistant Community Planning Division Director December, 1993 to February 1995; Supervising Planner February 1993 to December 1993.

Assistant Department Director: day to day administration of a 87 member Department that contained the following Divisions: Community Planning, Neighborhood Master Planning, Engineering, Code Enforcement, and Building. This work involved the preparation of the Department's \$6.0 million dollar budget and yearly work program, personnel matters, and intra-divisional coordination, extensive citizen involvement and presentations before City Commission and neighborhood associations. Department representative on the Management Benefits Committee (1993-94) and Management Labor Committee 1994-1998.

Community Planning Division Director: Day to day administration of Community Planning Division with 22 member staff and \$1.1 million budget. Supervisory responsibility includes: Current Planning (zoning plan review for building permits), Comprehensive Planning, Neighborhood Master Planning, Community Revitalization and Development, Urban Design, Historic Preservation, Concurrency/Site Plan review, grant applications, GIS and subdivision plans. Supervision includes matters associated with the annual work program, payroll, budget, annual work program, staff assignments and personnel including hiring and evaluations.

Coordination of major development projects for Department for private sector and design of city streetscape projects.

Presents reports and recommendations to the City Commission, Planning and Zoning Board, Board (Zoning) of Appeals and Adjustments, Design Review Board and Historic Preservation Board.

Prepared a new citywide zoning ordinance. New initiatives included a density based ordinance, design review for all new construction and rehabilitation, historic preservation, parking impact fee program, streamlining of regulations and creating a "customer friendly" zoning ordinance.

Prepared a \$29 Million Hollywood Beach Revitalization Plan which was adopted by City Commission in April, 1996. Prepared a Community Redevelopment Plan for Hollywood Beach which was adopted by the City Commission in July, 1997. After the CRA was created, I was responsible for processing all of the planning and zoning applications related to the approval of the \$300 million Diplomat Hotel Project.

Developed and implemented streetscape plans for the following areas: Harrison Street (downtown) \$2.2 million, Hollywood Blvd \$5.0 million, and Ocean Drive (A1A) \$5.2 million.

Prepared and received three Historic Preservation Grants relating to surveys, local designation districts/sites and National Register District Nomination. City designated as a Florida Certified Local Government for Historic Preservation.

National Register (historic recognition) nomination for downtown Hollywood Blvd. and Young Circle Park. The Historic Preservation Officer for the State of Florida has recommend nomination which is now under consideration on the federal level

Lead staff in the development and planning for the Community Redevelopment Area. Prepared a RFP for a 1 acre site in the Downtown Redevelopment Area, development of a streetscape and facade renovation program. Prepared and presently implementing a \$4.5 Million capital improvement program. Prepared a RFP for a city owned 5.5 acre city owned oceanfront site for a festival marketplace development.

October 1992 to Feb., 1993

North Beach Development Corporation, 300 71st, Miami Beach Florida 33141. Executive Director. Major responsibilities included:

First Executive Director of a not-for-profit economic development organization responsible for promoting the economic development of the North Beach community of Miami Beach.

Established tax exempt status (501, C-3) of organization, initiated membership recruitment program and created Management and Financial Standards.

Liaison with City for a \$12.0 million streetscape improvement program including establishment of special taxing district, public participation, planning and implementation of project.

Administration of Community Development Block Grants for: \$250,000 Facade and Building Rehabilitation Program and \$100,000 Street Improvement Project.

Administration of the North Beach Swings 16 week community concert series. Obtained \$30,000 Grant and \$30,000 in matching funds.

August 1977 Sept. 1992 City of Miami Beach, 1700 Convention Center, Drive, Miami Beach, Florida 33139 (100,000 population).

July 1990 to Department of Historic Preservation and Urban Design, Director Sept. 1992

Established Department whose mission is to provide professional services to protect and enhance the physical environment of the City, preserve its heritage and improve the quality of life.

Responsible for the Administration of the Department including supervision of its two Sections: Design Services and Historic Preservation.

Responsible for citywide streetscape design services.

Staff to Design Review Board, Historic Preservation Board and Zoning Board of Adjustment.

Administration of the design review process for all building permits.

January 1984 Department of Planning and Zoning, Director to July 1990

Responsible for the Administration of the Department with 15 employees and \$950,000 budget.

Increased departmental revenues from \$40,000 to \$220,000.

Administration of City Boards including the Planning Board, Board of Adjustment, Design Review Board, Historic Preservation Board, Zoning Ordinance Review Committee.

Initiated a team approach and organized the Department into three sections: Current Planning, Comprehensive Planning and Design Services/Historic Preservation.

Prepared the City's Year 2000 Comprehensive Plan pursuant to the State of Florida requirements under the Comprehensive Planning and Land Development Act. The State found the Plan to be in compliance with all applicable regulations upon our initial submission.

Prepared a new Citywide Zoning Ordinance as part of the Local Development Regulation to implement the Comprehensive Plan.

Prepared strategic neighborhood plans and development guides including Ocean Drive, Espanola Way, North Shore, Lincoln Road and the Museum District.

Prepared the City's first and subsequent Capital Improvement Plan (CIP).

Reorganized the Planning Board by reducing the membership from 11 lay persons to 7 individuals of which 5 are professionals and 2 are lay.

Designated the City's first three local historic districts, created economic incentives within the Zoning Ordinance to encourage the substantial revitalization of historic properties and prepared the Historic Property Database.

Technical advisor to the Ocean Drive Political Advisory Committee. This work resulted in the approval (public referendum) of a \$3 million bond issue for street and park improvements.

Implemented and administered the City's first Parking Impact Fee Program.

Numerous public speaking presentations to elected officials, advisory boards and citizen organizations.

Expert witness for the City in court pertaining to planning and zoning litigation.

One Year Building Division, Plan Review Supervisor

Overall responsibility for processing all building permit applications.

Supervisory responsibility for staff of six professional and three clerical positions.

Administration of Site Plan Review Process and Zoning Plan Review.

Administration and technical support staff to the Zoning Board of Adjustment.

Two Years Department of Planning, Current Planning Section Supervisor (Principal Planner)

Principal staff to the Planning Board and Zoning Board of Adjustment - prepared and presented planning recommendations regarding: South Pointe Interim Development proposals, change of zoning and variance requests, conditional use applications, amendments to the Zoning Ordinance and Comprehensive Plan, site plan review, and development projects.

Supervisory responsibility for four professionals.

Developed Planning Department policy, administration and management recommendations for consideration by the Planning Director.

Prepared planning grant applications and monitored consultant contracts. Funded applications include a \$3 million Land and Water Conservation Grant to develop a Beachfront Park and Promenade, \$40,000 HUD Housing and Land Use Plan and a \$30,000 Recreation and Park Management Program.

Developed requests for proposals, prepared consultant evaluation procedures and selection recommendations.

City representative to various Advisory Boards including Lincoln Road Revitalization, Biscayne Bay Management Plan and Shoreline Development Ordinance.

Principal author and staff coordinator for the preparation of the City's Comprehensive Plan, Collins Avenue Corridor Study, Citywide Housing Plan, Recreation and Open Space and Flamingo Park Master Plan.

Developed and coordinated the preparation of numerous planning reports and recommendations regarding zoning applications, land use regulations and development proposals.

One Year and Department of Planning, Senior Planner Four months

Major responsibilities included areas of Comprehensive Planning, Zoning, Neighborhood Planning, and Special Area Planning.

Specific tasks involved zoning matters, site plan analysis, reports and recommendations to the Planning Board and Zoning Board of Adjustment.

City representative on the Ad Hoc Advisory Committee regarding the Shoreline Development Ordinance of the Biscayne Bay Management Plan.

Two Years Department of Planning, Planner

Major responsibilities included data collection and analysis for all types of planning reports, zoning amendments, map changes, conditional use applications, site plan review and neighborhood studies.

Support staff to the Planning Board and Citizens Advisory Board for Community Improvement.

June 1975 to Southern Tier Central Regional Planning and Development Board., 53 Bridge St., Corning, N.Y. 14830.

<u>Assistant Program Manager:</u> EPA 208 Water Quality Program Major Responsibilities included:

Supervisory responsibility for five professionals, developed a CPM Management Program and budget (\$800,000), program policy and administration of project.

Public presentations to local governments and various interest groups and administration of work activities for committees (4).

Developed growth management techniques, land use controls and impact assessments.

Dec. 1974 Low Country Regional Planning Council, Yemassee, S.C. to June, 1975 29943. Regional Planner. Major responsibilities:

Developed a designation package, detailed work plan and grant application pursuant to EPA 208 Water Quality grant requirements. This work resulted in a grant of \$680,000.

Provided technical assistance to local governments in the areas of water and sewage, Community Development Block Grant Program and Health Assistance Planning.

PUBLICATIONS

Golf Cart Master Plan, 2010

Key Biscayne Zoning Ordinance, 2000 and 2010.

Master Plan Evaluation and Appraisal Report, 2007

Key Biscayne 2020 Vision Plan, 2006.

Crandon Boulevard Master Plan, 2004

Hollywood Beach Master Plan: Polishing the Diamond, Nov. 1995.

Hollywood Zoning and Land Development Code, 1994. (New Citywide Zoning Ordinance

Hollywood Design Review Guidelines, 1994.

Hollywood Request for Proposals for the Development for Site 2 in the Downtown Redevelopment Area.

Miami Beach Design Review Guidelines, 1992.

Miami Beach Comprehensive Plan, October, 1989.

Miami Beach Zoning Ordinance, September, 1989.

Museum District Plan (Miami Beach), February, 1989.

Parking Policy Strategy (Miami Beach), October, 1986.

North Shore (Miami Beach) Comprehensive Plan: A Commercial revitalization Study, March, 1986.

Espanola Way (Miami Beach): Renaissance of the Spanish Village, Nov. 1985.

Ocean Drive (Miami Beach): A Planning and Urban Design Study, October, 1984.

Miami Beach Housing Plan, September, 1982.

Lincoln Road Revitalization Plan, 1981.

Miami Beach Comprehensive Plan, August, 1980.

Housing and Land Use Element, HUD 701 Program, City of Miami Beach, 1978.

The Planning Board: Its role in the Governmental Process, Miami Beach, 1978.

Southern Tier Central Areawide Management Plan, August, 1977.

Baseline Land Use Projections, 1976.

Low Country Comprehensive Health Plan, 1975.

PRIVATE DEVELOPMENT

<u>Virginia Street Townhomes:</u> Purchased, arranged financing and converted a duplex structure into two condominiums (\$155,000). The project was the first two unit condominium in Coconut Grove, Florida (1977-78).

Montage Townhomes: Developed a four unit \$520,000 townhouse project in Coconut Grove, Florida (1979-1980). Development of the project included site acquisition, architectural contractor selection, financing, site development and sales.

CONDOMINIUM OFFICER

Sands Condominium (Key Biscayne, FL): Vice President 2018

Villaharbour Condominium (Key Biscayne, FL): Board Member 2010

Kendall Trace Townhomes: Board Member 1989-1991, President 1991-1998 (extensive work including supervision of repairs after Hurricane Andrew) and Treasurer 1998.

PLANNING AND ZONING AWARDS FOR PROJECTS ADMINISTERED BY JUD KURLANCHEEK

PROJECT	AWARD	ORGANIZATION
South Shore Revitalization Strategy	Award of Excellence Community Improvement Award	South Florida Chapter - American Planning Association Florida Planning and Zoning Association
Beachfront Park and Promenade	Award of Excellence	Florida Nursery/Growers Association
Miami Beach Year 2000 Plan	Award of Merit	South Florida Chapter - American Planning Association
Ocean Drive Plan	Award of Excellence Award of Merit Outstanding Service National Planning Award Honorable Mention Award of Excellence in Urban Environment	So. Florida Chapter - American Planning Association Florida Chapter - American Planning Association Miami Beach Development Corporation American Planning Association Florida Trust for Historic Preservation Rudy Bruner Foundation
Espanola Way Plan	Award of Excellence Award of Merit Award of Excellence	Florida Trust for Historic Preservation So. Florida Chapter - American Planning Assoc. Florida Chapter - American Planning Association
Design Review Board	Preservation Award	Miami Design Preservation League
Miami Beach Art Deco District Revitalization	Florida Preservation Award	Florida Trust for Historic Preservation

Exhibit B

EXHIBIT "B"

PLANNING AND ZONING AWARDS FOR PROJECTS ADMINISTERED BY JUD KURLANCHEEK

PROJECT	AWARD	ORGANIZATION
South Shore Revitalization Strategy	Award of Excellence Community Improvement Award	South Florida Chapter - American Planning Association Florida Planning and Zoning Association
Beachfront Park and Promenade	Award of Excellence	Florida Nursery/Growers Association
Miami Beach Year 2000 Plan	Award of Merit	South Florida Chapter - American Planning Association
Ocean Drive Plan	Award of Excellence Award of Merit Outstanding Service National Planning Award Honorable Mention Award of Excellence in Urban Environment	So. Florida Chapter - American Planning Association Florida Chapter - American Planning Association Miami Beach Development Corporation American Planning Association Florida Trust for Historic Preservation Rudy Bruner Foundation

PROJECT	AWARD	ORGANIZATION
Espanola Way Plan	Award of Excellence Award of Merit	Florida Trust for Historic Preservation
	Award of Excellence	So. Florida Chapter - American Planning Assoc. Florida Chapter - American Planning Association
Design Review Board	Preservation Award	Miami Design Preservation League
Miami Beach Art Deco District Revitalization	Florida Preservation Award	Florida Trust for Historic Preservation

Exhibit C

City of Miami Beach



F L O R I D A 3 3 1 3 9

OFFICE OF THE CITY MANAGER
HAROLD T. TOAL
CITY MANAGER

CITY HALL 1700 CONVENTION CENTER DRIVE TELEPHONE: 873-7010

ACTION SUMMARY

CITY COMMISSION MEETING

JUNE 4, 1980

COMMISSION CHAMBERS, 3RD FLOOR, CITY HALL 1700 CONVENTION CENTER DRIVE

MAYOR MURRAY MEYERSON VICE-MAYOR ALEX DAOUD COMMISSIONER MILDRED S. FALK COMMISSIONER MICHAEL FRIEDMAN COMMISSIONER MEL MENDELSON COMMISSIONER LEONARD O. WEINSTEIN COMMISSIONER DR. SIMON WIKLER

CITY MANAGER HAROLD T. TOAL *CITY ATTORNEY JOHN A. RITTER CITY CLERK ELAINE MATTHEWS

CALL TO ORDER - 9:45 A.M.

INVOCATION AND PLEDGE OF ALLEGIANCE

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

ACTION

All present except for Commissioner Weinstein, who is out of town.

Rabbi Mayer Abramowitz

Reflected throughout Action Summary

CONSENT AGENDA

C-1. LICENSES AND PERMITS

A. COMMISSION MEMORANDUM NO. 8244
APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 21
FROM LESTER PROBER TO JOSEPH GATT.

ADMINISTRATION RECOMMENDATION: APPROVE

Approved.

B. COMMISSION MEMORANDUM NO. 8245
APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 37
FROM HARRIET LUREY AND BARBARA GLASS TO MIHAIL AND/
OR RAILLA SHPILMAN.

ADMINISTRATION RECOMMENDATION: APPROVE

Approved.

C-2. COMPETITIVE BID REPORTS

A. COMMISSION MEMORANDUM NO. 8246
BID AWARD NO. 52-80, FUEL FACILITIES FOR PUBLIC WORKS RELOCATION, PB-76.
BID AMOUNT: \$148,797.00

ADMINISTRATION RECOMMENDATION: APPROVE BID AWARD NO. 52-80 IN THE AMOUNT OF \$148,797, PLUS AN ADDITIONAL \$19,000 FOR PAVING, GRADING, SITE PREPARATION, UTILITY ADJUSTMENTS, INSPECTION, CONTRACT ADMINISTRATION, AND INSTALLATION OF CONCRETE SLABS AT BOTH THE FIRE STATION AND THE NURSERY COMPLEX. THUS A TOTAL OF \$167,797 TO BE APPROPRIATED FROM THE MARCH 14, 1972 RELOCATION OF PUBLIC WORKS BOND FUND.

Awarded, Pieco Miami, Inc.

Appropriation of \$167,797 from 3/14/72 Public Works Relocation Bond Fund, approved.

*City Attorney Ritter in court; represented by Assistant City Attorney Lucia Allen in morning session. Present in afternoon session.

ACTION SUMMARY

JUNE 4, 1980

-1-

ACTION

R-3. TIME CERTAIN ITEMS

11:00 A.M. - BOARD AND COMMITTEE REPORTS

A. REPORT FROM SIDNEY GOLDMAN, CHAIRMAN, MARINE AUTHORITY, REGARDING AN AMENDMENT TO MARINE ORDINANCE NO. 75-2050, ARTICLE VI, SECTION 7-68(4) MULTIPLE DWELLING HOUSEBARGE.

11:00 A.M. - TIME CERTAIN ITEM

- B. DISCUSSION OF THE LEASING OF AIR RIGHTS OVER PARKING LOT BETWEEN 27TH AND 28TH STREETS ON COLLINS AVENUE TO PROVIDE FOR RENTAL HOUSING. (REQUESTED BY COMMISSIONER MILDRED FALK)

 (DEFERRED FROM 5/21/80)
 - Report from S.Z.Bennett re. parking lots and possible utilization for housing.

3:00 P.M. - PUBLIC HEARING

C. COMMISSION MEMORANDUM NO. 8205
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO OPERATE A FILLING STATION AT 1349 DADE BOULEVARD WITH THE STIPULATION THAT THE EIGHT CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8205 ARE MET.

NOTICE OF PUBLIC HEARING.

3:15 P.M. - PUBLIC HEARING

D. COMMISSION MEMORANDUM NO. 8296
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND
AN EXISTING FILLING STATION AT 1840 ALTON ROAD

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND A FILLING STATION AT 1840 ALTON ROAD WITH THE STIPULATION THAT THE TEN CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8206 ARE MET.

1. NOTICE OF PUBLIC HEARING.

Mr. Coldman appeared.

An ordinance amending Section 7-68 of the Code, so as to add the following: "No housebarge designed to contain more than one (1) dwelling unit shall be permitted to be moored or docked within any waterways of the City of Miami Beach" was passed on first reading.

Hearing and second reading scheduled for 6/18/80, at 2:00 p.m.

Commissioner Falk's motion that the City consider leasing air rights for construction of rental housing failed of passage.

Report set forth that of sites surveyed, 27th St. only one suitable; further study being made.

Hearing held and concluded.

Planning Board's recommendation to grant conditional use request for remodeling and expansion of an existing filling station approved subject to 8 conditions as set forth in Commission Memorandum No. 8205, with further amendment of Condition No. 1 that "storage area shall be decreased in size and a masonry wall of sufficient height to completely screen the storage area from all adjacent streets, but in no case less than 6 feet, shall be constructed".

Hearing continued to August 20, 1980, at 3:15 p.m., at the applicant's request.

Owner agreed to bear expenses of re-advertising.

MEYERSON: R-3C. Will you please call the Public Hearing, Miss Matthews? R-3C.

MATTHEWS: Mr. Mayor, notice was published in the Miami Beach Sun Reporter in issues of May 30th and 31st as well as being sent to various civic organizations that the Commission would at this time consider the PLANNING BOARD RECOMMENDATION FOR APPROVAL OF A CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1.349 DADE BOULEVARD Subject to recommendations which were made by the Planning Board.

MEYERSON: Very well.

MATTHEWS: No response.

MEYERSON: No responses?

MATTHEWS: No, sir. No written response. There may be some present.

MEYERSON: Very well. The Chair will entertain a motion to open the public hearing.

FRIEDMAN: Move it. FALK: Second.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Aye".

GROUP: Aye

MEYERSON: Any opposed? None opposed. Public hearing is now open. We do not have any listed speakers on this item.

ARNOLD LEON: You don't have a quorum.

MEYERSON: Yes, Dr. Wikler is in the other room. Dr. Wikler are you there?

WIKLER: Yes.

MEYERSON: Yes, all right. Does anybody wish to be heard on Item R-3C? Item R-3C. Very well, the Chair will entertain a motion to close the public hearing.

FRIEDMAN: Move it. FALK: Second.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Aye".

GROUP: Aya

MEYERSON; Any opposed? None opposed. The public hearing is now closed. I turn to the Administration.

BOB DAVID: Members of the Commission, this is a recommendation that came before the Planning Board for a request for the reinstitution of a gas service at an existing filling station that's located on the northeast corner of Dade Boulevard and North Bay Road. The area in which this gas station is located is zoned for a RM-...excuse me, a C-6 which is an intensive commercial district which permits trucking, warehousing, paint and body shops, and similar types of heavy uses.

MEYERSON: Let me ask you a question before you begin, Mr. David. Is this the filling station which adjoins—the fly-over?

DAVID: Yes. It is adjacent..it is one of the two that is right there. Yes, sir.

MEYERSON: Adjac nt to the fly-over.

DAVID: There are two of them located at that intersection.

MEYERSON; All right. Go right ahead.

DAVID: The applicant is asking to reinstitute as I said the gas service which had prior... which had been a prior use there. He had discontinued that due to some problems that he

DAVID (Con't): had with the original owers of the station. In any case conducted a regular garage service independent of the gas operation.

MEYERSON: Now, as I understand the backup material the gas station has not been in operation for a period of five years. Is that correct?

DAVID: That is correct. And as a conditional use it is necessary to come back before this Board for its reconsideration. The Planning Board in reviewing the original submission made several recommendations in conjunction with the Planning Division. The two diagrams that you see here illustrate on this side the original plan that was submitted which is in effect the gas station as it presently is constituted. The diagram over to your left indicates the revisions and modifications that have been recommended by the Planning Board. And very simply I'll go through those with you briefly. First of all this gas station also provides for the storage of wrecked vehicles. We are recommending that the wrecked vehicles be enclosed in a particular area within the site by a masonry wall. That is concealed from public view. We are also recommending that any other vehicles that are stored on the site, wrecked or otherwise, be stored within that area. The present drives that front on Dade Boulevard, there are two of them, is recommended that one of those two, the one further to the west be closed. (inaudible - not using microphone) There is presently a driveway located here and a second one is presently located here. Recommending that landscaping be incorporated along in front of the gas station so as to have only one entrance from Dade Boulevard leaving two remaining entrances or exits off of North Bay Road. intent of this of course is to reduce the traffic that may result from the Dade Boulevard side. It is also requested as a stipulation that in the event of any stacking of automobiles whether it be a gas crisis or otherwise, that the Dade Boulevard entrance be barricaded and all exits and entrances be from the North Bay Road approach to the site.

MEYERSON: You anticipate some difficulty in that regard?

DAVID: As far as further gas crisis?

MEYERSON: Yes.

DAVID: Well..

MEYERSON; No, I'm talking about congestion in the area.

DAVID: There possibly ... you know, if cars stack up on North Bay ... on Dade Boulevard that would be a problem, in fact, because of the lanes being restricted at that point because of the fly-over.

MEYERSON: This is a particularly dangerous area based on the automobile accidents. We've had some very serious accidents and I recall, Mr. David, that in 1974 and 1975 we had a great deal of difficulty with that fly-over. There were talks about changing It and changing the engineering sketches and tearing it down because it is an abortion in my opinion and it was an abortion in the opinion of people who served on the Council at that time. Has anything changed?

DAVID: Well, Mr. Mayor, there has been some modification, in fact that dates back several years. But to, you know, make a confirming opinion on that we requested the Dade County Department of Traffic and Transportation to make an analysis of this and they felt that with the stipulations that we have, that it wouldn't result in any, you know, undue hardship in terms of traffic or existing circulation in the area.

MEYERSON; O.K.

DAVID: So we felt ... and we also requested our Police Department to make a review of that also and they found it to be generally acceptable with these conditions. Going on

MEYERSON: Mr. Mendelson.

DAVID: One of the two. There are two entrances and exits now on Dade Boulevard. We're making it so that there would be only an entrance and one entrance from Dade Boulevard.

MEYERSON: Do you remember during the gas crunch or the crisis?

DAVID: Yes, sir.

MEYERSON; Do you remember how far it was backed up? They had an animal clinic along side, I believe. They just blocked their driveway and nobody in that garage came out and helped the situation whatsoever.

DAVID: Well..

MEYERSON: Is it the same owner? The same people there?

 ${\tt DAVID}\colon$ Yes, it is. In fact the applicant is here if you'd like to address questions directly to him.

MEYERSON: Yes, because I remember rending about it in the paper and I remember passing by that garage many a time and they had the cars stacked up all the way down Alton Road.

DAVID: Well..

FRIEDMAN: That's the other one. There's another permit. Mr. Mendelson, there's another permit coming up that deals with the Alton Road one. This one's on the.... Dade Boulevard and North Bay Road.

MEYERSON: Oh, O.K. Right.

FRIEDMAN: That's the other one. That did back up.

DAVID: But there is...you know, there is a possibility that that could occur and in this event, one of the stipulations of this conditional use is that entrance be barricaded Now, under conditional use provisions, the City has the right to withdraw this conditional use if these conditions are not adhered to. So this is not like any normal use where it is generally permitted. This is something that the City has the right to act on if the conditions are not met.

MEYERSON: Sometimes, Mr. David, based on conditional uses the conditions are questionable. It's a matter of interpretation and once the Commission grants the approval then of course the Courts have to decide whether the conditions have been met. Is that not true?

DAVID: Well, I'll read the condition to you, Mr. Mayor.

MEYERSON: Yes, please do.

DAVID: This is how it is worded. "No vehicle waiting for gasoline should be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to form." That's the wording presently. Now you may wish to amend that in some way and I'm certain that, you know, it could possibly be improved.

MEYERSON: What are some of the other conditions involved?

DAVID: O.K. Two remaining conditions are that the applicant make primary use of the gas pumps that are located on the Bay...North Bay Road side as opposed to the front. That is again in an effort to draw traffic over to the North Bay Road area and finally that a proper enclosed trash storage area be provided on site.

MEYERSON: Mr. David, let me ask you a question. Did the Planning Board take into consideration that that particular location now is going to generate a tremendous amount of traffic due to the fact that there are going to be 800 units on Purdy Avenue and perhaps even more than that on the Island View Hospital site?

DAVID: That was generally considered. Island View Hospital Site has not been considered but as far as the development of the Turchin property that was taken into consideration. In fact, when we asked for the reviews of this by Dade County we indicated that those developments would occur and that they should take those into consideration. Actually this is one street removed. It is close but it is one street removed from the main quarter that would service that development.

MEYERSON: The problem though, Mr. David, is that ...that Dade Boulevard is a very

MEYERSON (Con't): narrow strip and that anyone going to Purdy Avenue and those 800 units has to pass through that area. It's the only artery leading to the Purdy Avenue site, is down Dade Boulevard next to the fly-over. That concerns me. It also concerns me that there are what? 7 or 8 other conditions that have to be met. It seems to be an awful lot of conditions for conditional use. That's my thinking at the present time but go on. Go on with your presentation.

DAVID: Well, I think that completes the conditions that were imposed by the Board and the Division. I think the applicant is here and could possibly could give you further information.

MEYERSON: O.K.

DAVID: Please state your name.

MEYERSON: Very well, we'll hear from the applicant.

VINCENT J. FESTA: Yes, my name is Vincent J. Festa and I.'m the owner of the property on 1349 Dade Boulevard. And all I'm trying to do is put four pumps back in the exact same spot that they were when we took them off. And I heard say something about a backup on Dade Boulevard. In that case this would be a help because if the backup becomes to the gas station which is adjacent to me on the Gulf station, there is where you're going to have a problem. You will not have any traffic going east and west because the traffic will back out. And that will be right in the street of Bay Road. And there's where you will have a problem. Mine is coming from Alton Road and it's before the problem occurs so what we would do if there is a line up they will come into my place so there is no line up on Bay Road and the existing Gulf station that's there. So I would assume that this would be a help ... a help to get rid of some of the traffic that's going to ... if there is a gas crunch as you're predicting.

MEYERSON: Mr. Festa, are you the owner of the property or the lessee?

FESTA: No, I'm the owner, Your Honor.

MEYERSON: The owner. You operate it also as the lessem?

 $\ensuremath{\mathsf{FESTA:}}$. Yes, I'm operating it now. It was closed for a while.

MEYERSON: I see.

PESTA: O.K. While I had a gas station down at 1150 Collins Avenue which I had to get out after 30 years because I couldn't get a license for towing. A wrecker license after 30 years of doing wrecking service there for everybody on the Beach, we finally came up with a reason why it couldn't get renewed. So consequently to pay the taxes on the property I couldn't just do it by gas alone. I had to move to a C-6. This area is C-6, it's for gasoline, it's for, like Mr. David mentioned, it's for everything that I need. I'm not going past any ... I'm C-6. I'm not doing anything that's against the law or in violation. All I'm asking is gas for my trucks and for the public. And...That's all I'd like. I'd like the four pumps put back exactly where they were.

MEYERSON: O.K. Mrs. Falk.

FALK: Sir, I've been hearing conversation that you have on your property derelicts that are stacked up. Is that true?

FESTA: No, they're not stacked up. They're behind a fence. What we did, Mrs. Falk, is we took them may from in front of your house... In front of building, Mr. Mendelson's building, et cetera. We took it away from your building or your house so it doesn't deface your property and we put It in a C-6, one of the few properties...

FALK: Where? I understand it's on this lot.

FESTA: There's a fence. Right there behind the fence.

FALK: Is it visible.

FESTA: It's behind a fence.

FALK: Sir, I asked you, are those wrecks visible from the street?

FESTA: From the street?

FALK: Yes.

FESTA: Yes, I would say they're...from the street. From Bay Road.

FALK: Well, I don't know whether that is a very good recommendation for people coming over the Venetian to see \dots

FESTA: Can't see it from the Venetian.

FRIEDMAN: Point of information.

FALK: You're coming up and if they're right in there....

FESTA: They're not in there. If you'd look at this piece of property is 135×200 , and the last 30 to 40 feet of the 200 is where the cars are stored.

FALK: How long do you keep the cars in the lot, sir?

PESTA: Now long do I keep the cars? The most I keep them is 45 days because they are derelicts. They are taken away from the streets.

FRIEDMAN: Point of information.

MEYERSON: Point of information, Mr. Friedman.

FRIEDMAN: Ms. Falk, if you'd refer to the agenda package you'll find that one of the conditions recommended by the Planning Department and the Planning Board is number one storage area shall be decreased in size and a masonry, it's a concrete type of wall so you can't see through it, at least 6 feet in height shall be constructed around the storage area to conceal the vehicles from public view. That's on page R-9... well, let me give you the right site. R-3, page 2, Commission Memorandum 8205. It's in your package.

FESTA: Right. O.K.

FALM: Mr. Meyerson, 1'd like you to ask the Administration how they feel about this because in anticipation of giving out the towing contract, I assume this gentleman will want to bid on it.

FESTA: I already have the lowest bid.

FALK: There will be a question of that, whether the six foot high fence, Mr. Toal, whether in his opinion, in order to keep these cars from the view, our front door, I'd like to have some opinion on that.

MEYERSON: Very well. Mr. Cohen.

HAL COHEN: Relative to the towing business that Mrs. Falk refers to, we are going to require that all cars taken off the streets, toped out be behind an opaque fence of some type. What is being proposed here as I understand is a masonry fence which is the present ordinance. Probably we would relax that and allow other types of fences as long as they were opaque...

MEYERSON: One question, though, Mr. David you can answer this. I recognize that there'll be a six foot wall and probably that would be screened from the grading of the road on Dade Boulevard. Can the decelict automobiles be seen from the fly-over? Because you're raised somewhat.

DAVID: Well, they're in the back of the .. on the opposite side of the garage, so not having really made an aerial analysis, I would doubt that they could be seen, however because of the garage as well as the six foot wall.

MEYERSON: Coming from either direction?

DAVID: Yes, sir.

MEYERSON: Mr. Festa, you agree with that?

FESTA: Yes. I say they're not visible from Dade Boulevard.

MEYERSON: Mrs. Falk does that answer your question?

 $\label{eq:falk: Yes, because I have to bow to the sc... to the planners and to the Administration on their assurance that the eyesore will be corrected.$

FESTA: We're talking about gasoline now. We're talking about the gasoline...

FALK: We're talking about the Beach station.

FESTA: Yes, I understand that but that is a C-6. When Redevelopment comes in, they're going to be coming in asking where are we going to get more C-6 to take care of the businesses that are down First to Sixth Street. And I have a business down there that I...

FALK: I'm not opposed to your having the C-6 district. I'm not opposed to keeping the cars there but if in Mr. Cohen's opinion, Mr. Toal's opinion they would recommend a 7 foot fence and maybe all around fence with just one entrance and one exit. So...

FESTA: Whatever they want, I will comply.

FALK: .. So then I would have no further objection.

FESTA: O.K. I'm going to comply. I won't mention any names now but I am one of the few towing services that is ...has a C-6 and C-6 is what you need for towing.

COHEN: You know the Administration has no objection, Mrs. Falk, to an amendment stating that the fence shall be such that the storage cars cannot be seen from any of the adjacent roadways.

FALK: Perfect.

MEYERSON: Would you accept that amendment, Mr. Fester?

FESTA: Yes. Did we acknowledge whether it was masonry or whether it was opaque?

FALK: I don't care.

MEYERSON: Mr. Cohen?

COHEN: Under the present ordinance it must be masonry.

FESTA: O.K. That will go for the goose and the gander.

MEYERSON: Yes.

FESTA: O.K.

FRIEDMAN: What does that....

MEYERSON: Well, what do you mean by the gander? We know what the goose is.

FESTA: Well, O.K. All right. There are five, six people involved in this and in the past...in the past I have been pointed out...I have been pointed out in violation even though I was C-6 and people who were in R-1, R-1-2-5 were not. We are not mentioning names.

COHEN: Mr. Mayor.

MEYERSON: Mr. Cohen.

COHEN: Yes, I just want to have the gentleman clear that we may amend that ordinance in the future so what we're suggesting here relates to his conditional use only and not to the towing contract and what bidders may or may not be required under that later on.

MEYERSON: Yes.

DAOUD: Mr. Mayor.

MEYERSON: You understand that, Mr. Festa, what Mr. Cohen is saying? Right now you're here on a conditional use.

FESTA: That's right.

MEYERSON: ..and those are the conditions that we're posing to you. It may not apply to the other members because they are not asking for conditional use.

FESTA: All right. Now, what they're doing is, they're telling me that I have to do something different from anybody else even though I'm in the right zoning.

MEYERSON: Well, you're in the right zoning provided that the Commission gives you the conditional use. And the conditions have to be met.

FESTA: I understand but I just don't like to be favored by anybody and I just don't like to be not favored.

MEYERSON: Yes. Well, that's not the issue here. No one is taking advantage of you. You have a conditional use and we're trying to determine whether or not those conditions if they are met will be in the public interest. That's all.

(FESTA: Right. Well the public Interest...a gas station...a filling station would be nicer to look at then a junk yard.

MEYERSON: O.K. You made your point.

FESTA: O.K.?

DAOUD: Mr. Mayor.

MEYERSON: Mr. Daoud.

DAOUD: I have two crucial questions. Number one, and this is very important so I want you to think it over before you answer it. Are you going to be open on week-ends when everybody else is closed?

FESTA: Yes. In the past I was open all night because I had the police towing and I also had Triple A. So we were all open. The Police Department is notified, Central Cub is notified, everybody is notified. And we were a God send that City Hall Garage was opened.

MEYERSON: What's the name of your towing service?

FESTA: Beach Towing.

MEYERSON: Beach Towing.

DAGUD: And number two, I wanted to clarify one point. Are you still doing the towing for...in the area. You're towing derelict cars away?

FESTA: Yes.

DAOUD: You still are presently?

PESTA: Yes, we do. I think...Yes, anybody who calls up, we are the ones. Even when Dade County had a problem, for an 8 month problem, and they would not take any of the cars out because they are contracted to take them out, the Police Department called me as a favor and took them out and I held them for 45 days. I'm talking about cars with no wheels on it, and I mean I'm talking about derelicts. And I held them for 45 days to sell it for \$25. So it was for the better of Miami Beach.

MEYERSON: Mr. David, what was the vote of the Planning Commission on the approval of the conditional use?

DAVID: This was a unanimous vote by the Commission with these conditions. And if I may, Mr. Mayor, for the record, there's two points I'd like to clarify. One is that in addition to the items that I read into the record, listed here is also another condition

DAVID (Con't): in regarding the sign. The triangular metal sign which should be removed and replaced by a sign that conforms with the sign code for that district. And the second thing is in regard to Mrs. Falk's amendment which is well accepted. I think just something that would indicate that in addition to that that it be not less than six feet, if it's required to be more that's fine but I think we should have something in there at least minimizing the height.

FALK: Mr. David I think Murray Meyerson expressed it very well. So that no matter what height is required so that the junked ears should not be visible for people traveling up and down Dade Boulevard.

DAVID: O.K.

FRIEDMAN: Mr. Mayor.

MEYERSON: Yes, Mr. Friedman.

FRIEDMAN: Yes. I have a couple of questions. First of all landscaping has to be added, is that correct?

COHEN: That's correct.

FRIEDMAN: It's not currently there. Another thing is, I'm a little bit concerned knowing that under normal circumstances you will control your gas station, the flow of traffic but that arrow is really not going to be a major degerent for someone going that way and out across Dade Boulevard or creating a bottleneck in that area there. Is there any possible way, I've seen other areas, I'm not too fond of them because my MG doesn't fit over them, but where they have where you can go in one way without any problem, you know, they're kinda like things in the ground but to go the other way you can't go without really damaging your car. That serves as a real deterrent for someone jumping across Dade Boulevard like that. I'll tell you something. I read this and it said that when this gas station first open which was in '56 - '58 something like that. That sticks in my head.

FESTA: '56

FRIEDMAN: '56. It was desirable. But '56 and 1980 is a different time and the amount of traffic flow in that area based on that fly-over there has. well it creates a bottleneck. And I'm somewhat concerned that with added density in that area... residential density in that area, I don't know. I'm really kind of...Bob, can you assure me that we won't have a bottleneck, backing cars up. Because it's nice to say that we will have someone who will put up a barrier and not let the cars backup. But you know, I'm in business to pump gas and if I'm pumping gas, the more I pump the more I make and so if I can get them in this way coming off Dade Boulevard, or if I can get them in coming from North Bay Road, the more I can get in the more the money I can make and the better it is for me. And it's nice to say that yes, we would have the option of withdrawing the conditional use but the guy is, you know, he's going to build it already and you're not going to go in and rip the pumps out of the ground. So you know, what is going to be our remedy? I mean if he says, hey, I've got it. I'm working. I'm in business and you know, I'm open for business and I'm open.

FESTA: Well, Mr. Friedman, there is no ... there's only one way. There's only traffic coming from Dade Boulevard. That's Lt.

FRIEDHAN: Can you cross Dade Boulevard going east?

FESTA: To go east?

FRIEDMAN: Does the over...the fly-over comes down that way. So I couldn't jump from this gas station going east on Dade Boulevard.

FESTA: No. You can't.

MEYERSON: You can't.

FRIEDMAN: Do you see the fly-over? Does that come...in other words could I make a left turn from \dots

DAVID: There's a divider

€

MEYERSON: Yes.

DAVID: If you're talking about the eastbound lane...

FRIEDMAN: Yes.

DAVID: There's a divider that would prohibit you from making a left hand turn into the station at that point. The only way you could do it would be to go on North Bay Road.

FRIEDMAN: O.K. So in other words you could not go...you could not go east from the gas station out of that entrance.

DAVID: No.

FRIEDMAN: No. Because I couldn't tell from your diagram, and I didn't really remember. Well, I guess that takes care of my questioning. Thank you.

MEYERSON: Mr. Mendelson, any questions?

MENDELSON: No.

MEYERSON: The recommendation of the Administration is to approve the conditional use. The Planning Board has voted unanimously for it. The Administration concurs. Even though there are some questions in connection with this area, because of the fly-over predominately and because of the building of the 800 units and perhaps more on Purdy Avenue. You've been in business in this community for a long time, Mr. Festa, and you know what the Commission is trying to achieve. Where's the City Attorney? What is the vote that's necessary to approve the Planning Board's recommendation?

RITTER: I believe we need a 5/7th vote.

MEYERSON: Yes. A conditional use?

DAVID: It's a majority vote.

TOAL: To reject 5/7 - on conditional use.

RITTER: What is this, a conditional use?

DAVID: Conditional use.

RITTER: For conditional use we need a majority, Mr. Mayor.

MEYERSON: Yes. All right. I think to reject the Planning Board it needs a 5/7th vote.

TOAL: That's right.

MEYERSON: O.K. If there's no further discussion the Chair will entertain a motion.

FALL': Move it

MEYERSON: You're moving to accept the recommendation of the Administration? Is that?

FALK: Yes.

MEYERSON: O.K. Mrs. Falk has moved to accept the recommendation of the Administration for the conditional use as approved by the Planning Board and concurred in by the Administration. Do I hear a second?

WIKLER: I'll second it.

MEYERSON: Seconded by Dr. Wikler.

WIKLER: With this comment that I hope this gentleman makes enough money to pay for his wall and all that sort of thing. I think he's been very accommodative with us and wish you good luck in your venture.

FESTA: Thank you very much.

MEYERSON: Very well. Any further discussion? Call the roll.

MATTHEWS: Mr. Mayor, Is this with the further condition that was to be added? The additional condition.

MEYERSON: All conditions to be added as...

MATTHEWS: You need to set that forth. That condition that it's a wall to be no less than...what..how it is to be worded.

MEYERSON; No. I don't think, Miss Matthews, I think that the recommendation of the Administration...

MATTHEWS: Was not that.

MEYERSON: Involves the 8 conditional uses that that have been delineated by Mr. David and is in the backup material as part of the Agenda package and has been stipulated by Mr. Festa.

FALK: Point of information.

MEYERSON: You intend to comply with all the conditions, do you not?

FESTA: The ones we talked about.

FRIEDMAN: Yes, plus the modification of condition one.

FALK: Mr. Mayor.

MEYERSON: Yes.

FALK: Mr. Cohen just told me that what I stated has to be added as an amendment.

MEYERSON: Yes, the 7 foot wall, you're talking about.

FRIEDMAN: Whatever was necessary.

COHEA: Whatever was necessary to conceal from all directions.

MEYERSON: Very well.

COHEN: But no less than 6 feet.

MEYERSON; With that modification. With that modification. Very well, any further discussion? Any thing from the Administration? Any thing from the City Attorney?

RITTER: No, Mr. Mayor, it's in proper legal form.

MEYELSON: Call the roll.

MATTHEWS: Mr. Daoud Yes. Mr. Mendelson Yes

Mrs. Falk Yes Mr. Meyerson Yes

Mr. Friedman Yes Dr. Wikler Yes

MEYERSON: Thank you, Mr. Festa.

FESTa: Thank you. Thank you gentlemen. Thank you Lady.

MEYERSON: And good luck to you, sir.

FESTA: Thank you very much.

MEYERSON: We'll move on now to ITEM R3D. This is an item where the applicant has requested that the Public Hearing be continued to August 20, 1980, at the same time

FRIEDMAN: Mr. Mayor. May I make a request. There are some people here. 1 know Mr. Coodman is here and I know the Bicycle Club from Miami Beach Senior High School is here, in terms of the bond re-allocation.

MEYERSON: R9A. Let's take R9A.

MATTHEWS: Mr. Mayor, excuse me, will you please make the announcement with respect to the hearing on the conditional use for $1840~\mathrm{Alton}$ Road (R3D) that is to be continued at the request of the applicant.

MEYERSON: Thank you for reminding me.

MATTHEWS: This is to August 20, 1980, at 3:15 p.m.

MEYERSON: Ladies and Centlemen, in connection with Item R3D. This is a public hearing on a conditional use. At the request of the applicant and based on the Administration recommendation this matter will be continued to the August 20, 1980, meeting. Those of you where are here to speak at the public hearing on this item will be available on August 20th and you will be heard.

Exhibit D

MEMORANDUM



to Ricardo Fraxedas, Head Hazardous Materials Jection Date December 10, 1984

SUBJECT Beach Towing Services, Inc.

r now laid! Thyn Inspector !!

On becomber 11, 1996 I made an on site inspection of the above referenced frelift, and observed underground tanks below removed by Den and Coast Equipment bental, Inc. At this time the crowndwater table was visible and I observed no measurable amounts of hydrocarbons on the water (see photos). Wheel is, the above this inspector gave verbal approval to Mr. Ionald Chaffer allowing Mr. Shaffer to backfill the excavation using clean fill. Issue, Cowing Corvices, Inc. has hereby couplied with the orders issued on Ceptonler 21, 1969 (Org. No. 637607996), I therefore recommend this case be closed.

Ri':dlm





ENVIRONMENTAL RESOURCES MANAGEMENT POLLUTION PREVI NTION DIVISION SUITE 800 33.5 W. 2nd AVENUE MIAMI FLORIDA J3130 1540 (195) 312 8817

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METROPOLITAN DADE COUNTY, FLORIDA





METRO-DADE CENTER

ENVIRONMENTAL RESOURCES MANAGEMENT

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LABORATORY ANALYSIS RECORD

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PF1-MORE LEGAL PF2-PARCEL INFO PF3-FOL SRCH PF5-TAX COLL PF7-PREV OWNER PF8-MENU DC172008 *** UNACCEPTABLE RESPONSE. PLEASE TRY AGAIN ***

The Information dated prior to January 1, 1994 has been removed and microfilmed. For further assistance, please see the file clerks. Thank you.

METROPOLITAN DE COUNTY ENVIRONMENTAL SOURCES MANAGEMENT







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UT-233/

METROPOLITAN DE COUNTY ENVIRONMENTAL SOURCES MANAGEMENT





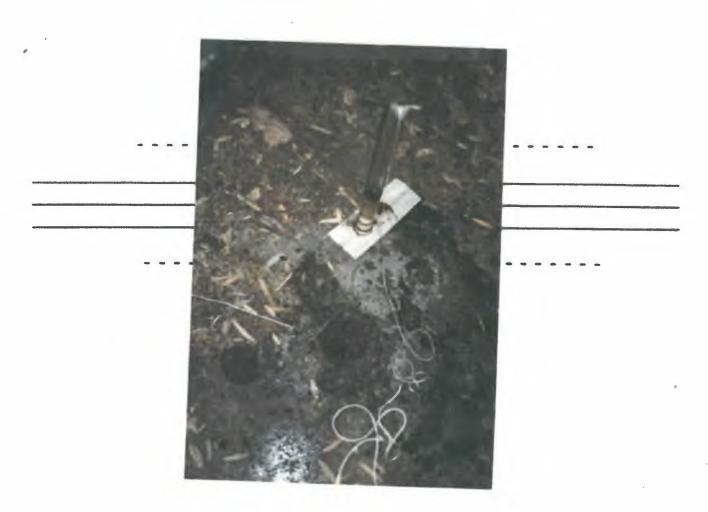
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Inspector:	NAUAFA	GARRETT	Section: STORAGE TANK Date: 11-8-86	7
Site Name:	REACH	JOHNAG	Address: 1349 DADE BLUD	

METROPOLITAN DADE COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT

Field Investigation by RTHYN

Date: 12-10-84

119.05-209



dispenser lines after tank was
removed



Picture Explanation: View of groundwater with slight layer of emulsified HC.



Several tanks removed, tank was purposely ruputured.



Picture Explanation: Truck
load of clean fill being drupped
off for backfill.

No File #

METROPOLITAN DE COUNTY ENVIRONMENTAL RESOUR MANAGEMENT

119.05-209

Field Investigation by Fermin de la Camon Date: 10/14/87





Picture Explanation:

reneral state of facility open to elements

[pro at right).

Picture Explanation:

Picture Explanation:

METROPOLITAN DADE COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT

119.05-209

Field Investigation by RTAYN DERIES Date: AUG 14 1984



Picture Explanation: #/ Nispenser bave been removed. #2 \$ #3 Show yent mes

for five (5) tanks.



Picture Explanation: #4 shows liller caps to tants

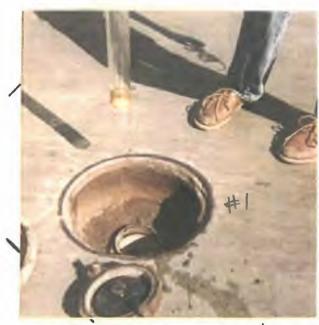


Shows filler cap to tank.

METROPOLITAN DADE COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT

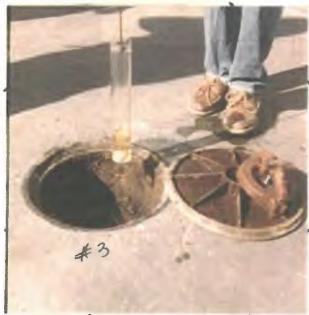
119.05-209

Field Investigation by RTHYN A.FRIES
Date: Aug 14, 1984

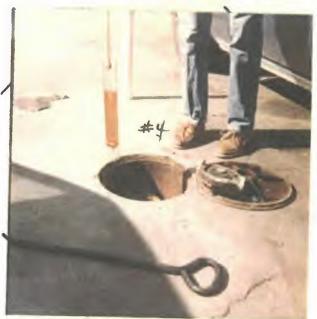


Picture Explanation: Sample taken from tank on





Picture Explanation: Samp



Picture Explanation: 52

119.05-209

Field Investigation by_

Date:



Picture Explanation: Sample taken from tank # 5

Picture Explanation:

fuel and water, also rust
particles present in the bottom.



Picture Explanation:
Advess visible of door of

Picture Explanation:

Front view, arrow indicates
lacation of tanks

Exhibit E



DIRECT LINE: (305) 377-6229 E-Mail: gpenn@brzoninglew.com

VIA ELECTRONIC MAIL

June 7, 2016

Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Request for Zoning Confirmation - Towing Storage Yard and Facility as a Primary Use in CD-2 Commercial Zone.

Dear Tom:

Please consider this letter our formal request for the following determination:

Whether a towing storage yard and facility is a main permitted or conditional use in the CD-2 zoning district.

I have included a check in the amount of \$250.00, which is the associated fee for this request. Please contact me at this office if you have any further questions or require additional information.

Sincerely

Sraham Penn

Exhibit F

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:

TRADE ADDRESS:

Code Business Type

#Locations

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



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 "G"

MIAMIBEACH

PLANNING DEPARMTENT

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. Moone AICP Planning Director

Attachment



ZONE0516-0011

EXHIBIT "H"

IN THE CIRCUIT COURT OF THE 11th 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.
- I graduated from the University of North Carolina in 1978 also with my J.D., and 3. 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 zoming 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/Permitee 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 he 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 husiness 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

Man cy Stron & Nancy Stroud

EXHIBIT "I"

1	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
2	Case No. 2016-004547 CA 01
3	Case No. 2010 001317 CA 01
4	
5	SUNSET LAND ASSOCIATES, LLC,
6	Plaintiff,
7	vs.
8	MARK FESTA, individually and as trustee, MAUREEN FESTA, VINCENT J.
9	FESTA, individually and as trustee, THE FESTA TRUST, and BEACH TOWING
10	SERVICES, INC., BEACH TOWING SERVICES OF MIAMI, INC., CONSOLIDATED STORAGE
11	YARDS, INC., GOOFE PARTNERS, INC., MIAMI AVENUE PROPERTIES, INC., 1718
12	BAY ROAD CORPORATION, FESTA TRANSPORT AND STORAGE, INC., and CORONA
13	STORAGE, LLC,
14	Defendant(s).
15	
16	and THE LOFTS AT SOUTH BEACH CONDOMINIUM ASSOCIATION, INC.
17	Intervenor-Defendant,
18	
19	and
20	MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.
21	Counter-Plaintiffs,
22	v.
23	SUNSET LAND ASSOCIATES, LLC, a Florida limited liability company,
24	riorida ilmited ilability company,
	SH OWNER, LLC, a Florida limited liability company, TOUCH OF CLASS

	-		·
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1	LLC, a Florida limited liability	1	INDEX
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2		-	DIRECT EXAMINATION BY MR. BUCKNER 5
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21		20	
22		21	
23		22	
24		24	
25		25	
	Page 3		Page !
1	APPEARANCES:	1	Deposition taken before Victor Selvaggi, Jr.,
2	ON BEHALF OF THE PLAINTIFF: LAW OFFICES OF BUCKNER & MILES	2	Florida Professional Reporter, and Notary Public in and
,	3350 Mary Street	3	for the State of Florida at Large in the above cause.
4	Miami, Florida 33133	4	****
	(305) 964-8003		
5	david@bucknermiles.com	5	THE REPORTER: Please raise your right hand.
6	BY: David M. Buckner, Esq.	6	Do you solemnly swear or affirm the testimony
7	ON BEHALF OF THE DEFENDANTS MARK FESTA, MAUREEN	7	you are about to give will be the truth, and
	FESTA, BEACH TOWING SERVICES, INC., BEACH TOWING	8	nothing but the truth?
8	SERVICES OF MIAMI, INC., CONSOLIDATED STORAGE YARDS,	9	THE WITNESS: Yes.
9	INC., GOOFE PARTNERS, INC., MIAMI AVENUE PROPERTIES,		
J	INC., 1718 BAY ROAD CORPORATION, FESTA TRANSPORT and STORAGE, INC., and CORONA STORAGE, LLC	10	THEREUPON:
10	2 2 3 4 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	11	SUSANA ALONSO, AICP,
	LEVINE & PARTNERS	12	having been first duly sworn or affirmed, was examined
11	3350 Mary Street	13	and testified as follows:
12	Miami, Florida 33133	14	DIRECT EXAMINATION
14	(305) 372-1350 ASR@LEVINELAWFIRM.COM		
13	BY: Allan S. Reiss, Esq.	15	BY MR. BUCKNER:
14		16	Q. Good morning, Ms. Alonso.
	ALSO PRESENT:	17	A. Good morning, sir.
15	Ralph Andrade Fee	18	Q. I'm David Buckner. Pleasure to meet you.
16	Ralph Andrade, Esq.	19	A. Pleasure to meet you, too.
17			<u>-</u>
18		20	Q. Let me go through some ground rules and we
19		21	will try to move through this expeditiously today. I
20		22	have a habit of talking too fast, which really drives
21 22		23	Vic crazy, but I'll try not to.
23		24	Have you had your deposition taken before?
24			
25		25	A. No, sir.
25			

	_		
	Page 6		Page 8
1	Q. This is the first time?	1	1.
2	A. Yeah. I'm a newbie.	2	(The document referred to
3	Q. Very exciting. So let me give you some ground	3	was thereupon marked as
4	rules, and if there is anything you don't understand,	4	Plaintiff's Exhibit Number
5	you tell me. I know you probably have gone through	5	1 for Identification,
6	this already with Mr. Reiss.	6	a copy of which is attached
7	First of all, everything you and I say,	7	hereto.)
8	everything anybody says will be taken down by the Court	8	BY MR. BUCKNER:
9	Reporter. For him to do that, we have to try not to	9	Q. Do you recognize Exhibit 1?
10	talk over each other because he can only take down one	10	A. Yes, sir.
11	voice at a time.	11	Q. And what is it?
12	A. Yes, sir.	12	A. It's a request to depose me.
13	Q. So it's not how we normally talk. It takes a	13	Q. Right. It's the notice why you are here
14	little work, but I'll work with you on that if you will	14	today, right?
15	work with me.	15	A. Yes.
16	I'm going to ask you questions. All you are	16	Q. Attached to it is Exhibit A, which is a list
17	asked to do is answer them to the best of your ability.	17	of documents that I requested.
18	Mr. Reiss may have objections at various points in	18	Have you gone through that list before to see
19	time. Those are for the record. We will deal with	19	which of these documents you have?
20	those later. Unless he instructs you not to answer,	20	A. I have everything on page seven.
21	which I can't imagine happening today, you just go	21	Q. When you say you have, you mean you brought
22	ahead and answer, but again, try not to talk over him	22	with you today?
23	or me as we are saying whatever we are saying so that	23	A. A-ha.
24	Vic can get it all down.	24	Q. Is that a yes?
25	If I ask you a anything that you don't	25	A. Yes.
1	Page 7 understand, you tell me and I'll restate it. If you	1	Page 9 Q. Let me tell you something else. We have to
2	answer my questions, we are going to assume that you	2	say yes or no so he can take it down. The usual thing
3	understood what I was asking and you were answering to	3	is we do like a-ha. I know what you meant, but he
4	the best of your ability. Okay?	4	can't take that down.
5	A. Yes, sir.	5	A. I get it.
6	Q. If you need to take a break at any point, we	6	Q. Okay. So you have everything from page seven
7	will take a break. We are going to try to get this	7	with you today.
8	done today so we can get everybody out of here, but	8	A. Yes, sir.
9	it's not meant to be a torture test, so if you need a	9	Q. Okay. How about page eight?
10	break, go to the bathroom whatever, just say so.	10	A. Yes, sir.
11	Is there any reason why you can't give	11	Q. And page nine?
12	truthful and complete testimony today?	12	A. Yes, sir.
13	A. No, sir.	13	Q. Okay. And so with regard to the entirety of
14	Q. You don't have to call my sir.	14	Schedule A, you brought whatever documents you have
15	A. I'm a southern girl.	15	with you here today.
16	Q. Okay. Then you can call me sir. Any	16	A. Yes, sir.
17	questions about the procedures today?	17	Q. I received a flash drive yesterday. Is
18	A. No, sir.	18	everything you have here with us on the flash drive or
19	Q. All right. Where are you from?	19	is there stuff here that's not on the flash drive?
20	A. Louisiana.	20	A. Yes, everything is on the flash drive.
21	Q. I'm from Kentucky.	21	Q. Okay. So it's the same thing.
22	MR. ANDRADE: Sorry to hear that.	22	A. Yes.
23	MR. BUCKNER: Oh, you had to do that.	23	Q. That will save us making copies of that later.
24	BY MR. BUCKNER:	24	MR. REISS: I don't want to interrupt. I
25	Q. I'm handing you what's been marked as Exhibit	25	think there are a few items, some e-mails.
1	_	1	I

	20 <u>F</u> 20m220		•
1	Page 10	1	Page 12
1	THE WITNESS: E-mails are not in there and	1	hereto.)
2	this giant.	2	BY MR. BUCKNER:
3	MR. REISS: You have an IT manual or	3	Q. Do you recognize Exhibit 3?
4	something?	4	A. Yes, sir.
5	THE WITNESS: Correct. I brought the IT	5	Q. What is it?
6	manual with me, but you can't keep that.	6	A. It's my retainer.
7	MR. REISS: Anything else on the flash drive?	7	Q. It's your retainer in this case?
8	THE WITNESS: No, but the e-mails are in here.	8	A. Yes, sir.
9	BY MR. BUCKNER:	9	Q. I notice it's not signed. Is there a signed
10	Q. That's fine. In terms of	10	version somewhere?
11	MR. REISS: I didn't mean to interrupt your	11	A. Yes, sir. I don't think I have a signed
12	deposition.	12	version here.
13	MR. BUCKNER: It saves time.	13	Q. Okay. Look at Exhibit 3 and make sure it's
14	BY MR. BUCKNER:	14	the same as the signed version?
15	Q. So in terms of what you have that you brought	15	A. It is. I read it.
16	today that is not on the flash drive, is it only the	16	Q. Okay. That's the retainer agreement under
17	stuff in the black folder there?	17	which you are testifying in this case?
18	A. Yes.	18	A. Yes, sir.
19	Q. Can we mark the full contents of folder and we	19	Q. All right. Exhibit 4.
20	will have copy of that made.	20	(The document referred to
21	(The document referred to	21	was thereupon marked as
22	was thereupon marked as	22	Plaintiff's Exhibit Number
23	Plaintiff's Exhibit Number	23	4 for Identification,
24	2 for Identification,	24	a copy of which is attached
25	a copy of which is attached	25	hereto.) (P four marked for identification.)
1	Page 11 hereto.)	1	Page 13 BY MR. BUCKNER:
2	BY MR. BUCKNER:	2	Q. Do you recognize Exhibit 4?
3	Q. All right. So Exhibit 2 is the only materials	3	A. Yes, sir.
4	you brought today that is not on the flash drive,	4	Q. What is that?
5	correct?	5	A. It's my curriculum vitae.
6	A. Yes, sir.	6	Q. And is that correct?
7	MR. REISS: There is the IT manual.	7	A. Yes, sir.
8	THE WITNESS: But are you going to put that	8	O. And finally Exhibit 5.
9	MR. REISS: You brought it and that was the	9	(The document referred to
10	question.	10	was thereupon marked as
11	BY MR. BUCKNER:	11	Plaintiff's Exhibit Number
12	Q. What is the IT manual for my edification?	12	5 for Identification,
13	A. Trip Generation Manual 9th Edition. All three	13	a copy of which is attached
14	volumes of it.	14	hereto.)
1			
15	· · · · · · · · · · · · · · · · · · ·		BY MR. BUCKNER:
15 16	Q. Okay. That's fine. So you have those with	15	BY MR. BUCKNER: O. What is Exhibit 5?
16	Q. Okay. That's fine. So you have those with you.	15 16	Q. What is Exhibit 5?
16 17	Q. Okay. That's fine. So you have those with you. A. I have them with me.	15 16 17	Q. What is Exhibit 5? A. A report.
16 17 18	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't	15 16 17 18	Q. What is Exhibit 5?A. A report.Q. Is it your report in this case?
16 17 18 19	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them.	15 16 17 18 19	Q. What is Exhibit 5?A. A report.Q. Is it your report in this case?A. It is my report.
16 17 18 19 20	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them. Exhibit 3.	15 16 17 18 19 20	Q. What is Exhibit 5?A. A report.Q. Is it your report in this case?A. It is my report.Q. And how did you come to prepare that report?
16 17 18 19 20 21	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them. Exhibit 3. (The document referred to	15 16 17 18 19 20 21	Q. What is Exhibit 5?A. A report.Q. Is it your report in this case?A. It is my report.Q. And how did you come to prepare that report?A. I utilized my professional experience and
16 17 18 19 20 21 22	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them. Exhibit 3. (The document referred to was thereupon marked as	15 16 17 18 19 20 21 22	Q. What is Exhibit 5? A. A report. Q. Is it your report in this case? A. It is my report. Q. And how did you come to prepare that report? A. I utilized my professional experience and education and reviewed some materials that were some
16 17 18 19 20 21 22 23	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them. Exhibit 3. (The document referred to was thereupon marked as Plaintiff's Exhibit Number	15 16 17 18 19 20 21 22 23	Q. What is Exhibit 5? A. A report. Q. Is it your report in this case? A. It is my report. Q. And how did you come to prepare that report? A. I utilized my professional experience and education and reviewed some materials that were some publicly available and others that were made available
16 17 18 19 20 21 22	Q. Okay. That's fine. So you have those with you. A. I have them with me. Q. We are not going to mark those. You don't have to take them out unless you need them. Exhibit 3. (The document referred to was thereupon marked as	15 16 17 18 19 20 21 22	Q. What is Exhibit 5? A. A report. Q. Is it your report in this case? A. It is my report. Q. And how did you come to prepare that report? A. I utilized my professional experience and education and reviewed some materials that were some

	September		0, 2016 14 t0 17
	Page 14		Page 16
1	A. Mr. Andrade and Mr. Reiss.	1	explanation of the same points.
2	Q. Okay. Let's go through this. I want to go	2	Q. Explaining the nature of?
3	through some things in your resume first and then we	3	A. The nature of the neighborhood.
4	are going to talk about your report a bit.	4	Q. Okay. Tell me where that is.
5	So I take it because you never have been	5	A. I need mine.
6	deposed before, you never testified as an expert	6	Q. Do you want me to make another copy so you can
7	before, correct?	7	refer to it?
8	A. Never, sir.	8	Let's take a quick break and I'll make copy.
9	Q. So that means you never have been certified as	9	Off the record.
10	an expert in any subject?	10	(Discussion off the record.)
11	A. No.	11	BY MR. BUCKNER:
12	Q. What is it that you believe you're an expert	12	Q. Back on the record. Exhibit 6 then. What is
13	in?	13	that?
14	A. I'm an expert in planning and zoning and urban	14	A. This is the amended report.
15	planing.	15	(The document referred to
16	Q. Anything else?	16	was thereupon marked as
17	A. That's about it. That's enough.	17	Plaintiff's Exhibit Number
18	Q. I hate to ask. Lawyers will do this. When	18	6 for Identification,
19	you say that's about it, it suggests to me maybe there	19	a copy of which is attached
20	is something else. Is there anything else you're an	20	hereto.)
21	expert in other than those areas? No?	21	BY MR. BUCKNER:
22	A. No. Nothing relevant to this trial. How's	22	Q. Let's take a minute then since I was not aware
23	that?	23	there was a revised report. Let's take a minute and
24	Q. I'll take your word for it. We will leave	24	walk me through it. I'm looking at Exhibit 5 and
25	that alone. I want to go through your resume a little	25	Exhibit 6 side by side. Six is the new report? Tell
	Daga 15		Daga 17
1	Page 15 bit. I'm going to actually start at the back with your	1	Page 17 me what changed from 5 to 6? You can gone page by
2	education.	2	page.
3	A. This is the old version of the report.	3	A. All right.
4	Q. This is the old version.	4	Q. First of all, I can see on page three there
5	A. Yes.	5	are some additional documents, right?
6	Q. There is a new version?	6	A. Yes. On page three I added the amended
7	MR. REISS: It was produce last night. There	7	traffic study by Traf Engineering.
8	is an updated report.	8	Q. Okay.
9	MR. BUCKNER: Produced last night?	9	A. It was amended on August 22nd.
10	MR. REISS: On the flash drive.	10	Q. Okay.
11	MR. BUCKNER: Okay. I didn't realize that it	11	A. And the report of Ms. Dougherty's
12	was updated. Which one is the updated one?	12	declaration report on July 12th.
13	MR. REISS: Do you have it printed out?	13	Q. Okay. Exhibit
14	THE WITNESS: Yes, I do.	14	A. Y and Z.
15	MR. BUCKNER: I can go print it.	15	Q. Those are new.
16	BY MR. BUCKNER:	16	A. Yes.
17	Q. What changed about the old version and the new	17	Q. What else?
18	version of the report?	18	A. Page four.
19	A. I amended the square footage according to the	19	Q. Go ahead.
20	traffic, the amended traffic study, and I amended some	20	A. Nothing I can see. Page six, the bottom
21	of the numbers that were produced in the traffic study.	21	paragraph is added. It's a further explanation.
22	Q. Okay. Other than the changes to the traffic	22	Q. Where it said or the paragraph that starts
23	study, did you make any other changes?	23	with as per Section 130-33 B?
24	A. I added a paragraph explaining the nature of	24	A. Sorry, I'm on page five.
25	the neighborhood a little more, just further	25	Q. Okay.
1			

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	Page 18			Page	20
1	A. It starts with in fact.	1	A.	Yes.	
2	Q. Okay. That paragraph is new.	2	Q.	Is it stuck to yours, an e-mail?	
3	A. Yes.	3	A.	No.	
4	Q. Okay.	4		MR. BUCKNER: Is that stuck to yours, Allan?	
5	A. Now on page six.	5		MR. REISS: No.	
6	Q. Okay. We are looking at the new report when	6		MR. BUCKNER: It's my e-mail on another	
7	you are giving the pages?	7	mat	ter.	
8	A. Yes, sir.	8	BY MR. B	UCKNER:	
9	Q. Okay.	9	Q.	Okay.	
10	A. There is a part of paragraph four that has	10	A.	Last page is the map.	
11	been added.	11	Q.	Okay. So your last page is the map. We wil	.1
12	Q. Paragraph four. Tell me what paragraph four	12	talk abo	ut that. So let's talk about some stuff.	
13	starts with.	13		I'm going to look at your CV. I'm working	
14	A. It starts with previously mentioned.	14	from the	back. What is can Chi Epsilon?	
15	Q. Okay. What else?	15	A.	That is an honors society for civil engineer	s.
16	A. The last paragraph on that page as per Section	16	Q.	And are you a civil engineer?	
17	130-33. That one has been rearranged.	17	A.	No, sir, I never graduated.	
18	Q. Okay.	18	Q.	Do you have an engineering degree of any kin	nd?
19	A. And then on page seven is the part that is a	19	A.	No, sir.	
20	little more different. I rewrote the square footage.	20	Q.	It says here you did undergraduate and	
21	Q. When you say the square footage, is that at	21	graduate	work at the University of Miami in civil and	i
22	the top where you say 120,000 square feet?	22	architec	tural engineering.	
23	A. Yes. I had written in the previous over	23		Yes.	
24	49,000 and I decided to be a little more specific.	24	0.	And you were there for how many years?	
25	Q. Okay. I want to make sure I understand what	25		Three years.	
	· · · · · · · · · · · · · · · · · · ·				
	Page 19			Page	21
1	the change is.	1	Q.	And if you don't mind my asking, why did you	1
2	Are you saying there that on the Assemblage	2	not domn	lete your work there?	
			HOC COMP	iece your work diere:	
3	that's at issue in this case, part of which is owned by	3	_	I decided that architecture was one of my	
3 4	that's at issue in this case, part of which is owned by Sunset Land, you are saying they can build up to		_	-	
	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without	3	A. things.	-	
4	Sunset Land, you are saying they can build up to	3 4	A. things. Q.	I decided that architecture was one of $\ensuremath{\mathtt{my}}$	
4 5	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without	3 4 5	A. things. Q. focus are	I decided that architecture was one of my Okay. So then you decided to switch your	
4 5 6	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking.	3 4 5 6	A. things. Q. focus are	I decided that architecture was one of my Okay. So then you decided to switch your chitecture?	
4 5 6 7	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes.	3 4 5 6 7	A. things. Q. focus ar A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir.	cer
4 5 6 7 8	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else?	3 4 5 6 7 8	A. things. Q. focus are A. Q. It doesn	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that.	cer
4 5 6 7 8 9	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the	3 4 5 6 7 8 9	A. things. Q. focus ar A. Q. It doesn you went	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat	er
4 5 6 7 8 9	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is	3 4 5 6 7 8 9	A. things. Q. focus ar A. Q. It doesn you went A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech.	cer
4 5 6 7 8 9 10	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different.	3 4 5 6 7 8 9 10	A. things. Q. focus ar A. Q. It doesn you went A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir.	er
4 5 6 7 8 9 10 11 12	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay.	3 4 5 6 7 8 9 10 11 12	A. things. Q. focus ar A. Q. It doesn you went A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture.	er
4 5 6 7 8 9 10 11 12 13	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I	3 4 5 6 7 8 9 10 11 12 13	A. things. Q. focus are A. Q. It doesn you went A. Q. A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir.	cer
4 5 6 7 8 9 10 11 12 13 14	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there.	3 4 5 6 7 8 9 10 11 12 13 14	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture?	eer
4 5 6 7 8 9 10 11 12 13 14 15	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay.	3 4 5 6 7 8 9 10 11 12 13 14	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir.	eer
4 5 6 7 8 9 10 11 12 13 14 15 16	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight.	3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree?	cer
4 5 6 7 8 9 10 11 12 13 14 15 16 17	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else?	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree?	er
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q. A. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year	eer
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is unchanged.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q. A. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year Do you have any other professional degrees?	eer
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is unchanged. Q. When you say the next section, you mean the	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. things. Q. focus ar A. Q. It doesn you went A. Q. A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year Do you have any other professional degrees? No, sir.	eer
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is unchanged. Q. When you say the next section, you mean the development proposal by Sunset Land Associates?	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. things. Q. focus ar A. Q. It doesn you went A. Q. A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year Do you have any other professional degrees? No, sir. Do you have any academic degrees at all?	er
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is unchanged. Q. When you say the next section, you mean the development proposal by Sunset Land Associates? A. Yes, that's the same.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q. A. Q. A. degree. Q. A.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year Do you have any other professional degrees? No, sir. Do you have any academic degrees at all? No, sir.	eer
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Sunset Land, you are saying they can build up to 120,000 square foot of commercial space without parking. A. Without parking, yes. Q. Okay. What else? A. The next section is rearranged based on the traffic study so that are the next section is significantly different. Q. Okay. A. Reflecting the amended traffic study. I incorporated the new numbers in there. Q. Okay. A. And it's the same on page eight. Q. Okay. What else? A. Then on page nine, the next section is unchanged. Q. When you say the next section, you mean the development proposal by Sunset Land Associates? A. Yes, that's the same. Q. Okay. Then I see you added	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. things. Q. focus ar A. Q. It doesn you went A. Q. A. Q. A. Q. A. Q. A. degree. Q. A. Q.	I decided that architecture was one of my Okay. So then you decided to switch your chitecture? Yes, sir. Is that why you transferred strike that. 't look like you transferred. Some years lat to Louisiana Tech. Yes, sir. And you studied architecture. Yes, sir. Did you complete a degree in architecture? Yes, sir. What degree? A Bachelor's in Architecture, a six year Do you have any other professional degrees? No, sir. Do you have any academic degrees at all? No, sir. Do you have any professional certification?	eer

22 to 25

	Page 22	1	Page 24
1	A. I'm a certified professional planner,	1	Q. Okay. Did you actually create any traffic
2	certified by the Institute of Professional Planners.	2	data or you just compiled it
3	Q. Anything else?	3	A. No, sir, I just compiled it.
4	A. No, sir.	4	Q. And just remember we can try not to talk over
5	Q. Then it says here you did graduate course work	5	each other.
6	in urban planning at Florida Atlantic University.	6	A. Sorry.
7	A. Yes, sir.	7	Q. I know you know what my question will be, but
8	Q. And you didn't complete that degree?	8	he has a hard time getting us both.
9	A. I didn't complete it.	9	So you just compiled data from other sources.
10	Q. Have you ever done your own traffic	10	A. Yes, sir.
11	engineering study?	11	Q. After that, from November, 2004 to November,
12	A. No, sir.	12	2009, you were a planner for the City of Miami Beach,
13	Q. Have you ever strike that. Let's go	13	correct?
14	through the rest this.	14	A. Yes, sir.
15	You started out as a planning intern for the	15	Q. What did you do as a planner?
16	City of Miami Beach, right?	16	A. I was at the counter. I was a plan reviewer.
17	A. Yes, sir.	17	Q. When someone had a plan for a particular
18	Q. And you started work in May of 2002?	18	building or project, they would come to the counter and
19	A. Yes, sir.	19	you were the one who looked at it.
20	Q. Who was the planning director at the time?	20	A. Yes, sir.
21	A. Mr. George Goldman.	21	Q. What was your role with regard to those plans?
22	Q. It says here there is a reference to MIMO,	22	A. I was a plan reviewer. I reviewed them and I
23	M-I-M-O all in caps.	23	reviewed them for compliance with the land development
24	A. MIMO.	24	code.
25	Q. What does that mean?	25	Q. Anything else during that time?
1	Page 23	1	Page 25
1 2	A. Miami Modern.	1	A. No, sir.
2	A. Miami Modern. Q. I learned something today. Is that a type of	2	A. No, sir. Q. Then it says from November, 2009 to June,
2 3	A. Miami Modern. Q. I learned something today. Is that a type of building?	2 3	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that
2 3 4	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture.	2 3 4	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail?
2 3 4 5	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern?	2 3 4 5	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility.
2 3 4 5 6	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that	2 3 4 5 6	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans?
2 3 4 5 6 7	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board	2 3 4 5 6 7	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in
2 3 4 5 6 7 8	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board in the City of Miami Beach.	2 3 4 5 6 7 8	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in charge of all the other planners that review plans.
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2 3 4 5 6 7 8 9 10 11	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board in the City of Miami Beach. Q. Tell me what you mean by design guidelines. A. Basically the ways that we can reinvigorate '50s and '60s building into something that is modern	2 3 4 5 6 7 8 9 10	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in charge of all the other planners that review plans. Q. And, again, this is still for the City of Miami Beach. A. Still for the City of Miami Beach.
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2 3 4 5 6 7 8 9 10 11 12 13 14	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board in the City of Miami Beach. Q. Tell me what you mean by design guidelines. A. Basically the ways that we can reinvigorate '50s and '60s building into something that is modern and palatable. Q. So that's like architectural. A. With code, yeah. Turning it into code.	2 3 4 5 6 7 8 9 10 11 12 13	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in charge of all the other planners that review plans. Q. And, again, this is still for the City of Miami Beach. A. Still for the City of Miami Beach. Q. What did your job entail then? A. I was also in charge of the parking stuff in general.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board in the City of Miami Beach. Q. Tell me what you mean by design guidelines. A. Basically the ways that we can reinvigorate '50s and '60s building into something that is modern and palatable. Q. So that's like architectural. A. With code, yeah. Turning it into code. Q. Okay. After that you were a planning tech also for the City of Miami Beach, correct? A. Yes. Q. What did you do? A. Maps. Lots and lots of maps. Q. So tell me what that means.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in charge of all the other planners that review plans. Q. And, again, this is still for the City of Miami Beach. A. Still for the City of Miami Beach. Q. What did your job entail then? A. I was also in charge of the parking stuff in general. Q. What does that mean? A. Valet parking operations, all that other parking nonsense. Anything that had to do with parking, parking requirements. If there was a parking requirement ordinance going through, I would be consulted.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Miami Modern. Q. I learned something today. Is that a type of building? A. Yes. It's a type of architecture. Q. What did you do as a planning intern? A. I was in charge of the design guidelines that were later approved by the History Preservation Board in the City of Miami Beach. Q. Tell me what you mean by design guidelines. A. Basically the ways that we can reinvigorate '50s and '60s building into something that is modern and palatable. Q. So that's like architectural. A. With code, yeah. Turning it into code. Q. Okay. After that you were a planning tech also for the City of Miami Beach, correct? A. Yes. Q. What did you do? A. Maps. Lots and lots of maps. Q. So tell me what that means. A. I was in charge of the GIS, Geographic Information System in the planning department, so I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. No, sir. Q. Then it says from November, 2009 to June, 2012, you were a senior planner. What does that entail? A. A step up. More responsibility. Q. But still reviewing plans? A. Part partly, yes. At that time I was in charge of all the other planners that review plans. Q. And, again, this is still for the City of Miami Beach. A. Still for the City of Miami Beach. Q. What did your job entail then? A. I was also in charge of the parking stuff in general. Q. What does that mean? A. Valet parking operations, all that other parking nonsense. Anything that had to do with parking, parking requirements. If there was a parking requirement ordinance going through, I would be consulted. Q. Did you actually write any of the ordinances? A. No, not at that time.
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1	Page 26	1	Page 28 and conditional use amendments.
1	Q. You weren't creating anything of your own.	2	
2 3	A. No, no, sir.	3	Q. You said it was two schools, a church, a small hotel and a single family home. Did I miss anything?
	Q. The same as when you were a planner?		
4	A. Yes, sir.	4	A. No, sir.
5	Q. And then in June of 2012 you left the City of	5	Q. Where was the single family home?
6	Miami Beach.	6	A. In the City of Miami, Morningside District.
7	A. Yes.	7	Q. And what change did they want to make?
8	Q. Why did you decide to leave?	8	A. They wanted to be a historic designated home
9	A. Personal maternity leave reasons. I had a	9	for tax purposes.
10	baby.	10	Q. And were you successful in getting them the
11	Q. Congratulations. And you opened your own	11	historic designation?
12	planning, construction and building permit consulting	12	A. Yes.
13	firm.	13	Q. You said the two schools, and let's take them
14	A. Yes.	14	one at a time. The Casa Dei Bambini. They wanted a
15	Q. What was the name of that firm?	15	conditional use permit?
16	A. My name.	16	A. They had to amend their conditional use
17	Q. And what did your work for that business	17	permit.
18	entail?	18	Q. Why did they have to do that?
19	A. Basically helping people through board	19	A. They had more students than they had in their
20	applications in the city.	20	conditional use. They needed to increase their size.
21	Q. Was that all in the City of Miami Beach?	21	Q. Were you able to successful to do that?
22	A. Mostly. I did some work in Miami and some	22	A. Yes, sir.
23	work in Biscayne, but mostly Miami Beach.	23	Q. How about the Montessori School, what did they
24	Q. How many projects did you work on during that	24	need?
25	four year period?	25	A. They needed the same thing. They needed to
1		1	
1	Page 27	1	Page 29
1 2	A. Maybe five.	1 2	add students and that one died before it got to
2	A. Maybe five. Q. Do you remember which any of them were?	2	add students and that one died before it got to hearing. They pulled the application.
2 3	A. Maybe five. Q. Do you remember which any of them were? A. Sure.	2 3	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you
2 3 4	A. Maybe five.Q. Do you remember which any of them were?A. Sure.Q. Okay. Can you tell me?	2 3 4	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you know?
2 3 4 5	A. Maybe five.Q. Do you remember which any of them were?A. Sure.Q. Okay. Can you tell me?A. I worked for two schools, conditional uses for	2 3 4 5	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you know? A. They didn't want to deal with the traffic
2 3 4 5 6	A. Maybe five. Q. Do you remember which any of them were? A. Sure. Q. Okay. Can you tell me? A. I worked for two schools, conditional uses for two schools. One church, one single family home that	2 3 4 5 6	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you know? A. They didn't want to deal with the traffic study.
2 3 4 5 6 7	A. Maybe five. Q. Do you remember which any of them were? A. Sure. Q. Okay. Can you tell me? A. I worked for two schools, conditional uses for two schools. One church, one single family home that wanted historic designation, a small hotel that wanted	2 3 4 5 6 7	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you know? A. They didn't want to deal with the traffic study. Q. Did the Case Dei Bambini, for their
2 3 4 5 6 7 8	A. Maybe five. Q. Do you remember which any of them were? A. Sure. Q. Okay. Can you tell me? A. I worked for two schools, conditional uses for two schools. One church, one single family home that wanted historic designation, a small hotel that wanted a upper story and rooftop addition is the right word.	2 3 4 5 6 7 8	add students and that one died before it got to hearing. They pulled the application. Q. Why did they pull the application, do you know? A. They didn't want to deal with the traffic study. Q. Did the Case Dei Bambini, for their conditional use, did they need a traffic study?
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	Page 30		Page 32
1	Q. So they dropped their application for an	1	storage locations, they were opening and closing
2	amendment to the conditional use?	2	locations everywhere. Licensing, so they came in with
3	A. Yes, sir.	3	applications every once in a while.
4	Q. How about the United Methodist Church, what	4	Q. And you were involved in some of those?
5	did they need?	5	A. Yes, sir.
6	A. They needed to work their conditional use with	6	Q. And I know there is one in particular that we
7	the school on their property.	7	will go through that's referenced in your report, but
8	Q. So they needed to amend their conditional use?	8	other than the one you specifically reference in your
9	A. Yes.	9	report, do you know if were you involved in any other
10	Q. To do what?	10	applications
11	A. To allow the school to operate their parking	11	A. Yes.
12	lot.	12	Q by Beach Towing?
13	Q. And what happened with that application?	13	A. Yes, on a regular basis.
14	A. It died also. They decided not to go forward.	14	Q. Okay. Can you remember
15	Q. Because it's related to Montessori?	15	A. I can't remember all of them.
16	A. Yes, because it was related to the Montessori.	16	Q. Can you remember any of them?
17	Q. Then you said there was a small hotel you	17	A. Not particularly.
18	worked for. Do you remember the name of it?	18	Q. Okay.
19	A. Casa Coloretta.	19	A. It was mostly very routine stuff, opening a
20	Q. Spell the last name.	20	parking lot here and using storage in another place,
21	A. Coloretta is C-o-l-o-r-e-t-t-a.	21	that kind of stuff.
22	Q. Okay. What did you do for them?	22	Q. Okay.
23	A. They wanted an upper story addition and they	23	A. I just can't right now.
24	needed historic preservation board approval.	24	Q. Not moving their towing operation.
25	Q. Did they get it?	25	A. No, never.
	Dago 21		
	Page 31		Page 33
1	Page 31 A. And a couple of variances. They got it.	1	Q. Just storage at different places.
1 2	9	1 2	
	A. And a couple of variances. They got it.		Q. Just storage at different places.
2	A. And a couple of variances. They got it. Q. What work specifically did you do for them?	2	Q. Just storage at different places. A. Yes. Sometime it was more towards the valet
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. And a couple of variances. They got it. Q. What work specifically did you do for them? A. I did some planning, preparation of the application, I prepared, I consulted their architect for the design, I consulted with all the engineers. It was a delicate project because it was an old building. I consulted with the engineers to make sure it was appropriate, the landscape architect. Q. Okay. Did you prepare any of the submissions that were ultimately made to the City? A. Yes, sir, all of them. Q. Where is that hotel located? A. South of the 5th on 3 I can't remember the address right now, but three something Washington. Q. So it's on Miami Beach. A. Yes, sir. Q. So other than those projects we had just gone through, that's the only projects you worked on between June, 2012 and November, 2016? A. Yes. Q. Prior to leaving the City of Miami Beach, did	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Just storage at different places. A. Yes. Sometime it was more towards the valet operations that were in other places. Q. Okay. A. I didn't really deal with the towing in general. Q. Okay. And who from Beach Towing did you deal with? A. Mr. Andrade. Q. How long have you known Mr. Andrade? A. Probably since 2008. Q. And is he the person that generally came into the City A. Yes. Q to deal with towing issues? A. Yes. Q. You have to let me get the whole question out because you don't know what I'm going to ask you yet. Is Mr. Andrade the person that generally came to the City from Beach Towing to deal with planning and zoning issues?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. And a couple of variances. They got it. Q. What work specifically did you do for them? A. I did some planning, preparation of the application, I prepared, I consulted their architect for the design, I consulted with all the engineers. It was a delicate project because it was an old building. I consulted with the engineers to make sure it was appropriate, the landscape architect. Q. Okay. Did you prepare any of the submissions that were ultimately made to the City? A. Yes, sir, all of them. Q. Where is that hotel located? A. South of the 5th on 3 I can't remember the address right now, but three something Washington. Q. So it's on Miami Beach. A. Yes, sir. Q. So other than those projects we had just gone through, that's the only projects you worked on between June, 2012 and November, 2016? A. Yes. Q. Prior to leaving the City of Miami Beach, did you have any interaction with Beach Towing?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Just storage at different places. A. Yes. Sometime it was more towards the valet operations that were in other places. Q. Okay. A. I didn't really deal with the towing in general. Q. Okay. And who from Beach Towing did you deal with? A. Mr. Andrade. Q. How long have you known Mr. Andrade? A. Probably since 2008. Q. And is he the person that generally came into the City A. Yes. Q to deal with towing issues? A. Yes. Q. You have to let me get the whole question out because you don't know what I'm going to ask you yet. Is Mr. Andrade the person that generally came to the City from Beach Towing to deal with planning and zoning issues? A. Yes.
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			•
1	Page 34	1	Page 36
1 2	planner in the town of Miami Lakes. Is that right? A. Yes.	1 2	A. No, sir. O. Is that correct?
		3	^
3	Q. And did you close down your own business? A. At the time I was a consultant. I was working		A. Yes, sir.
4	<u> </u>	4	Q. Looking just at page three, is this a complete
5	with through my consulting business.	5	list of the materials you considered in preparing your
7	Q. And are you still a consultant for the City of Miami Lakes?	7	report? A. Yes, sir.
8	A. No, sir, I'm now an employee. It transitioned	8	
9	into a full time position.	9	Q. Nothing else? A. No, sir.
10	Q. Okay. When did you go from a consultant to an	10	Q. Okay. I'm going to start I'll go in the
11	employee?	11	order your report goes because that seems like the
12	A. A couple months ago.	12	easiest thing to do. We will go through your opinions
13	Q. This is now September, 2018. The beginning of	13	and I'll ask you about them.
14	the summer?	14	First of all, let's start on page two with
15	A. Yeah.	15	your qualifications, if we could. You say here that
16	Q. So from November, 2016 to basically the	16	you had your private practice office in a flex building
17	beginning of the summer of 2018, you were a consultant	17	on Sunset Harbour Drive.
18	to Miami Lakes.	18	A. Yes, sir.
19	A. Yes, sir.	19	Q. Which building was that?
20	Q. And after that you became a full time	20	A. It's called it's the one right next to the
21	employee.	21	garage.
22	A. Yes.	22	Q. Next to the municipal garage?
23	Q. Why did you decide to do that?	23	A. Yes.
24	A. They needed an administrative official. Their	24	Q. Okay. I'm not familiar with the name, but
25	previous administrative official had left.	25	it's the one there.
1	Page 35 Q. What does a senior town planner do?	1	Page 37 A. It's not we work. It's the other one. Euro.
2	A. In my previous engagement as a consultant, I	2	
3	was aiding in preparation of ordinances, reviewing	3	Q. Euro. Do you know how old that building is? A. It's from 2012.
4	applications to boards, presenting to the boards,	4	Q. And it's an office building?
5	presenting to the counsel.	5	A. It's a mixed use. It has ground floor,
6	Q. And so that's what you are still doing?	6	commercial office on top.
7	A. That's still what I'm doing. Now I'm on my	7	Q. What's on the ground floor, commercial?
8	own, so I'm not aiding, now I'm doing.	8	A. Restaurant. Pubbelly. There is a gym, Green
9	Q. I see. Are you the only planner for the City	9	Monkey.
10	of Miami Lakes?	10	Q. Okay. And that building, do you still have
11	A. Right now, yes.	11	your office there?
12	Q. So you handle all their planning issues?	12	A. No, sir.
13	A. Yes.	13	Q. That was just when you had your own practice.
14	Q. Who do you answer to?	14	A. Yes.
15	A. The town manager.	15	Q. And you spent obviously a number of years on
16	Q. Any other consultants or anyone else working	16	Miami Beach, correct?
17	in planning other than you?	17	A. Yes.
18	A. No, sir.	18	Q. Where that building is, that office building
19	Q. Okay. So I'm going to go through your report.	19	where the bureau is that you had your business, that
20	Let me ask you some general questions about it.	20	used to be where Tremont Towing was located, correct?
21	Are all your opinions in this case set forth	21	A. And a warehouse.
22	in the report, Exhibit 6?	22	Q. It was a warehouse and Tremont Towing.
23	A. Yes, sir.	23	A. Yes, sir.
1 04	O Was been as ather solutions ather than the	104	O Novikla on office building on how with

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 ${\tt Q.}\ \ \, {\tt Now}$ it's an office building on top with 25 restaurants on the ground floor and a parking garage.

Q. You have no other opinions other than these,

25 correct?

	Susana September		
	Page 38		Page 40
1	A. Yes.	1	Q. How much?
2	Q. And that parking garage, and we will talk	2	A. It's in the it's in your file. I don't
3	about that later. That's the municipal garage?	3	know the exact number.
4	A. Yes.	4	Q. There was an Excel spread sheet in there
5	Q. Do you know how many spaces there are in that	5	showing
6	garage?	6	A. Yes.
7	A. 439.	7	Q some billing. That's your bills to date?
8	Q. Do you know how many spaces there are in the	8	A. Yes.
9	proposal that Sunset Land submitted to the City to	9	Q. Just talking about the City of Miami Beach
10	develop on the property at issue here?	10	now. With regard to the code, the land, how do you
11	A. 100 I'm not sure. I know it's 100 and	11	refer to the land use code on the Beach?
12	something.	12	A. The land development code.
13	Q. Okay. So probably a quarter of what's in the	13	Q. Okay. So if I call it the code today, you and
14	municipal garage.	14	I will both understand that?
15	A. Okay. Yes, sir.	15	A. Yes, sir.
16	Q. When you worked for the City of Miami Beach,	16	Q. If at some point I use the word code and you
17	was it the case that all traffic studies were reviewed	17	think I'm referring to something else, just ask me.
18	by licensed professional engineers?	18	I'll use code for land development code, okay?
19	A. I don't understand that question.	19	A. Yes, sir. I will, too.
20	Q. Well, when someone would submit a traffic plan	20	Q. Okay. So under the code, if something is not
21	to the City of Miami Beach as part of an application	21	a permitted use, that means you are required to get a
22	for anything, was an engineer required to look at it	22	conditional use or it has to be an accessory, right?
23	for the City?	23	A. No, sir.
24	A. Yes, sir. Peer review.	24	Q. All right. So tell me what a permitted use
25	Q. Okay. So it had to be an engineer.	25	is.
	Page 39		Page 41
1	A. Yes.	1	A. Permitted use is something that is allowed in
2	Q. Do you recall who were some of the engineers	2	the district.
3	you worked for?	3	Q. Okay. And those are listed out in the code?
4	A. Yes. Xavier. I can't remember his last name,	4	A. Yes, sir.
5	but yes.	5	Q. And they are listed under each district type
6	Q. When you were working for the City of Miami	6	in the code.
7	Beach, when an application came in that had a traffic	7	A. Yes, sir.

component to it and had a traffic report from an

engineer, an engineer from the City had to review it.

A. Yes, sir.

11 Q. And I think we talked about this before, you 12 never actually prepared a traffic study yourself.

13 A. No, sir.

10

18

24

14 Q. Okay. Let's talk about -- I'm going to work

from my original draft, at least to the extent you

16 didn't change it because that's where all my notes are.

17 A. That's fine.

Q. So I want to talk about, like I said, stuff in

order. The first thing you address here is 1349 Dade 19

Boulevard. Actually, before we get to that, can you

tell me how much you have been paid to date for your

work in this case?

A. \$2,600. 23

Q. And are you owed any money?

25 A. Yes. Q. And there are also conditional uses, correct?

A. Yes.

10

13

O. What's a conditional use?

A. A conditional use is a use that would be

allowed in the district if certain conditions are met.

Q. And are those listed out in the code?

14 A. Yes, sir.

Q. And there are also conditional uses that are 15

similar to existing uses, permitted uses. Strike that.

17 There are also conditional uses that are

similar to permitted uses that can be allowed in a

particular zone or district as long as you have a

conditional use permit.

A. Say that again.

22 Q. I messed that up. Let me not do that. Let me

23 ask you this.

24 In the course of your work for this case, are you aware of whether Beach Towing has a conditional use

Page 42 Page 44 1 permit to tow at 1349 Dade Boulevard? A. No, sir, only as reference. 1 2 A. No, sir. Q. What does that mean, only as reference? 3 Q. Have you seen a conditional use permit of any A. We routinely had to look into it to ascertain kind for Beach Towing for 1349? whether something was going forward right or not. 5 5 A. No, sir. Q. Okay. Were you required to actually apply the old code? 6 Q. So as far as you are aware, as you sit here 6 7 7 now, Beach Towing doesn't have any conditional use A. No, sir. permits for any uses of 1349 Dade Boulevard? Q. And were you ever actually required to 8 8 9 9 A. No, sir. interpret the old code? 10 Q. Is that correct, they do not? A. I would never be interpreting it. That would 10 be the administrative official's job, so I don't 11 A. Yes, that's correct. Actually, let me 11 12 rephrase that. I'm not aware that they have it. interpret. I never interpreted. I would always refer 13 Q. Okay. Tell me, did you make any effort to to the administrative official. determine whether Beach Towing had any conditional use 14 14 Q. And who is the administrative official? permits at all for 1349 Dade Boulevard? 15 15 A. At the time it was Mr. Gomez, Jorge Gomez. 16 A. Yes, sir. 16 Q. The planning director. 17 Q. And tell me what effort you made. 17 A. The planning director. A. I looked into old records going back. Q. So in all your roles at the City of Miami 18 18 19 Q. Okay. Anything else? Beach, it was never your job to interpret the code. 20 A. No. That's what you usually do. 2.0 A. No, it was my job to apply the code, not to 21 Q. And when you say old records, you are talking 21 interpret. 22 about records in the City of Miami Beach? 22 Q. Okay. And tell me what the difference between 23 A. Yes, sir. 23 those two things is. 24 Q. In the course of your search for those 24 A. I made sure that things that came before me records, you found no conditional use permits -were in conformance with the code as the administrative Page 45 Page 43 A. I found no conditional use permit. official understood it. Q. -- for Beach Towing? Q. The job of interpreting the code was the City A. For Beach Towing. planning director. 4 Q. -- at 1349 Dade Boulevard. Is that correct? A. Yes, sir. 5 A. That's correct. Q. Your job was to follow his interpretation. 6 Q. You have to let me ask the question. Vic is A. Yes, sir. 7 actually going to kill us. Let me get it all the way Q. You weren't making your own interpretation. 8 out because we are doing it in pieces. 9 Just so the record is clear, you found no 9 Q. And that's true with both the new code and the 10 conditional use permits for any use of 1349 Dade 10 old code. 11 Boulevard at all. 11 A. True. 12 A. That's correct. 12 Q. Just again so I'm clear, the new code is post 1989 and the old code is pre 1989. 13 Q. You work for the City starting in 2002. 14 A. Yes sir. 14 A. Yes, sir. 15 Q. By the way, when I refer to the City, I mean 15 O. You understood that? 16 Miami Beach. 16 A. Yes, sir. 17 A. Yes, sir. 17 Q. During the time you worked for the City of Miami Beach, were you ever involved in any conditional 18 Q. Again, if anything I ask you gets confusing, I'm not trying to trick you. It may just be $\ensuremath{\text{I'm}}$ 19 19 use permits at all? short-handing it and I leave you behind. Just ask me 20 20 A. Yes, sir. and I'll clarify. 21 Q. How were those recorded? Strike that. 22 So you only had the opportunity to work with 22 During the time you worked for the City of the code in place after 1989, correct? 23 Miami Beach, what records were created by the

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planning -- well, let me unpack that.

You actually worked for the planning

24

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A. Yes, sir.

Q. Did you ever work with the pre 1989 code?

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	Page 46		Page 48
1	department, right?	1	officer of the City with regard to the interpretation
2	A. Yes, sir.	2	of the code.
3	Q. And was the planning department the one	3	A. Yes.
4	responsible for keeping records of conditional use	4	Q. And you still would, correct?
5	permits?	5	A. I still would today.
6	A. Yes, sir.	6	Q. And with regard to the old code, you defer to
7	Q. How were those records kept?	7	the administrative officers who were in place at the
8	A. Define records.	8	time the old code was in place, correct?
9	Q. Well, if someone was granted a conditional	9	A. Yes.
10	permit, I don't want to go all the way through the	10	Q. Let's talk about Beach Towing, where it is now
11	process because I know it's incredibly involved, but	11	currently. It is in a CD-2 District, correct?
12	let's say someone is granted a conditional use permit	12	A. Correct.
13	for the City of Miami Beach when you were working	13	Q. Let me use the right phraseology. When I
14	there, what documentation would evidence that that	14	refer how do you refer to it? If I say something is
15	permit was granted?	15	in a CD-2
16	A. There would be a resolution.	16	A. District.
17	Q. From who?	17	Q. District is the right word. I got it right.
18	A. By the planning board.	18	So Beach Towing is in a CD-2 District, correct?
19	Q. And was there a place those documents were	19	A. Yes, sir.
20	kept?	20	Q. And towing is not permitted in CD-2, correct?
21	A. Yes.	21	A. No, sir.
22	Q. Where was that?	22	Q. It is not.
23	A. Laserfiche.	23	A. It is not a permitted use.
24	Q. They were kept on microfiche.	24	Q. It's a permitted use in the I-1 District,
25	A. Microfiche, yeah.	25	correct?
1	Page 47 Q. Okay. Were they recorded with the Circuit	_	Page 49
	Q. Onay. Were they recorded with the circuit	1	A. Yes, sir.
2	Court?	2	A. Yes, sir. Q. Do you know if Beach Towing has ever made any
2 3	-		·
	Court?	2	Q. Do you know if Beach Towing has ever made any
3	Court? A. Yes.	2 3	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1?
3 4	Court? A. Yes. Q. All of them? A. At the time I was there, yes.	2 3 4	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no. Q. Do you know if Beach Towing made any effort to
3 4 5	Court? A. Yes. Q. All of them?	2 3 4 5	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no.
3 4 5 6	Court? A. Yes. Q. All of them? A. At the time I was there, yes. Q. And was that, or do you know if that was the	2 3 4 5 6	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no. Q. Do you know if Beach Towing made any effort to move to an I-1 District?
3 4 5 6 7	Court? A. Yes. Q. All of them? A. At the time I was there, yes. Q. And was that, or do you know if that was the practice before you got to the City of Miami Beach?	2 3 4 5 6 7	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no. Q. Do you know if Beach Towing made any effort to move to an I-1 District? A. I'm not aware of that either.
3 4 5 6 7 8	Court? A. Yes. Q. All of them? A. At the time I was there, yes. Q. And was that, or do you know if that was the practice before you got to the City of Miami Beach? A. I don't know.	2 3 4 5 6 7 8	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no. Q. Do you know if Beach Towing made any effort to move to an I-1 District? A. I'm not aware of that either. Q. But you know that Tremont has moved to an I-1
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Q. All of them? A. At the time I was there, yes. Q. And was that, or do you know if that was the practice before you got to the City of Miami Beach? A. I don't know. Q. Why, if you know, why were they recorded with the Circuit Court? A. For further so that the next owner could see when they did a title search, so they would help out title searches. Q. Were you ever responsible for actually doing the filing for the Circuit Court? A. No. Q. Who did that? A. The applicant would do it. We would receive the recorded document, a certified copy from the court. Q. So you said a few minutes ago that when you worked for the City of Miami Beach, it was never your job to interpret the code. That was the administrative officer, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Do you know if Beach Towing has ever made any effort to try and change the zoning to I-1? A. I'm not aware of it, no. Q. Do you know if Beach Towing made any effort to move to an I-1 District? A. I'm not aware of that either. Q. But you know that Tremont has moved to an I-1 district, correct? A. Yes, sir. Q. So since the 1349 Dade Boulevard is a CD-2 District. The only way Beach Towing can operate a towing operation there is if it's a legal nonconforming use, correct? A. An existing legal nonconforming use. Q. So I'm right. A. Yes. Q. Is it your conclusion that Beach Towing is an existing legal nonconforming use? A. Yes, sir. Q. And tell me how you reached that conclusion. A. Rephrase the question, please.

	September	00	6, 2018 50 to 53
	Page 50		Page 52
1	A. Currently or in the past?	1	interpretation attached, are you aware of any written
2	Q. Well, is it different?	2	findings by the administrative official for the City of
3	A. Yes.	3	Miami Beach finding that Beach Towing was a legal
4	Q. Tell me about in the past.	4	nonconforming use at 1349 Dade Boulevard?
5	A. In the past, in 2010?	5	A. Not in that form.
6	Q. Well, let me ask you this way. Is Beach	6	Q. Okay. So you are not aware of any writings.
7	Towing an existing legal nonconforming use at different	7	A. Not in that form. Not in the official form of
8	points in time?	8	a AMICUS brief.
9	A. Yes, it has been.	9	Q. Are you aware of anything in writing?
10	Q. Okay. Which points in time?	10	A. Yes.
11	A. It has been an existing nonconforming use	11	Q. What?
12	since 1989.	12	A. The testimony given in 19 by the then
13	Q. Okay. But since 1989, a moment ago you	13	administrative official.
14	referred to 2010. Are there breaks in time between	14	Q. Which testimony are we talking about?
15	1989 and the present that are relevant to your	15	A. I'm sorry. I need to check my report for that
16	analysis?	16	one.
17	MR. REISS: Form.	17	Q. Okay.
18	THE WITNESS: Not to my analysis. In the way	18	A. Jud Kurlancheek, the administrative official
19	I reached that conclusion, yes.	19	at the time.
20	BY MR. BUCKNER:	20	Q. He made a determination that Beach Towing was
21	Q. Okay. Tell me what you mean.	21	a legal nonconforming use?
22	A. In the past, I deferred to the administrative	22	A. No. He made a determination that towing was
23	official at the time.	23	an allowable operation in that location.
24	Q. So you're saying that administrative officials	24	Q. Okay. And you're talking about the
25	prior to today, in your estimation, have determined	25	A. And he specifically referred to Beach Towing,
	Davis F1		D 52
1	Page 51 that Beach Towing was a legal nonconforming use.	1	Page 53 yes.
2	A. Yes, sir.	2	Q. He referred to Beach Towing.
3	Q. You talk about that in your report, correct?	3	A. Yes.
4	A. Yes, sir.	4	Q. Okay. And you're talking about the Magnum
5	Q. And we will talk about that. Prior to	5	Towing matter.
6	you've obviously seen the AMICUS brief filed?	6	A. Yes.
7	A. Yes.	7	
8	Q. Prior to that AMICUS brief being filed, are	8	the transcripts of the board hearing at which Mr.
9	you aware of any written determination by the	9	Kurlancheek testified, correct?
10	administrative official for the City of Miami Beach,	10	A. Yes, sir.
11	that Beach Towing was a legal nonconforming use at 1349	11	Q. And that's what you are saying is the basis of
12	Dade Boulevard?	12	your determination that a determination had been made
13	A. Define written.	13	by a administrative official for the City that towing
14	Q. Well, my understanding is when the	14	was allowed in C-5 and C-6?
15	administrative official for the City of Miami Beach	15	A. Yes, sir.
16	makes an official determination of a legal	16	Q. But did Mr. Kurlancheek specifically say that
17	nonconforming use, they do it through writing of some	17	Beach Towing was a legal nonconforming use at 1349 Dade
18	kind, correct?	18	Boulevard?
19	A. Not necessarily.	19	A. At that time it wouldn't have been a legal
20	Q. Okay. How do they do it?	20	nonconforming use. It would have been an allowable
21	A. They may be requested to do a writing. They	21	use.
22	may be requested by a junior employee to clarify for	22	Q. Okay. What I'm asking you is are you aware
23	the purposes of approving or denying an application.	23	you already told me let me make sure. Strike that.
		١.,	

Are you aware prior to Mr. Mooney's recent

25 filing with the AMICUS brief, prior to that, are you

Q. So what I'm asking you is, prior to the AMICUS

25 brief filed by the City with Mr. Mooney's

	Contember			54 to 57
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	Page 54			Page 56
1	aware of any written finding or written document by the	1	A. And he says well, fi	rst we will have to
2	administrative official for the City of Miami Beach	2	determine whether it's a lega	l nonconforming use.
3	that Beach Towing is a legal nonconforming use at 1349	3	Q. And did he make that	determination?
4	Dade Boulevard?	4	A. We went about it tog	ether, yes.
5	A. No, sir.	5	Q. And how did you deci	de it was a legal
6	Q. And prior to and are you aware of any other	6	nonconforming use?	
7	record finding by an administrative official for the	7	A. We did some research	
8	City of Miami Beach that Beach Towing specifically is a	8	Q. And what did you fin	d?
9	local nonconforming use at 1349 Dade Boulevard?	9	A. We found it was.	
10	A. How do you define a record?	10	Q. Why?	
11	Q. Any kind of finding at all.	11	-	been existing prior to
12	A. Yes.	12	1989. Legally existing prior	
13	Q. Okay. And tell me what.	13	Q. And I understand the	
14	A. It was requested to determine once and it was	14	1989. How did you determine	=
15	determined verbally.	15	1989?	chae ie was iegai prior eo
16	Q. Okay. And tell me when that was.	16	A. We looked for BTR'S	and agginational ligange
17	Q. Okay. And tell me when that was. A. 2010.	17	records.	and occupational literise
18	Q. Is this in your discussion with who's the	18		s and occupational license
19	planning director at the time?	19	records showed that Beach Tow	
20	A. Mr. Lorber.	20	operation prior to 1989, corr	ect?
21	Q. Okay. And Mr. Lorber was requested to	21	A. Yes, sir.	
22	determine whether Beach Towing was a legal	22	Q. What other evidence	=
23	nonconforming use at 1349 Dade Boulevard?	23	A. Prior approval of ot	her planners going back to
24	A. Yes, sir.	24	the '70s.	
25	Q. Who requested it?	25	Q. So when you say prio	r approvals, approvals of
	Page 55			Page 57
1	A. I did.	1	what?	rage or
2	Q. And did he create a written document that	2	A. Approvals of BTR's,	approvals of changes in
3	reflected his findings?	3	small changes here and there.	Just accumulation of
4	A. No, it was a verbal determination.	4	stuff that happens through th	e years.
5	Q. So he just told you.	5	Q. Are any of those doc	uments that you reviewed,
6	A. Yes.	6	are those referenced in your	list of documents?
7	Q. And you were working for the City at the time.	7	A. No, sir. I don't ha	ve access to them right
8	A. Yes.	8	now.	•
9	Q. Other than what he told you, is there any	9	Q. Okay. So in terms o	f what documents would
10	record of that?	10	back up what you're telling,	
11	A. I approved the license based on his approval.	11	you don't have.	
12	Q. And which license did you approve?	12	A. I don't have them, n	0.
13	A. I approved well, I approved the	13		the record, I think she
14	occupational business tax receipt. I don't remember	14		t and expert witness, just
				c and caperic writiess, just
15	what it was for. We had to determine it was for adding	15	for your clarification.	
16	an additional owner or an additional associate to the	16	MR. BUCKNER: Okay.	
17	operation.	17	BY MR. BUCKNER:	
18	Q. Okay. This was in 2010?	18	Q. So the basis for you	-
19	A. A-ha.	19	that Beach Towing was a legal	nonconforming use prior

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20 to 1989 is based on what about Mr. Lorber told you,

MR. REISS: Form.

Q. What's it based on?

THE WITNESS: No, sir.

correct?

24 BY MR. BUCKNER:

22

25

20

21

24

25

Q. Is that a yes?

Q. You had a conversation with Mr. Lorber. Tell

A. I asked him can I approve this.

Q. And what did he say?

A. Yes, sir.

23 me what you asked him.

Page 60 A. That was what it was based off in 2010. Today Q. And that's the transcript from the Magnum 1 1 2 it's based on Mr. Kurlancheek's determination, Towing matter, correct? A. Yes. 3 3 contemporaneous determination that it was legal nonconforming at the time. Q. Other than those two things, do you have any 5 Q. Okay. And that's based on the records you 5 other basis for determining that Beach Towing was a cite from the Magnum Towing matter. legal nonconforming use at 1349 Dade Boulevard? 6 7 7 MR. REISS: Form. A. Yes, sir. Q. And so with regard to what Mr. Kurlancheek 8 THE WITNESS: There is also several contracts 8 9 9 with the police. The uses are very well meant and what he was talking about, you would obviously defer to him on that, correct? established prior to 1989. 10 10 11 A. Yes, because he's the official. BY MR. BUCKNER: 11 12 Q. Okay. But let's talk about prior to 2010. I 12 Q. Okay. 13 want to break this up. Leave aside Mr. Kurlancheek's 13 A. So the transition, you just have to prove determination. I want to finish with Mr. Lorber's 14 existence before and existence after the transition. 15 determination. 15 Q. Well, you have to prove lawful existence. 16 With regard to Mr. Lorber's determination that 16 A. Yes. 17 Beach Towing was a legal nonconforming use, that's 17 Q. So if Beach Towing was operating a towing based solely on what he told you, correct? operation unlawfully at 1349 Dade Boulevard before 18 19 1989, the mere fact of the transition to the new code A. No, sir. 2.0 2.0 wouldn't convert it to a legal nonconforming use, Q. Okay. What's it based on? 21 A. Like I said, we went through the records, the correct? 21 22 old records and he asked me to do some research before 22 A. Define lawfully. he made a determination. 23 23 Q. Well, there is legal and there is more than 24 Q. All right. And you found old BTR's and old one kind of nonconforming use, isn't there? 24 25 licenses for the City? A. No. Page 59 Page 61 1 A. Yes, sir. Q. There is only a legal nonconforming use? Q. For the City of Miami Beach for Beach Towing. A. If it's nonconforming, then you can't -- it's either legal nonconforming or not permitted. 4 Q. You didn't find any conditional use permits, Q. Okay. So if something was not permitted prior 5 correct? to 1989 on a particular district, the mere fact that a 6 A. No, sir. new code is enacted doesn't make it legal 7 Q. And you didn't make the determination that nonconforming, correct? 8 Beach Towing was a legal nonconforming use. Mr. Lorber A. True. 9 had to do that, right? Q. It has to be both nonconforming and legal 10 A. Yes, sir. prior to the change in code. 11 Q. Because he's the administrative officer. 11 MR. REISS: Form. 12 A. Yes. 12 THE WITNESS: You have to rephrase that. 13 Q. So he told you that. 13 BY MR. BUCKNER: 14 A. Yes. 14 Q. Sure. What does the word legal in legal 15 Q. That's how you know that because he had to 15 nonconforming use mean? 16 tell you, correct? 16 A. It means authorized by the City. 17 A. Yes. 17 Q. And it means it had to be authorized under the 18 Q. You would agree with me that -- strike that. old code, correct? 19 So I want to make sure I exhausted the 19 A. It had to be authorized in some form, yes. universe of stuff you know about this area. 20 Q. Right. Because if it was authorized under the 20 21 So other than your conversations with Mr. new code, that use, you wouldn't need to go through the Lorber and the documents you brought to him that you legal nonconforming analysis, right? don't have, there is the stuff that you said from Mr. 23 23 A. Okay.

24

25

Q. Is that right?

A. Sure.

24

25

Kurlancheek, right?

A. Yes.

	September	U	6, 2018 62 to 65
	Page 62		Page 64
1	Q. For example, if CD-2 allowed a towing use,	1	you ever encounter a BTR that was issued in error?
2	Beach Towing would be able to operate at 1349 Dade	2	A. I don't think so.
3	Boulevard under the current code, correct?	3	Q. Okay. So Beach Towing's status today at 1349
4	A. Sure.	4	Dade Boulevard is a nonconforming use of land, correct?
5	Q. But because CD doesn't allow towing, right?	5	MR. REISS: Form.
6	A. It doesn't.	6	THE WITNESS: I don't understand that
7	Q. The only way Beach Towing can operate lawfully	7	question.
8	there is if they are a legal nonconforming use,	8	BY MR. BUCKNER:
9	correct?	9	Q. I said Beach Towing's use at 1349 Dade
10	MR. REISS: Form.	10	Boulevard today is as a nonconforming use of land,
11	THE WITNESS: Yes.	11	correct?
12	BY MR. BUCKNER:	12	MR. REISS: Form.
13	Q. I want to make sure I'm done with this.	13	THE WITNESS: Yeah. I object to the form,
14	Other than Mr. Kurlancheek that you told me	14	too.
15	about and Mr. Lorber and your discussions with him, are	15	BY MR. BUCKNER:
16	there any other basis for your assertion that Beach	16	Q. Okay. You can't object to the form.
17	Towing is a legal nonconforming use at 1349	17	A. Rephrase, please.
18	A. Yes.	18	Q. You know what a nonconforming use of land is,
19	Q. Okay. And you said one of them was that they	19	right?
20	had gotten permits, towing permits, correct?	20	A. Again, nonconforming use of land.
21	A. No.	21	Q. Okay. Tell me what kinds of nonconforming
22	Q. Okay. Tell me what else.	22	uses there are.
23	A. The use was well established prior to 1989 and	23	A. This is an existing use that is nonconforming
24	it's on records, including police contracts, including	24	to the district.
25	BTR's and there is records of that available in	25	Q. Okay.
1	Page 63 microfiche and they are included on my list of stuff.	1	Page 65 A. So it's not it's not a land use that is
2	Q. Okay. Anything else?	2	I know it's complicated. It's difficult to understand.
3	A. No, that's sufficient.	3	Q. Well, what I'm asking you is
4	Q. Have you looked at the pre-1989 code as part	4	A. There is a line in there.
5	of your work in this case?	5	Q. Okay. I'm trying to figure out what that line
6	A. Yes, sir.	6	is. You can have a nonconforming use of a building,
	Q. And do you find in looking at the pre-1989	7	right?
8	code, is a towing listed anywhere in the code?	8	A. Yes.
9	A. No, sir.	9	Q. And you can have nonconforming use of land,
10	Q. And you are aware BTR's have language on them	10	right?
11	that say strike that. Let's just use one.	11 12	A. Yes. Q. And so is there anything else other than land
12	MR. REISS: Off the record.		
13	(Thereupon a recess was taken in deposition, after which the	13	and buildings on which zoning is involved? A. No.
	_		Q. Okay. So it's either a nonconforming use of a
15 16	deposition continued as follows:) BY MR. BUCKNER:	15 16	building or it's a nonconforming use of land, correct?
17	Q. Just so I'm clear, in the entirety of your	17	A. Okay.
18	work for the City of Miami Beach, you never have been	18	Q. I'm asking you, Beach Towing has a large, we
19	the administrative officer charged with making the	19	will call it a lot, on which they keep cars that they
20	determination of whether something is or is not	20	have towed, right?
21	consistent with the code, correct?	21	A. Okay.
22	A. No, sir.	22	Q. You have been out there, right?
23	Q. You have not been.	23	A. Yes.
24	A. I have not been.	24	Q. Have you been out there recently?
25	Q. In the time that you worked for the City, did	25	A. Yes.
"	z. In one came date jour notified for the city, that		200.

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	Page 66		Page 68
1	Q. Okay. So that's the land they are using to	1	A. Currently, yes. They are morphing it into, I
2	store those cars, correct?	2	think CD's or a mixture of commercial and residential.
3	A. Yes.	3	They are working on it.
4	Q. And so the legal nonconforming use of that	4	Q. Who's make that change?
5	property is a legal nonconforming use of land, correct?	5	A. The City of Miami Beach and some applicants.
6	A. Yes.	6	Q. Have you had any involvement in that?
7	Q. Okay. So let's talk about some other stuff.	7	A. No, sir. I've seen some
8	I want to you don't have to look at your report.	8	Q. You just heard about it, right?
9	You can always look at whatever you want. It's not a	9	A. Right, through the grapevine.
10	closed book test. I want to ask you some stuff about	10	Q. So I want to bounce around a little bit. Let
11	your other parts of your report.	11	me see if we can move this along.
12	First of all, you talk about, on page five,	12	One of the things you reviewed in this case
13	you say the only other industrial district is located	13	was Ms. Dougherty's report, correct?
14	on Watson Island, a small island off MacArthur	14	A. Yes, sir.
15	Causeway, right?	15	Q. And you also reviewed her declaration?
16	A. Yes.	16	A. Yes.
17	Q. Isn't Watson Island part of the City of Miami?	17	Q. You saw where she discussed uses in the Sunset
18	A. No, sir.	18	Harbour area that had changed, correct?
19	Q. Watson Island is part of the City Miami Beach?	19	A. I need to go read it again.
20	A. No, sir. That's where the City's municipal	20	Q. Sure.
21	lot is. It's the portion close to Miami Beach. It's	21	A. Do you want to walk me through it?
22	called Terminal Island really, but it's a portion of	22	Q. On page seven let's do this. I'm going to
23	Watson Island that is part of Miami Beach.	23	mark her report. Exhibit 7 Ms. Dougherty's report.
24	O. Is it zoned industrial?	24	(The document referred to
25	A. Yes. It's changing now. There is obligations	25	was thereupon marked as
45	A. ICS. IC & CHANGING NOW. INCIC IS OBLIGACIONS	43	was chereupon marked as
25	A. 103. It 5 Changing now. Indice is obliquetons	25	was dieteupon marked as
25	Page 67	23	Page 69
1		1	-
	Page 67		Page 69 Plaintiff's Exhibit Number 7 for Identification,
1	Page 67 to morph it into nonindustrial.	1	Page 69 Plaintiff's Exhibit Number
1 2	to morph it into nonindustrial. Q. Is the whole of Watson Island zoned	1 2	Page 69 Plaintiff's Exhibit Number 7 for Identification,
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Page 67 to morph it into nonindustrial. Q. Is the whole of Watson Island zoned industrial? A. No, they are changing it. Like I said, it's under change right now. Q. Okay. Let's break it into pieces. Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know? A. Terminal Island. I think two years ago. Q. Okay. You refer to Watson. Is it Watson Island or Terminal Island? A. Terminal Island is a piece of Watson and that's the part that belongs to Miami Beach. Q. All right. So Watson Island A. Miami. Q belongs to Miami. A. Most of it, yeah. Q. Terminal Island belongs to Miami Beach. A. Yes. Q. And Terminal Island is where you're talking	1 2 3 4 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Page 69 Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those? A. Say that again. Q. That's okay. A. I was reading. Q. That's all right. Let's be specific. Have you looked at this part of Ms. Dougherty's report? A. Yes, sir. Q. And let's talk first about notable changes from 2003 to 2014, which is the bullets at the top of page seven. Do you see those?

Q. And it's zoned I-1 currently?

25 changes?

Susana Alonso

	Susana		
	September	. 06	6, 2018 70 to 73
	Page 70		Page 72
1	A. Not incorrect. How's that?	1	Q. Do you know if that's a legal nonconforming
2	Q. That's fine. So looking at the second block	2	use?
3	of bullet the summary of notable changes from 2014 to	3	A. It must be.
4	2017, in reviewing those, have you found that any of	4	Q. Well, when you say it must be, do you know?
5	her determinations there are incorrect?	5	A. I don't know. I know it's existing.
6	A. No, they are not incorrect.	6	Q. You know it exists today in 2018.
7	Q. Okay. And tell me again, what exhibit did I	7	A. And it has existed there for a few years.
8	mark that?	8	Q. Do you know if it existed there prior to 1989?
9	A. 7.	9	A. I don't.
10	Q. Now, you attached to your latest version of	10	Q. And so to be a legal nonconforming use, it
11	your report, a map entitled distribution of existing	11	would have to have existed there prior to 1989,
12	industrial uses in Sunset Harbour neighborhood XT.	12	correct?
13	A. Yes.	13	A. Probably, yes.
14	Q. Did you create that?	14	Q. But if it didn't, it's not a legal
15	A. Yes.	15	nonconforming use, correct?
16	Q. I want to ask you about this. I'm going to go	16	A. Probably not, yes.
17	ahead and mark it separately because I actually pulled	17	Q. During the time you worked for the City of
18	it off your thumb drive last night. I'm going to put	18	Miami Beach, did you ever take any enforcement action
19	the sticker here.	19	against the scooter shop?
20	(The document referred to	20	A. No, sir.
21	was thereupon marked as	21	Q. As you sit here today, you said you don't know
22	Plaintiff's Exhibit Number	22	whether it existed prior to 1989?
23	8 for Identification,	23	A. I don't know. It never came up.
24	a copy of which is attached	24	Q. Let me ask you about that. When you say it
25	hereto.)	25	never came up, what does it take for a illegal use to
	Page 71		Page 73
1	BY MR. BUCKNER:	1	come up
2	Q. All right. So I want to ask you about a few	2	MR. REISS: Form.
3	things on here and I may need you to mark stuff so we	3	BY MR. BUCKNER:
4	know later on what we are talking about. I have a pen	4	Q at the City of Miami Beach when you worked
5	if you need one. Tell me what you were trying to do	5	there?
6	with this map.	6	A. They would have to come in for an application,
7	A. Show existing industrial uses in the Sunset	7	for a new application or they would have to have a code
8	Harbour neighborhood.	8	enforcement action against them.
9	Q. Okay. And the existing industrial uses are	9	Q. And who starts code enforcement actions?
10	the ones you circled in, what is that, light purple?	10	A. Code. The code department.
11	A. Yes.	11	Q. Sp they would have to discover the illegal use
12	Q. I want to ask you about a few of these.	12	and bring it to your attention. When I say your, I
13	First of all, there is a use on the corner of	13	mean the planning department.
14	Purdy and 18th furthest to the west, right north of the	14	A. Yes.
15	assembled properties, do you see that?	15	Q. I assume that happened from time to time when
16	A. Purdy and 18th, yes.	16	you worked at the City.
1		I	

17 Q. Okay. And that building there is used for 18 kayak rentals, correct?

19 A. Yes, and a motorcycle shop.

20 Q. When you say a motorcycle shop, scooter

rentals, right?

22 A. They have repairs on site. Repairs are not

allowed in the City. 23

Q. That's a CD-2 zoned lot, right?

25 A. Yes.

24

A. Quite often.

Q. But not with regard to the scooter rental shop.

20 A. Not particularly that I remember. Not that I remember with regards to the scooter rentals.

22 Q. Okay. If we go -- let's head due east from there and the block, on the same block as the Tremont

and Beach Towing. You've got a use on the corner of

18th and West Avenue.

17

18

Susana Alonso

	September September				74	to	77
	beptenber	. U	O, Z				
1	Page 74			man thomasah tha middla af it		Pag	ge 76
1	A. A-ha.	1		ng through the middle of it.			
2	Q. Do you see that there?	2		. Yes, sir.			
3	A. Yes.	3		One of those is a yoga studi			
4	Q. That's the Sushi Garage, correct?	4		. Yes, there are several units	; inside	oi tha	at.
5	A. Yes.	5	buildi				
6	Q. And what is the Sushi Garage.	6		. Okay. One of them is a yoga		, right	Ε?
7	A. It's a restaurant.	7		. There is a yoga studio, yes			
8	Q. And you circle it as industrial.	8	Q				
9	A. It's a building that has mixed industrial and	9	A	. No, sir.			
10	commercial uses.	10	Q	. One is Skin by Tatum, right?			
11	Q. Okay. Well, obviously the Sushi is not	11	A	. It's another mixed district	. There	is a	
12	industrial.	12	-	of uses in there that would no		lowed (on a
13	A. It's not taking up the entire building.	13	regula	r commercial district, so it's	mixed.		
14	Q. What else is in there?	14	Q	. Okay. And is that in I-1 or	CD-2?		
15	A. There is a garage in there.	15	A	. That's in I-1.			
16	Q. What kind of garage?	16	Q	. What is in there that would	not be	allowed	d in
17	A. I don't know what they are ding today, but it	17	CD-2?				
18	was approved as another motorcycle repair shop.	18	А	. There is a pet grooming shop	that h	ad	
19	Q. Okay. Do you know or have you checked to see	19	overni	ght kennels that went in there.	. There	was	
20	if they are doing motorcycle repairs there today?	20	anothe	r repair shop that went in them	re at one	e time	or
21	A. No, I haven't, but they are existing there.	21	anothe	r, so the space is still availa	able. I	don't	know
22	It's publicly available that they are existing there	22	if the	y rented it out lately.			
23	today.	23	Q	. All right. Anything else?			
24	Q. When you say it's publicly available, what do	24	А	. But that's the kind of stuff	f that h	as gone	e in
25	you mean?	25	there,	in and out of there lately.			
	Page 75					-	ge 77
1	A. They are still on Google marked as existing	1		. Okay. Well, let's talk abou			are
2	there.	2		there was a pet grooming shop	. Is it	still	
3	Q. Okay. Other than the motorcycle shop being	3	there?				
4	marked on, you searched Google?	4	A	. I don't know if it's still t	there.	The spa	ace
5	A. Yes.	5	is rea	dy for it to have a new ownersh	nip or n	ot.	
6	Q. And found something on Google saying they were	6	Q	. Have you gone to the space t	o look?		
7	still there at that location?	7	A	. No.			
8	A. Yes.	8	Q	. So how do you know that?			
9	Q. Other than that, you have no other	9	A	. It's just I remember oper	ning up	a lice	nse
10	information?	10	for th	em in the past in that space, s	so I did		

11 A. No, sir. 12 Q. Is that yes, you don't?

A. I don't. I don't work for the City of Miami 14 Beach anymore, so I don't have internal information.

13

Q. Okay. So in terms of whether there is still 15 an existing industrial use still going on at that 17 particular spot on the corner of 18th and West, you

18 don't know. A. I don't know. 19 20 Q. Going one block further east and a block 21 north, I'm now looking at the block that's on the west -- I'm sorry, strike that. 22 23 On the east side of West Avenue north of 18th.

Do you see where I am? You have two, it looks like two 25 buildings surrounded by light purple with lines

inspections there back in.

Q. Prior to 2012.

A. Yes.

12

13

21

Q. So you don't know, as you sit there today,

whether it's being used as an industrial use or not? 15 16

A. No, but it would be available for industrial 17 uses and the spaces are appropriate for either

industrial or commercial uses. They are not buildings that are built for commercial use. They are buildings

20 made for either industrial or commercial uses.

Q. Okay.

22 A. That's what I mean by mixed use buildings. They are not buildings that are built for retail

exclusively. The form of the building allows

industrial uses.

Page 80

Page 81

Page 78

Q. If it's in the I-1 district, you can have 1 2 industrial use.

3 A. It would allow. So the current tenant --

these are buildings that would allow, by their form and

by their location, industrial uses easily.

Q. So what you meant here with regard to these 6 7 purple lines on this map is these are buildings that

could be used for industrial uses.

9 A. The ones that have the stripes could be, yes.

10 Q. But you're not saying that they are actually being used for industrial uses. 11

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

built with qualifications for industrial building. 15

Q. Okay. So these buildings with the stripes 17 through them, I guess that's the red stripes, mixed

commercial, industrial? 18

A. Yes. 19

2.0 Q. So what those mean on your map here is those

are buildings that have nonindustrial uses in them 21

22 today.

4

5

10

11

15

18

5

16

23 A. Yes.

24 Q. Even though at one point in time they may have

had industrial uses.

1 department, yes.

Q. Right. Even with regard to these building

that you are talking about, mixed commercial,

industrial, you said before some of these used to be

industrial and now they are being used for commercial,

not industrial, right?

A. Yes.

7

17

18

21

Q. And, again, I'm not trying to argue with you.

9 As you sit here today, with regard to the buildings

that have the red stripes through them, are you aware

if any of them have any current industrial uses?

12 A. No, not to my knowledge. Not that I can

13 testify to.

14 Q. Okay. And obviously you know that at least some of the property at issue in this case, what you

call down here in the lower left assembled prop. 16

A. Properties, yeah.

Q. Some of those assembled properties used to be

19 used by Giant Motors, correct?

20 A. Yes.

O. And that was an industrial use.

22 A. Yes.

23 O. But it's not being used for industrial

24 anymore.

25 A. No, it's been closed for more than six months,

Page 79

1 A. A mixture of industrial and commercial uses.

Q. Whether they are still industrial uses today,

3 as you sit here, you don't know.

A. No, and that's not relevant.

Q. Okay. But I want to make sure I exhaust your

knowledge. As you sit here, you don't know, with

7 regard word to those buildings, whether they had

industrial uses in them or not.

9 MR. REISS: Form, argumentative, asked and

answered.

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

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.

These buildings are ready to be industrial if

19 needed.

20 BY MR. BUCKNER:

21 Q. Okay.

22 A. So that's where --

23 Q. But you do agree with me that uses of building

24 can change over time, correct?

25 A. Sure. Show a change of use in the building so they would not be allowed to be open.

Q. Right. Because that's CD-2, correct?

A. Yes, sir.

Q. You have further down on the corner of West

and Dade, there is a public storage building, correct?

Q. You have that as existing nonconforming

industrial.

10

15

9

Q. Do you know if the public storage has a --

A. It has been there for a long time. I don't

know what -- I didn't do a certification as to whether

it is an existing nonconforming legal use, from your definition.

Q. Okay. Well, I want to use your definition. The legal nonconforming use --

17 A. It exists. This map is meant to say that it exists at the site and it's a CD-2, it would not be 19 allowed today.

20 Q. I see. But as you sit here, you don't know whether that public storage has -- strike that.

22 As you sit here today, you don't know whether 23 that public storage was there prior to 1989.

24 A. I don't remember what the date of building

25 was.

	September	06	6, 2018 82 to 85
	Page 82		Page 8
1	Q. So you don't know what the legal status is on	1	Q. Do you know how long the Atma Beauty shop has
2	that property.	2	been there?
3	A. No, I don't.	3	A. No, I really don't know.
4	Q. Here in the heart of you talk in your	4	Q. And with regard to the municipal parking
5	report about the I-1 District that's now sort of core	5	garage you have there on Bay Road, and we will talk
6	of this Sunset Harbour area buttressed strike that.	6	more about that later, but that building, in addition
7	You talk about the I-1 core in this Sunset	7	to parking, it has restaurants and retail on the ground
8	Harbour area buffered by the CD-2 zones, correct?	8	floor, correct?
9	A. Yes.	9	A. Yes, sir.
10	Q. And in the heart of the I-1 District, one of	10	Q. And restaurants and retail not industrial.
11	the things that's there is the Fresh Market, correct?	11	A. No, they are not.
12	A. Yes, sir.	12	Q. And that municipal parking garage is on land
13	Q. That's on a lot that is zoned I-1.	13	that used to be, I think you said before that was
14	A. Yes, sir.	14	Tremont Towing, correct?
15	O. But Fresh Market is not an industrial use,	15	A. Yes, a long time ago.
16	correct?	16	Q. Tremont Towing was industrial, correct, an
17	A. No, sir.	17	industrial use?
18	O. It is not?	18	A. Was it on that side or the other side? Yes.
19	A. No.	19	I don't remember if it was on that side of the street
20	O. And there are other nonindustrial uses in the	20	or on the other side. It was on that side of the
21	Sunset Harbour area that used to be industrial uses,	21	street, yes.
22	correct?	22	Q. Okay. So the municipal parking garage was
23	A. Rephrase.	23	where Tremont used to be.
24	O. I said there are other nonindustrial uses in	24	A. Yes.
25	Sunset Harbour are on land that used to be used for	25	O. And Tremont is an industrial use. It's a
1	Page 83 industrial purposes, correct?	1	Page 8 towing company, correct?
1		1	
2	A. Yes.	2	A. Well, it's use allowed in the industrial
3	Q. Just because it's zoned I-1 doesn't mean it	3	district.
4	has to be used industrial, correct?	4	Q. Right now it's only allowed in the industrial
5	A. No, sir.	5	district.
6	Q. That's correct?	6	A. Yes.
7	A. That's correct.	7	Q. So that change from Tremont's towing operation
8	Q. Like, for example, let me ask you another one.	8	to restaurant, retail and parking, is a change from an
9	If you go up West Avenue just south of 20th, so the	9	industrial use to a mixed commercial use.
LO	first thing, the first structure south of 20th between	10	A. It's a change of use, yes.
11	West and Bay, that's the Publix, right?	11	Q. Did you have anything to the with the approval
L2	A. Yes, sir.	12	of that property?
13	Q. That's not industrial.	13	A. I reviewed the plans when they came in for
L4	A. That's not industrial.	14	permitting, yes. I also inspected it.
15	Q. And then if you go down to the next of your	15	Q. You say inspected it. Did you actually go out
L6	pink I'm sorry, purple lots on West Avenue, south of	16	and inspect?
17	the Publix, there is Atma Beauty store there, correct?	17	A. I counted parking spaces.
18	A. Yes, but upstairs is storage.	18	Q. You counted the parking?
L9	Q. Upstairs is storage.	19	A. Yes.
20	A. But it's a mixed situation.	20	Q. Because they were supposed to have a certain
21	Q. It's another mixed situation. That's a	21	number?
22	building that's being used for both industrial	22	A. Yes.
23	A. And commercial.	23	Q. Do they have them?
24	Q. And is that in I-1?	24	A. Yes.
٥٦	3 "	١٠٠	ADD DETOG . IT

MR. REISS: When it's convenient, can we take

A. Yes.

1	Page 86	1	Page 88
1	a break?	1	in your materials, correct?
2	MR. BUCKNER: Sure. Now is a good time.	2	A. It seems like it, yeah.
3	(Thereupon a recess was taken in	3	MR. REISS: You gave me 10 and 11.
4	deposition, after which the	4	THE WITNESS: Let me check my list.
5	deposition continued as follows:)	5	BY MR. BUCKNER:
6	BY MR. BUCKNER:	6	Q. So you have 10, 11 and 12 in front of you?
7	Q. All right. Back on the record. You are still	7	A. 10, 11 and 12.
8	under oath.	8	Q. And these three are documents that you
9	A. Yes, sir.	9	reviewed as part of your work on this case?
10	Q. We were talking about some stuff. I want to	10	A. Yes.
11	go back to something for a second. Exhibit 9.	11	Q. And these relate specifically to Sunset
12	(The document referred to	12	Harbour, correct?
13	was thereupon marked as	13	A. Yes.
14	Plaintiff's Exhibit Number	14	Q. Looking at just Exhibit 10, that's Ordinance
15	9 for Identification,	15	2012-3786 and this is an ordinance by the City,
16	a copy of which is attached	16	correct?
17	hereto.)	17	A. Yes.
18	BY MR. BUCKNER:	18	Q. And it says in the first whereas clause,
19	Q. I found this in your documents, right?	19	whereas, Sunset Harbour neighborhood is delineated by
20	A. Yes, sir.	20	the boundaries in this ordinance, is a neighborhood in
21	Q. Can you tell me what this is?	21	transition from the light industrial uses that
22	A. It seems to be a report of approvals in the	22	originally occupied the area to an area of mixed use.
23	permits plus system.	23	Do you see that?
24	Q. What's the permits plus system?	24	A. Yes.
25	A. It's a permitting system of the City of Miami	25	Q. Do you agree with that assessment?
			~
	Page 87		Page 89
1	Beach. The previous permitting system of the City of	1	A. Somewhat, yes.
2	Miami Beach.	2	Q. Only somewhat.
3	Q. Do you know where this document came from?	3	A. It depends on how you phrase it. It's a use
4	A. It looks like a printout, the kind of printout	4	change. It's not a change in code.
5	that they release when you request it.	5	Q. Right.
6	Q. Did you request this?	6	A. The code is not changing.
7	A. No.	7	Q. But how the area is being used is changing.
8	Q. Do you know who did?	8	A. Sure.
9	A. No, I don't.	9	Q. And it's changing to light industrial to more
10	Q. And it's your understanding this came from the	10	of a mixed use.
11	City of Miami Beach.	11	A. Sure.
12	A. Yes. It has the same format as to what comes	12	Q. And, in fact, if you look at Exhibit 11, the
13	from the City of Miami Beach.	13	same whereas clause, the first one contains the same
14	Q. Why was this in your documents? Is this	14	observation, correct?
15	something you reviewed?	15	A. Yes.
16	A. Because provided to me to review.	16	Q. And it actually but this one actually has
17	Q. Okay. Exhibit 10.	17	to an area of mixed uses including residential.
18	(The documents referred to	18	A. Okay, yes. In the second one.
19	were thereupon marked as	19	Q. That's 2013-3802.
20	Plaintiff's Exhibit Numbers	20	A. Right, because it's referring to residential
21	10, 11, 12 for Identification,	21	parking.
22	a copy of which is attached	22	Q. Okay. And one of the changes that's happened
23	hereto.)	23	to Sunset Harbour in the last few years is that there
24	BY MR. BUCKNER:	24	has been more residential construction, right?
25	Q. I'm giving you 10, 11 and 12. These also were	25	A. Yes.

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	Susana		
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	Page 90		Page 92
1	Q. For example, Palou below is new.	1	A. Yes.
2	A. Yes.	2	Q. Okay. Prior to that change to 130-33, the
3	Q. And that's residential.	3	owners of the property, my clients and the other owners
4	A. Yes.	4	of the property at issue in this case, they would have
5	Q. And that's not industrial.	5	to have included parking on the premises, correct?
6	A. No, sir.	6	A. Yes, sir.
7	Q. Okay. And then in Exhibit 12, there is a	7	Q. They would have that parking somewhere on the
8	similar observation that the neighborhood is in	8	property.
9	transition, correct?	9	A. Yes, sir.
10	A. In use, yes.	10	Q. Forgive me, I'm going back and forth because
11	Q. Transition in use.	11	I'm trying to deal with both versions of your report,
12	A. In use.	12	so I want to make sure I'm not missing a change.
13	Q. Right. From light industrial to mixed use.	13	So I was looking through the new parts of your
14	A. Yes.	14	report just to see if there is anything I want to ask
15	Q. Let me ask you about the first of these,	15	you about. Give me a second.
16	2012-3786. That's Exhibit 10, okay?	16	A. Sure.
17	A. Yes.	17	Q. So let me ask you. I'm on page seven of your
18	Q. We will talk about this in a little while, but	18	report. I'm trying to track the changes, but on page
19	we were talking in the beginning of your deposition	19	seven you talk about the, right below where you talk
20	about Sunset Land's ability to build, I think you said	20	about the fact that they could put 120,000 of
21	it was 120,000 square foot of commercial space without	21	commercial without parking there, you say since all
22	parking, correct?	22	parking would occur offsite at the parking garage
23	A. Yes.	23	located about 500 feet north of the site.
24	Q. Is this ordinance here, 2012-3786 the	24	A. Yes, sir.
25	ordinance that makes that possible?	25	Q. Is the parking garage you're talking about the
1	Page 91 A. Yes.	1	Page 93 municipal garage
1		1	
2	Q. Okay. And that specifically, and like I said, we will talk about it later, but specifically that	2	A. Yes, sir, 1900 Bay Drive.
3	· · · · · · · · · · · · · · · · · · ·	3	Q. Okay. And how do you know that all the
4	Section 130-33, right?	"	parking is all the cars that come to this 120,000
5	A. Yes.) 2	square feet of commercial space would go there to park?
6	Q. And 130-33 in its current form was enacted in	6	A. I don't.
7	2012. Is that right?	7	Q. I mean, it's equally possible they can park in
8	A. Was amended in 2012, yes.	8	the street, right?
9	Q. Okay. And let me be more clear. The	9	A. To the capacity of the street.
10	amendment that allows the owners of the property at	10	Q. Sure. And in the process
11	issue in this case to build 200,000 square feet of	11	A. Unlikely.
12	commercial space without parking	12	Q. Well, when you say unlikely, are you saying
13	A. Not 200,000, no.	13	it's unlikely they would try and park in the street or
14	Q. I'm sorry, 120,000.	14	it's unlikely they would all be able to park in the
15	A. Yes.	15	street?

15 16 Q. Let me ask that again. The amendment to the 17 City code, to 130-33 that allows the owners of the 18 property at issue in this case to build 120,000 square feet of commercial space without parking was enacted --19 20 A. Up to. Q. Up to, was enacted in 2012, correct? A. Yes. 23 Q. And that's this ordinance? 24 A. Yes.

25

Q. Exhibit 10?

15 street? A. Unlikely they would all be able to park on the Q. Right. Because there is a limited amount of on street parking. Q. And when you have 120,000 square of commercial 22 space, that probably is going to get a fair amount of

23 visitors.

24 A. Yes.

Q. So you're saying -- well, strike that.

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Page 94 So it is possible, however, that people coming 1 vehicles facility. 1 to that 120,000 foot of commercial space could circle Q. I see. So have you done any analysis of how the neighborhood, the Sunset Harbour neighborhood, many additional trips would be engendered by the 4 looking for parking, could they not? construction of 120,000 square feet of space on the 5 5 property? A. Some may. Q. And that would obviously engender additional 6 A. No, sir, that would be for the traffic 6 7 traffic, right? engineer. 8 8 Q. And so in terms of whether that additional A. Some traffic. 9 9 number of trips could be absorbed by on street parking Q. And depending on how long people circulated in the neighborhood looking for parking, that would be or whether some people would have to park in the 10 10 that much additional vehicular traffic, right? garage, you didn't do that analysis either. 11 11 12 A. Okay. 12 A. No, sir. 13 Q. Fair statement? 13 Q. So you don't know as you sit here. A. Fair statement. 14 14 A. That would be for the traffic engineer. Q. You say a couple places in your report, you 15 15 Q. So you're not saying in here that all the additional -- strike that. use the word detrimental. You say, for example, 16 17 increased vehicular traffic would be detrimental to the You're not saying that all the additional 17 vehicular traffic coming to this hypothetical 120,000 operation of Beach Towing. 18 18 square feet of space would necessarily go to the 19 19 Is detrimental a term used by traffic 20 parking garage, are you? engineers when they are assessing a traffic impact? 20 21 A. Rephrase the question. 21 A. I don't know. I'm not a traffic engineer. 22 Q. Sure. I want to make sure I understand the 22 Q. Okay. So you are just using detrimental in 23 point you're making in your report. I think what you 23 what context? said is some people may try -- strike that. 24 24 A. In the planning perspective. 25 25 I think what you said is with regard to that Q. And what does detrimental mean in the planning Page 95 1 120,000 square feet of commercial space, some people perspective? will try to find parking in the street. A. Detrimental in its general use is a negative 3 A. I'M not an expert on people behavior, so at impact. 4 the end of the day, the cars have to be stored Q. Okay. So let me ask you this. Is any somewhere. I don't know what people will do before additional traffic detrimental? finding their parking. A. Not necessarily. 7 Q. Okay. In terms of whether they park in the Q. What amount of additional traffic becomes street or in that parking garage, as you sit here, you detrimental? 9 don't know. A. It doesn't work like that. 10 A. They would have to be stored in a location 10 O. How does it work? 11 that allows storage of vehicles, which would be in the A. It's a circulation issue. It's how that 12 traffic circulates and moves and how does traffic collide with other uses and other traffic. 13 Q. Right. 14 A. Because the street would not have the capacity 14 Q. All right. 15 to hold that kind of car -- that amount. 15 A. So it's not a matter of volume. 16 Q. When you say stored, we are actually talking 16 Q. Fair enough. So does volume have nothing to 17 about parking, right? 17 do with it? 18 A. Yes, storage of vehicles. 18 A. No, it has a lot to do with it. Q. And this is all stuff that traffic engineers 19 Q. Are they technically being stored or being 19 20 parked or are those the same thing? work out, right? 20 21 A. When you're not in your vehicle, then the 21 A. Right. 22 vehicle is being stored. 22 Q. One of the issues is volume of additional 23 traffic potentially if you are talking about Q. So is that a parking garage or is that a

25

A. Yes.

detrimental effects as you use the term, right?

24

25

storage garage?

A. It's a parking garage which is a storage of

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- 1 Q. And the other issue is how that traffic
- 2 circulates through an area.
- 3 A. Yes.
- 5 detrimental?

8

- 6 A. Yes, the existing uses in the area.
- 7 Q. Tell me what you mean.
 - A. How the existing uses get impacted by --
- 9 different uses have different needs of or different
- 10 capacity to accept additional circulation around them.
- 11 Q. Let's talk about Beach Towing for a minute.
- 12 How does Beach Towing put vehicles onto its
- 13 lot, towed vehicles?
- 14 A. I believe they back them in.
- 15 Q. So they come down -- do you know if they go
- 16 north or south on Bay Road or both?
- 17 A. I think they do both. I think they do both,
- 18 but I don't know this off -- I've never driven a tow
- 19 truck.
- 20 Q. Have you asked anyone at Beach Towing how they
- 21 get the cars in the lot?
- 22 A. No.
- Q. Have you ever observed them do it?
- 24 A. Yes.
- Q. And what did you observe?

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- Q. Sure. Do you have an opinion on how Beach
- 2 Towing's practice of backing up its tow trucks and cars
- 3 on Bay Road to pull them into the lot there effects
- traffic circulation in the area?
 - A. Effects traffic circulation? It probably
- 6 impedes it.
 - Q. Have you analyzed it?
 - A. It stands to reason that it would impede it.
- 9 Q. Okay. So you are just making that observation
- 10 as just a lay person that it would impede traffic?
 - A. As a planner, yes, I would say that backing
- 12 into the driveway would impede traffic.
- 13 Q. And you also say in here, I'm on page, still
- 14 on page seven of your report. The last paragraph
- 15 before the bold part if you want to look. You don't
- 16 have to.
 - A. Page seven?
- 18 Q. If you want to follow me, it's up to you. You
- 19 say here partway through the first sentence, as it
- 20 would be detrimental to most uses which rely heavily on
- 1 uninterrupted ingress and egress to their place of
- 22 business.
- 23 Are you talking about the Beach Towing use or
- 24 all uses on Bay Road?
 - A. I'm talking about general industrial uses.

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- 1 A. That they usually back them in.
- 2 Q. So they are on Bay Road heading either north
- 3 or south, they stop and back the vehicle in.
 - A. Yes

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- 5 Q. Is stopping and backing up on a public road a
- 6 lawful traffic maneuver?
 - A. I'm not an expert in that. I wouldn't know.
- 8 Q. Is there any sign that says it's lawful to
- 9 back up on a public road in that area?
- 10 A. There is no sign, but signs don't necessarily
- 11 make something legal or illegal.
- 12 Q. Okay. You were a planner for the City of
- 13 Miami Beach. Where on the City of Miami Beach is it
- 14 lawful to back up your car on a public road?
- 15 A. Again, I'm not an expert. I'm not an expert
- 16 how traffic in the City of Miami Beach is handled or
- 17 what is legal or not legal as far as vehicle movements.
- 18 Q. So as you sit here today, you have no idea
- 19 whether it's legal for Beach Towing to back up tow
- 20 trucks and cars?

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- A. And I have no opinion on it either.
- 22 Q. Do you have any opinion on how Beach Towing's
- 23 operation of backing up their tow trucks and towing
- 24 cars on Bay Road effects the circulation in that area?
- 25 A. Rephrase the question, please.

- Page 101 Q. Okay. So when you are saying traffic would be
- detrimental to the operation of Beach Towing as a
- 3 vehicular storage and towing facility, including police
- 4 towing, as it would be detrimental to most uses which
- 5 rely heavily on uninterrupted ingress and egress to
- 6 their place of business, you are talking about Beach
- 7 Towing's uninterrupted ingress and egress.
 - A. Yes, sir, and any then other similar use.
- Q. Obviously we are here on Beach Towing. You
 .0 are not an expert on anything else, right?
 - A. Right.
- 12 Q. You are here testifying as an expert with
 - regard to this case?
- 14 A. I'm here as an expert witness for this case,
- 15 yes.

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- Q. Okay. So from the perspective of traffic planning, do you know what uninterrupted ingress and
- 18 egress means?
- 19 A. Yes.
- Q. What does it mean?
 - A. It means that you are not getting interrupted when you are trying to come in and out.
- Q. Doesn't it, in fact, mean the ability to enter
- 24 and leave a particular place without having to stop?
 - A. Not necessarily, no. Define stop.

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Page 102

- 1 Q. Stop. Without having to come to a stop.
- 2 A. Sometimes you have to come to a stop.
- 3 Q. Okay. But I'm asking you as traffic engineers
- 4 understand the term uninterrupted ingress and egress.
- 5 A. You mean constant, n a regular basis, on a
- 6 continues basis?
 - Q. Is that your testimony?
- 8 A. Yes.

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- 9 Q. All right. Your testimony is that how traffic
- 10 engineers would understand that term?
- 11 A. Uninterrupted, yes.
- 12 Q. So you don't believe they understand it to
- 13 mean not having to come to a stop?
- 14 A. I don't know what a traffic engineer would
- 15 understand or not.
- 16 Q. Okay. You're using these phrases,
- 17 uninterrupted ingress and egress --
- 18 A. I'm using planning and zoning terminology.
- 19 I'm not using traffic.
- 20 Q. Okay.
- 21 A. I'm not using traffic engineers terminology.
- Q. You do realize you are reviewing a traffic
- 23 engineer's report.
- 24 A. I am using a traffic engineer's report to base
- 25 my planning analysis on.

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Page 105

- 1 because it relies heavily on uninterrupted ingress and
- 2 egress. I'm asking you --
 - A. Rephrase the question.
- Q. So what I'm asking you is, what leads you to
- 5 the conclusion that Beach Towing relies heavily on
- 6 uninterrupted ingress and egress to their place of
- business as you defined those terms?
 - A. What leads me to the understanding that they
- 9 rely heavily on uninterrupted. Am I phrasing that
- 10 correctly?
- 11 Q. Yeah. So you said in your report Beach Towing
- 12 relies heavily on uninterrupted ingress and egress.
- 3 I'm asking you where does that conclusion come from?
- 14 A. Where is the conclusion that they rely on it?
 - Q. Yes.
 - A. Okay. It comes from -- if you are thinking
- 17 about the use and how the use functions, you would
- 18 understand, as a planner, that they need to come in and
- 19 out on a regular basis.
- 20 Q. Okay.
 - A. Right?
- 22 Q. But parking garage would also have people
- 23 coming in and out on a regular basis, correct?
 - A. Sure.
 - Q. So do all parking garages have a need for

Page 103

- 1 Q. Okay.
- A. So the word reviewing is the one that I have a problem with.
- Q. Okay. You're using the uninterrupted ingress and egress as you understand the term.
- 6 A. Yes.
- 7 Q. Don't all businesses rely on uninterrupted
- 8 ingress and egress of their place of business?
- 9 A. No, sir.
- 10 Q. Let me ask you this. Starbucks down the
- 11 street with a parking lot, do you think they're okay if
- 12 their ingress and egress to the parking lot is
- 13 interrupted?
- 14 A. They could handle some interruptions, yes.
- 15 Q. It's your testimony that Beach Towing could
- 16 not handle any interruption?
- 17 A. They probably have some trouble if they got
- 18 interrupted, yes.
- 19 Q. When you say probably, what's your conclusion
- 20 based upon?
- 21 A. Again, you're making a hypothetical right now, 22 but yes.
- Q. You say here, and this isn't a hypothetical.
- 24 You say in your report increased vehicular traffic
- 25 would be detrimental to the operation of Beach Towing

- uninterrupted ingress and egress?
 - A. Yes.
- 3 Q. So would that mean, for example, let's use the
- 4 parking garage that we were talking about earlier, the
- 5 municipal garage. Does that mean there shouldn't be
- 6 any development around the municipal garage because
- 7 they need --
 - A. No, sir.
- 9 Q. -- uninterrupted ingress and egress? So
- what's the difference between the municipal garage and Beach Towing?
- 12 A. I've never contended that they can't have any 13 development.
- 14 Q. Well, what you contended is that increased
- 15 vehicular traffic would be detrimental. I'm trying
- 16 figure out what that means.
- 17 A. Increased vehicular traffic in a two road 18 access that has two entrances to two heavily used, it
- would obviously be detrimental to their business.Q. When you say obviously, how do you quantify
- 21 that? Have you done any analysis?22 A. It's normal planning knowledge.
 - Q. Okay.
 - A. You don't have to analyze that.
 - Q. So the answer to my question is you haven't

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Page 106

- 1 done any actual traffic analysis to see how it --
- 2 A. I don't do traffic analysis it in that way. I
- 3 do circulation analysis.
- 4 Q. Okay. So you do circulation analysis.
- 5 A. Yes.
- 6 Q. Have you drawn up a document in this case that 7 shows the circulation analysis?
 - A. You can see it in there, yes.
- 9 Q. So that's what you call the circulation
- 10 analysis?

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- 11 A. Yes.
- 12 Q. We will go to those in a few minutes.
- 13 In terms of how much additional vehicular
- 14 traffic would it take in the area of Beach Towing for
- 15 it to be detrimental to Beach Towing?
- 16 A. That's not a question I can answer. That
- 17 would be a traffic study question.
- 18 Q. So there is some amount of additional traffic
- 19 that would not be detrimental and there is an
- 20 additional amount that would be, correct?
- 21 A. Yes.
- 22 Q. But in terms of how much more traffic the area
- 23 around Beach Towing could handle before being
- 24 detrimental to Beach Towing, you don't know the number.
- 25 A. I don't know the number, no.

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- Q. Okay. If you have 200 cars using that road
- and only two cars have an accident everyday, that's
- still only a one percent accident rate.
- A. These are all hypotheticals.
 - Q. What I'm asking you is, what analysis did you
- 6 do to determine whether the percentage risk of an
- 7 accident around Beach Towing would go up with
 - additional vehicles?
- 9 A. That's not an analysis I've conducted. It's
- 10 an analysis that's possible and I would like the City
- 11 to ask of the traffic engineer because that is an
- analysis that a traffic engineer could conduct.Q. Okay. So the traffic engineer is qualified to
- 14 determine what risk of increased accident there would
- 15 be by increasing traffic.
 - A. If they have access to police reports, yes.
- 17 Q. Okay. But you have not done that analysis.
 - A. I wouldn't. I wouldn't.
 - Q. Because you are not qualified.
- 20 A. Yeah, it wouldn't be in my realm of expertise.
 - Q. So when you say here increased opportunity for
- 22 accidents, you're speaking hypothetically.
- 23 A. I'm speaking statistically.
 - Q. When you state statistically, you have no
- 25 statistics, though.

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- 1 Q. You say here also, and I'm still on that same
- paragraph. The second sentence you say adding vehicles
- 3 to Bay Road, access roads around Beach Towing would
- 4 slow in and out operation and increase opportunity for
- 5 accidents between Beach Towing vehicles and privately
- 6 operated vehicles.
- 7 When you say increased opportunity for
- 8 accidents, what analysis did you do to make that
- 9 determination?

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- A. Cars collide with each other.
- 11 Q. So the mere fact -- it's your analysis that
- 12 the mere additional -- strike that.
- 13 It's your analysis that the mere addition, of
- 14 additional cars to a particular roadway increases the
- 15 risk of accident?
- 16 A. Yes, statistically. If there are no cars on
- 17 the roadway, you would have zero. If you have more
- 18 cars on the road, you will have more accidents.
- 19 Q. Okay. Well, you are saying more accidents on
- 20 a gross basis, not a percentage basis, right?
 - A. Say what again?
- 22 Q. For example, if 100 cars use a particular road
- 23 in a day and there is one accident a day, that means
- 24 you have a one percent accident rate, right?
- 25 A. Yes.

- Page 109
 A. I have no particular statistics in this
- particular case.
- Q. But you haven't done any statistical analysis.
- A. Not in this particular case.
 - Q. Right. When I asked you, when you say
- 6 increased opportunity for accidents, you're
- 7 hypothesizing.
 - A. Sure.
- 9 Q. Since we are talking about traffic, you said
-) in your first report you reviewed Traf Tech's 2018
- 11 traffic study, correct?
- 12 A. Yes. I didn't review it. I read it.
 - Q. Okay. I don't want to use the wrong word.
- 14 A. I'm not here to review traffic.
- 15 Q. So you read the March, 2018 traffic study and
- .6 what other traffic studies by Traf Tech have you read
- 17 with regard to this case?
 - A. The August.
 - Q. August 22nd?
- 20 A. August 22nd amendment.
 - Q. Have you read any other traffic studies with
- 22 regard to this case?
- 23 A. I don't believe so, no.
 - Q. And let me just talk generally. I'll give you
- 25 a heads up. Obviously we are talking about the traffic

Page 110 Page 112 1 studies and that stuff now and I'll stay in there 1 Publix garage is on Bay Road, correct? unless I wonder off, but I probably won't. If I 3 Q. And you're familiar with the Lofts, correct? confuse you, you let me know. 4 You have in your, basically starting on page, A. Yes. 5 I guess, more or less, seven of your current report 5 Q. And the entrance and exit to the Lofts parking through, I guess, almost a little more than the middle garage is on Bay Road. 7 7 on page nine, you're discussing traffic and traffic A. Yes, sir. patterns. 8 Q. So you said you had a chance to read both the 8 9 9 March and the August 22nd, 2018 Traf Tech studies. A. Yes. 10 Q. And that analysis, correct? What changes did you observe between the two of them? 10 A. Increased the square footage of the commercial 11 A. Yes. 11 12 Q. And so I want to talk to you about that. 12 spaces, increased the number of trips. 13 So other than reading the two Traf Tech 13 Q. Anything else? 14 14 reports that we talked about before, what other A. Some of the distribution that the City had 15 documentation did you read to formulate your opinion requested they distributed differently in how they with regard to the section I just -enter the area. 16 16 17 17 A. No documentation. Q. All right. And, also, I'm sure you observed Q. Just those two reports. 18 that the way entrance and exit is achieved at the 18 19 A. Those two reports and my personal experience. proposed development on the Sunset Land property is a 2.0 Q. All right. So other than those two reports right-hand turn in and a right-hand turn out, correct? 20 21 and your personal experience, you are not relying on A. Right-hand turn in and right-hand turn where? 21 22 anything else? 22 Q. Into and out of the garage. Instead of being 23 A. And my knowledge of the neighborhood. able to enter and exit from either a left-hand turn or 24 a right-hand turn, you can only make a right in and a Q. Okay. I want to make sure I get everything. For that analysis on pages seven through 10 with regard 25 right out in the my report, correct? Page 111 Page 113 1 to traffic, you are relying on the two Traf Tech A. You have to show me where. I don't remember 2 reports, your experience and the knowledge of the seeing that. neighborhood. Q. Let's do this because it's not a closed book 4 A. Yes. test and I told you it wasn't. 5 Q. Anything else? A. I'm having a hard time visualizing it. 6 A. Let me read it again. 6 Q. Exhibit 13 is the March report. 7 7 Q. Sure. Take your time. (The document referred to A. Actually, I used mostly the traffic report. 8 was thereupon marked as 9 Q. Okay. When you say the traffic report, you 9 Plaintiff's Exhibit Number 10 are talking about the two Traf Tech. 10 13 for Identification, 11 A. Yes. 11 a copy of which is attached 12 Q. What are they called, studies? 12 hereto.) 13 13 A. Yes. Traffic studies, yes. THE WITNESS: It's very thin. 14 Q. Okay. Let's talk about a few things then 14 BY MR. BUCKNER: 15 within your analysis here. One of the things we are Q. If you need them, I will get them, but I did 16 talking about is Bay Road, right? not include all the data that backs up the report. 17 A. A-ha. Yes. 17 It's just the report itself. 18 Q. The reason that's relevant to your discussion 18 A. It's interesting stuff. 19 and your expert opinion is because that's where Beach 19 Q. Do you need the data? 20 Towing enters and exits its lot. 20 A. I may. 21 A. Yes, sir. Q. If you do, you will tell me and I will go 22 Q. In addition, the entrance and exit to -- that print it out and bring it to you. It's hundreds of Sunset Harbour municipal garage is on Bay Road, right? 23 23 pages of data. 24 A. Farther up, yes. 24 A. I know.

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Q. Exhibit 14. It has your exhibit sticker on

Q. And, in fact, the exit and entrance to the

	September	. 06	5, 2018 114 to 117
	Page 114		Page 116
1	it, Allan.	1	A. Say that again.
2	(The document referred to	2	Q. The intersection of Bay Road and 18th Street
3	was thereupon marked as	3	is the intersection just north of Beach Towing on Bay
4	Plaintiff's Exhibit Number	4	Road.
5	14 for Identification,	5	A. Yes.
6	a copy of which is attached	6	Q. Okay. The intersection of Bay 17th and Dade
7	hereto.)	7	is the intersection just south of Beach Towing.
8	BY MR. BUCKNER:	8	A. That's on the top. Yes.
9	Q. I'll find it later because I can't remember	9	Q. That's the intersection just to the south.
10	where it is. Let's deal with the August 22nd, 2018.	10	A. Yes.
11	If you turn to page 20 with me, you read these two	11	Q. And you see here that with regard to 2020, the
12	tables as part of your reading of this report, correct?	12	year 2020 with the project completed, the intersection
13	A. Yes.	13	level of service on either end of Bay Road from Beach
14	O. You read both of those tables?	14	Towing, the letter grade is the same with and without
15	A. Yes, sir.	15	the project.
16	Q. And do you know how the letter grades are	16	A. Yes.
17	generated for each of those intersections?	17	Q. And you have no reason to dispute that, do
18	A. I have an understanding.	18	you?
19	Q. What is that understanding?	19	A. I kind of do.
20	A. They are generated based on the statistical	20	Q. Okay. What's your basis for disputing it?
21	analysis of the intersection and how many cars it can	21	A. I would like to see a different distribution
22	hold to pass through at a certain number of time	22	of trips.
23	periods.	23	Q. Okay. Tell me what you mean.
24	Q. And is it your understanding that these letter	24	A. The way that the assumptions that he made
25	grades are generated by a piece of software?	25	in this report, which are the assumptions that he made,
23	grades are generated by a prece or software.	23	in this report, which are the assumptions that he made,
	Page 115		Page 117
1	A. Yes.	1	are based on the fact that so much of the traffic is
2	Q. Have you ever actually done that analysis	2	going to go in coming in from this direction or that
3	yourself?	3	direction. Some of those may not hold if their current
4	A. No, sir.	4	traffic circulation is true and that's those are his
5	Q. So looking at this, this shows the levels of	5	calculations.
6	service at each of the intersections around the project	6	Q. Okay. So anything else you would criticize
7	at issue here.	7	Mr. Vargas for with regard to these two tables?
8	At the current time in 2020, without the	8	MR. REISS: Form.
9	project and 2020 with the project, right?	9	THE WITNESS: I don't choose to criticize Mr.
10	A. Yes.	10	Vargas. I think he's doing a fine job. However, I
11	Q. And what it shows is with regard to both	11	may have some difference of opinion as to some of
12	intersections on Bay Road nearest the project, those	12	his assumptions.
13	would also be the same intersections nearest to Beach	13	BY MR. BUCKNER:
14	Towing, correct?	14	Q. Okay. Any other differences of opinion other
15	A. They hold on.	15	than the one you just gave me?
16	Q. There is 18th and Bay, correct?	16	A. Not at this point.
17	A. You are on the other side.	17	Q. So in terms of the one difference of opinion
18	Q. Yeah.	18	of Mr. Vargas and how he reaches these letter grades
19	A. Okay.	19	for these specific intersections we discussed, if I'm
20	Q. 18th and Bay is to the north of Beach Towing	20	understanding you correctly, is that he made certain
21	on Bay, right?	21	assumptions about circulation that you disagree with.
22	A. Yes.	22	A. Yes, and so does the City of Miami Beach.
23	Q. And the intersection of Bay, 17th and Dade	23	Q. When you say so does the City of Miami Beach,
1	Dealers of the determination that he she much of	1 04	t-11 b b that

24 tell me how you know that.

A. There is a series of e-mails that went back

24 Boulevard is the intersection just to the south of

25 Beach Towing, correct?

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	September	06	, 2	01
	Page 118			
and forth.	_	1	do you	have

1

- 2 Q. Okay. Do you know --
- 3 A. As to changes in the report.
- Q. Do you know whether the changes to his
- 5 report -- do you know whether the report you are
- looking at, the August 22nd report, is the one
- 7 reflecting those changes?
- 8 A. I'm sure it's the one that Mr. Vargas thinks
- 9 is those changes.
- Q. Are you aware the City has accepted this 10
- report now? 11
- 12 A. No, I'm not.
- 13 Q. So as you sit here, other than you think the
- City took issue with it, you would have done different 14
- 15 circulation than Mr. Vargas did.
- 16 A. I would have asked him to consider different
- 17 circulation.
- 18 Q. And as you sit here, you don't know what that
- different circulation you would ask him to consider, 19
- 20 how that would effect the letter grades at these
- 21 intersections?
- 22 A. I would think that some of these letter grades
- 23 may be altered slightly.
- 24 Q. When you say you may think, do you have any
- basis to know that?

- Page 120
- re any other disagreements with Mr. Vargas'
- August 22nd, 2018 report?
- 3 A. I don't call them disagreements. I would come
- 4 to different conclusions.
- 5 O. Okay.
 - A. So it's not disagreements.
 - Q. Which different conclusions would you come to?
 - A. I would disagree that -- can I read through?
- 9 Q. Take your time.
 - A. Give me a second.
 - Q. Take your time.
- 12 A. I would be skeptical that the valet operations
- 13 would work the way that he says or defines it.
 - Q. Okay.
- 15 A. And I would be skeptical not so much
 - disagreeing.
- 17 Q. Okay. What is your skepticism based on?
- 18 A. He says that they need eight valet parking
 - operators in order for this operation to be successful.
- Eight is a lot of people to have on board at all times.
- Also, their cueing is only for two spaces at a time
- 22 which is what requires the eight valet operators. So
- assuming all residents and all commercial owners are
- going to use the valet operation. Probably some
- residents will choose not to, so there is some

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- 1 A. Not obviously without doing the job.
- Q. And you're not qualified to do the analysis
- yourself, correct?
- 4 A. No, but I'm qualified to request it.
- 5 Q. If I asked you to go assign letter grades to
- 6 these intersections, you couldn't.
- 7 A. I wouldn't.
- 8 Q. Well, you couldn't.
- 9 A. Because I wouldn't.
- 10 O. Well, couldn't and wouldn't are different
- 11 things. I know you wouldn't. Can you? Are you able?
- 12 A. You can write letters anywhere you want. I
- 13 wouldn't. It's not something I do.
- 14 Q. Have you ever used the software that assigns
- 15 letter grades to intersections?
- 16 A. No.
- 17 Q. Okay. So you don't know how, do you?
- 18 A. I know how it works. I've seen it work. I've
- seen it fed information and information comes out and 19
- 20 the result is only as good as the information you put
- 21
- 22 Q. True enough. But you have never done it
- 23 yourself.
- 24 A. No, I wouldn't.
- 25 Q. You like that word wouldn't. Other than that,

- Page 121 assumptions that are going into this that I'm skeptical
- about and they would be hard to enforce as well.
- Q. Other than those things you mentioned,
- anything else that you're skeptical about?
 - A. That's generally it.
- Q. Okay. Nothing else you can point me to today?
 - A. No.
- Q. Okay. And when you say eight valet operators,
- is it because you don't think they will have eight
- valet operators on hand at anyone time?
- A. Yes. It's going to be hard for the City to
- 12 enforce eight valet operators on site.
- 13 Q. It's your assessment there will be less than
- 14 that at anyone time.

15

- A. There will be whatever the valet operator
- 16 chooses to have. Whether it's five or 10.
- 17 Q. As you sit here, you don't know what the valet operator is going to choose.
 - A. Exactly.
- Q. I noticed from your original report, I guess 20
 - it doesn't have a date on it. The original report that
- I was looking at, the one I received back in July, in
- this section that we are dealing with here on page, top
 - of page nine, you talk about an increased number of
- trips and some percentages, but those percentages don't

	-	1	
	Page 122		Page 124
1	appear in your current report.	1	Q. And that's at present, correct?
2	A. Those were based on the original March numbers	2	A. That's at present, yeah.
3	that Mr. Vargas had provided and because they had	3	Q. And then if you go to figure
4	changed things to the new report, I decided to remove	4	A. That's on the day that the traffic engineer
5	them because they didn't quite work out.	5	was taking numbers.
6	Q. You also noticed that your percentage	6	Q. Right. Do you have any reason to believe that
7	increase, for example, you say here at the top, only	7	the traffic data here is wrong?
8	during weekday peak hours the northbound trips increase	8	A. No.
9	from current 21 to 71, an increase of 163 percent,	9	Q. Okay. So then you said, if you go to
10	right?	10	figure you said it increases to 71 and that's if you
11	A. That was on his report, yeah.	11	go to figure six, that same intersection, and let me
12	Q. You know that's incorrect, right?	12	see if I'm looking at the right thing. It's now 71,
13	A. It was on his original traffic count.	13	right?
14	Q. Let's look at that.	14	A. A-ha.
15	A. It was on the original, in the number	15	Q. Okay. And that's traffic with the project in
16	distribution.	16	the year 2020.
17	Q. Right. So actually where it is, if you go to	17	A. Yes.
18	figure three on his first report, right?	18	O. What's the traffic at that intersection
19	A. Let me check my notes now.	19	heading northbound without the project?
20	Q. Okay.	20	A. 42.
21	A. It's coming out of figure six?	21	Q. Okay. So when you say it's 163 percent
22	Q. Figure three.	22	increase, that includes both the project and organic
23	A. My numbers come out of figure six.	23	growth in traffic.
24	Q. Okay. We can do that, too. Figure three is	24	A. Yes.
25	where you get the original number, which is 27 cars	25	Q. But when you look only at the project impact
	Page 123		Page 125
1	Page 123 going north on	1	Page 125 itself, it's far less than 163 percent, right?
1 2		1 2	
	going north on		itself, it's far less than 163 percent, right?
2	going north on A. 71.	2	itself, it's far less than 163 percent, right? A. It's still very significant.
2 3	going north on A. 71. Q. Right. You have 27 cars northbound on Bay at	2 3	itself, it's far less than 163 percent, right? A. It's still very significant. Q. Did you calculate it?
2 3 4	going north on A. 71. Q. Right. You have 27 cars northbound on Bay at present, right? That's from figure three. MR. REISS: Form.	2 3 4	itself, it's far less than 163 percent, right? A. It's still very significant. Q. Did you calculate it? A. I chose not to. I chose to write a number. Q. You calculated the total traffic going north
2 3 4 5	going north on A. 71. Q. Right. You have 27 cars northbound on Bay at present, right? That's from figure three. MR. REISS: Form. BY MR. BUCKNER:	2 3 4 5	itself, it's far less than 163 percent, right? A. It's still very significant. Q. Did you calculate it? A. I chose not to. I chose to write a number.
2 3 4 5 6 7	going north on A. 71. Q. Right. You have 27 cars northbound on Bay at present, right? That's from figure three. MR. REISS: Form. BY MR. BUCKNER: Q. Well, you tell me.	2 3 4 5 6 7	itself, it's far less than 163 percent, right? A. It's still very significant. Q. Did you calculate it? A. I chose not to. I chose to write a number. Q. You calculated the total traffic going north on Bay, including organic growth. A. Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	going north on A. 71. Q. Right. You have 27 cars northbound on Bay at present, right? That's from figure three. MR. REISS: Form. BY MR. BUCKNER: Q. Well, you tell me. A. I have figure five. I don't have figure three. Q. Let's look at figure five. Figure five A. I don't have figure three in here. Q. You don't have figure three in yours. A. Figure five is the background traffic, so that wouldn't be accurate either. Q. When you say it wouldn't be accurate A. I found it. Q. You are on figure three? A. A-ha. Q. I want to just figure out where you got these numbers from. A. Right here. Q. Exactly. Turning right, you have 27 going	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	itself, it's far less than 163 percent, right? A. It's still very significant. Q. Did you calculate it? A. I chose not to. I chose to write a number. Q. You calculated the total traffic going north on Bay, including organic growth. A. Yes. Q. But didn't separate out what's the project. A. I didn't separate out. Q. But you know it's less than 163 percent. A. It's still in the 163 percent growth from now until the 2020 with the project, which is the number that we were looking for. Q. There will be some growth even without the project, correct? A. Natural growth, yeah. Q. That's going to happen whether there is a project there or not. A. Sure. Q. And do you know what impact strike that. So if we are looking at Bay Road and Purdy Road between 18th and Dade, those are both one lane in

), 2016 129 to 129		
	Page 126		Page 128		
1	A. Bay Road and Purdy.	1	THE WITNESS: Say that again. I didn't		
2	Q. I want to look at the section between 18th and	2	understand the question.		
3	Dade.	3	BY MR. BUCKNER:		
4	A. Yes.	4	Q. Okay. The bubble at Purdy and Dade, it shows		
5	Q. Those are both one lane in each direction,	5	a right-hand turn and a left-hand turn going north on		
6	right?	6	Purdy, correct?		
7	A. They are two lane roads, one in each	7	A. Yes.		
8	direction, yes. Actually Purdy at that stretch they	8	Q. What's the total traffic count going on the		
9	are one lane, yeah.	9	right-hand turn?		
10	Q. In each direction?	10	MR. REISS: Form.		
11	A. Yes.	11	THE WITNESS: I don't really you would have		
12	Q. Both of them are the same in that regard.	12	to add those numbers.		
13	A. Right. One has a median and one doesn't, yes.	13	BY MR. BUCKNER:		
14	Q. Do you know what the total traffic volume is	14	Q. I'm just asking you for the right-hand turn.		
15	today on Purdy?	15	MR. REISS: Form.		
16	A. It's not something I put in my report.	16	THE WITNESS: Would you like me to read it?		
17	Q. Okay.	17	BY MR. BUCKNER:		
18	A. I could look it up if you want, but it's not	18	Q. Yes.		
19	something I know off the top of my read.	19	A. It's the number 60.		
20	Q. If you look at figure three from the March	20	Q. What is the amount going north on Purdy from		
21	report, northbound traffic on Bay is 27.	21	Dade making a left-hand turn?		
22	A. Yes.	22	MR. REISS: Form.		
23	Q. Northbound traffic on Purdy is 60 plus 144,	23	THE WITNESS: 144.		
24	correct?	24	BY MR. BUCKNER:		
25	MR. REISS: Form.	25	Q. And what's 144 plus 60?		
1	Page 127 THE WITNESS: Yeah. I really would like to	1	MR. REISS: Form.		
2	THE WITNESS: Yeah. I really would like to look at it more carefully.	2	MR. REISS: Form. THE WITNESS: Again, you need me to add it up?		
2 3	THE WITNESS: Yeah. I really would like to look at it more carefully. BY MR. BUCKNER:	2 3	MR. REISS: Form. THE WITNESS: Again, you need me to add it up? BY MR. BUCKNER:		
2 3 4	THE WITNESS: Yeah. I really would like to look at it more carefully. BY MR. BUCKNER: Q. Okay. You have the figures right there.	2 3 4	MR. REISS: Form. THE WITNESS: Again, you need me to add it up? BY MR. BUCKNER: Q. Yeah. Can you add 144 and 60?		
2 3 4 5	THE WITNESS: Yeah. I really would like to look at it more carefully. BY MR. BUCKNER: Q. Okay. You have the figures right there. A. I need like a calculator and sit down and	2 3 4 5	MR. REISS: Form. THE WITNESS: Again, you need me to add it up? BY MR. BUCKNER: Q. Yeah. Can you add 144 and 60? MR. REISS: Form.		
2 3 4 5 6	THE WITNESS: Yeah. I really would like to look at it more carefully. BY MR. BUCKNER: Q. Okay. You have the figures right there. A. I need like a calculator and sit down and think about it.	2 3 4 5 6	MR. REISS: Form. THE WITNESS: Again, you need me to add it up? BY MR. BUCKNER: Q. Yeah. Can you add 144 and 60? MR. REISS: Form. THE WITNESS: Sure, I can add. 204.		
2 3 4 5 6 7	THE WITNESS: Yeah. I really would like to look at it more carefully. BY MR. BUCKNER: Q. Okay. You have the figures right there. A. I need like a calculator and sit down and think about it. Q. Let's look at the bubble that's at the	2 3 4 5 6 7	MR. REISS: Form. THE WITNESS: Again, you need me to add it up? BY MR. BUCKNER: Q. Yeah. Can you add 144 and 60? MR. REISS: Form. THE WITNESS: Sure, I can add. 204. BY MR. BUCKNER:		
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Page 130 A. You can look at the traffic report. I'm sure 1 1 that. 2 they have a letter grade for it. I can tell you right 2 Do you have any opinion as to what additional 3 volume of vehicular traffic coming down either now it doesn't matter as to my report because it has no traffic -- no towing operations on it. northbound or southbound on Bay Road between 18th and 5 Q. So what volume of cars, given that -- well, Dade would be acceptable? let me ask you this. Let's go back to the current A. It is not in my purview of expertise, no. 6 7 report. We were looking on page 20 at all those Q. Do you know what -- have you done any analysis intersections. Do any of those intersections get a to determine what additional delays the traffic that is 8 9 9 failing grade? projected to come to this proposed project would cause 10 A. Again, it's the traffic studies, the on Bay Road? 10 engineer's --11 11 A. No, I wouldn't do that. 12 12 Q. Have you done any analysis to determine what Q. Okay. 13 Bay Road measure of effectiveness would be after the A. --report. 13 Q. Well, you read it. project was completed? 14 14 15 15 A. I read it. A. I wouldn't do that. 16 Q. Your opinion is based on it. 16 O. And I think I know the answer to this, but 17 A. My opinion is based on the data that's 17 I'll ask you anyway. In the course of your entire 18 contained, yes. career, have you ever reviewed a traffic engineering 19 Q. And I'm asking you are you aware of any of the 19 study, and based on your review alone, an agency made a 20 intersections in Sunset Harbour getting a failing grade 20 recommendation to an approving board? 21 21 at present? A. Yes. 22 A. Not according to your traffic engineer. 22 Q. Based on your review alone without an engineer 23 Q. And you have no basis to find otherwise, do 23 looking at it, they made a recommendation. A. No. I had an engineer peer review it and then 24 you? 24 25 A. No, not at this point. I made a recommendation. Page 131 1 Q. Are you going to go and do an analysis to find Q. I'm asking you something different. In the out whether the grades are wrong? course of your career, have you ever made -- in the 3 A. I don't know if my client will do that in the course of your career, have you ever reviewed a study 4 future. That's not something I would. alone with no traffic engineer, and based on your 5 Q. That's something you can do. 6 A. They would hire a traffic person. 6 board? 7 7 Q. Okay. So as you sit here, you have no basis MR. REISS: Form. to dispute that all the intersections around Sunset 8 Harbour that are listed on page 20 are currently 9 10 operating at acceptable intersection levels of service. 10 BY MR. BUCKNER: 11 A. Right. 11

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? A. I'm sure the traffic engineer has an opinion

17 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 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 about what additional volume of car traffic -- strike review alone, an agency made a recommendation to a THE WITNESS: Not based on my review alone. I relied on the traffic engineer peer review. Q. Hang on to the reports. We may come back to them. Let me ask you about a couple things. You had, in your original report on page eight, you had two, what are these called, maps? A. Okay. Diagrams. Q. I want to call them what you call them. A. Diagrams. Q. You had two diagrams, and on your new report, pages eight and nine, are those the same diagrams? A. Identical. Q. So they haven't changed. Let me do this. Exhibit 15. (The documents referred to were thereupon marked as Plaintiff's Exhibit Number

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	September	0 0	6, 2018	134 to 137
	Page 134			Page 136
1	15 & 16 for Identification,	1	A. Yes.	
2	a copy of which is attached	2	Q. For example, you don't h	have any access to the
3	hereto.)	3	area, let's take it from the top	. You have a red line
4	BY MR. BUCKNER:	4	coming off of Alton Road and make	ing a left-hand turn to
5	Q. What I did was, just so you know, I printed	5	the south on Bay Road, correct?	
6	them up from your flash drive that I got because it's a	6	A. What? From Alton Road.	
7	little hard to see, although I notice they are a little	7	Q. I'm following red lines	. The red line that
8	easier because they are bigger, but the roads	8	comes Alton Road, it comes of	f of Alton Road and it
9	themselves don't show up on these.	9	eventually makes a left onto Bay	. Isn't that what's
10	A. Yeah.	10	that doing?	
11	Q. Let me ask you something about these. In your	11	A. No. Bay Road and Alton	Road do not meet each
12	flash drive that I got, Exhibit 15 and 16, is that what	12	other.	1000 00 1100 1100 0001
13	it is?	13	O. Your red line is across	Ig that
14	A. 15 and 16.	14	A. That's 17th. 17 Dade Bo	
15	Q. Exhibit 15 was entitled desired circulation	15	Q. We are looking at differ	rent unings. I'm here.
16	and Exhibit 16 was entitled non-desired. Did you put	16	Is that 20?	
17	those titles on them?	17	A. That's 20th Street.	
18	A. Yes.	18	Q. So it comes off of Altor	n Road, that red line.
19	Q. What did you mean by that?	19	A. Yes.	
20	A. I meant that one particular diagram of	20	Q. Down 20th and makes a le	eft on Bay.
21	circulation would be more desirable for my client.	21	A. Yes.	
22	Q. When you say	22	Q. Okay. And so it's your	testimony that
23	A. Would be preferable.	23	vehicular traffic entering Sunset	Harbour bypasses West
24	Q. For Beach Towing.	24	and Purdy and instead goes straig	ght to Bay?
25	A. Yes.	25	A. If their desired termin	us is the municipal
	Page 135			Page 137
1	Q. Let's look at 15 first. So I think what you	1	parking garage, yes, that's what	
2	said in your report is that current vehicular	2	Q. What if the desired term	minus is somewhere
3	circulation conditions dictate that any vehicles which	3	else?	
4	would patronize businesses in the Sunset Harbour	4	A. That's the point.	
5	neighborhood, must use one of the routes marked in red,	5	Q. Well, there are other	- this is as things
6	right?	6	currently stand, your Exhibit 15	, correct?
7	A. A-ha.	7	A. A-ha.	
8	Q. Is that a yes?	8	Q. And you're not showing a	any other desired
9	A. Yes.	9	terminus off of Alton from the no	orth except the
10	Q. Obviously looking at Exhibit 15, these are not	10	municipal garage.	
11	all the ways you can access the surface roads through	11	A. Because that's what we a	are talking about.
12	Sunset Harbour, correct?	12	Q. I'm asking you something	g different. What
13	A. Those are the main accesses.	13	evidence or facts do you have to	-
14	Q. Okay. How did you determine that?	14	traffic coming from Alton Road to	
15	A. They are the most used right now, so the	15	Harbour bypasses West and Purdy?	
16	places where you have the most circulation.	16	A. All the traffic that is	choosing to use to
17	Q. When you say the most used routes, based on	17	patronize the businesses on the	_
18	what?	18	-	
1 -0	WIIQU:	1 _0	Q. So that's what I wanted	to ask you. I wall to

20 It's hard to get there without going through those 21 routes. 22

Q. And right now --

19

24

23 A. My knowledge of the area.

Q. You would agree with me that those red routes,

A. My experience and it's just how you get there.

25 there are other roads in Sunset Harbour, right?

24 left. 25 A. Okay. That's a very complicated way of saying

bypass West Avenue and go straight to Bay and make a

It's your testimony that all the traffic

coming into Sunset Harbour that wants to patronize the

businesses there will come from the north west on 20th,

make sure I understand what you're saying.

19

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Susana Alonso September 06, 2018 Page 138 1 it. A. I don't understand the question. 2 Q. Is that right? Q. I'm asking you for all the evidence you have 3 A. All the traffic -- most of the traffic that is to back up your assertion with this red line here on coming to the north that is wishing to patronize this Exhibit 15, coming off of Alton, crossing 20th to the 5 area is the easiest route for them to come in right now west down Bay to the municipal garage, what is all the from the north, is down 20th Street and probably the evidence that you have to support that that is the 6 7 one chosen by most people. route everyone is choosing to take coming into Sunset 8 Q. And --8 Harbour from the north on Alton? MR. REISS: Form, predicate. 9 9 A. Because it's the easiest route. 10 Q. And you have them all going to the municipal 10 11 11 garage. 12 A. If they are going to the businesses that don't 12 BY MR. BUCKNER: 13 13 have dedicated parking, yes. 14 Q. Okay. Is it your testimony that all 14 do that. 15 15 businesses, everyone coming to patronize businesses A. I'm generalizing, yes. that don't have their own dedicated parking are 16 16

17 necessarily going to the municipal garage? A. Either that or a valet operation, yes. 18 19

Q. Okay. What data is that based on? 2.0 A. That's just the only available parking right now. If they are not parking there, they are parking 21 22 on the street.

23 Q. Okay. But you would agree with me there is 24 street parking on West, right?

A. There is street parking all throughout Miami

THE WITNESS: I don't have. I'm not asserting that all the traffic is doing anything. Q. Okay. You are asserting that some traffic can Q. Some traffic could also choose coming on 20th making a left on West, right? A. Yes, if there was a traffic blockage and they were under construction, they may choose to do

something different. Traffic conditions change all the 20 21 time. 22 Q. Right. Or if they decide to park on the 23 street on West, they can take a left on West.

A. Surg. Again, there is a limited number of parking spaces on the street. Some people may choose

Page 139

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Beach, yes. 2 Q. And there is street parking all throughout 3 Sunset Harbour, right? 4

A. Yes, sir.

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5 Q. Okay. They don't have to go to the municipal 6 garage.

7 A. Street parking is only so much of it, so eventually it runs out and you go to the garage.

9 Q. What I'm asking you though is they don't have 10 to go to the garage, right?

11 A. Nobody has to do anything.

Q. But you have them all going to the garage.

13 A. I don't have them all going to the garage. I 14 have the majority, the trending movements going to the 15 garage because that's where most of the storage is 16 located right now.

17 Q. And what I'm asking you is, what data do you 18 have that shows coming from the north --

19 A. There is 489.

20 Q. You have to let me finish my question.

What data do you have coming from the north on 22 Alton Road and entering Sunset Harbour on 20th Street

23 that all that traffic is going to bypass the surface

24 roads and go straight to Bay and go straight to the

25 garage?

Page 141 to park on the street. My assertions are based on what

most of the people might do because that's where the

parking is available. If most of the parking is

available in a particular location, that most of the

cars that can end up at that location necessarily

because they can't be stored where there is no parking.

Q. You would agree there is street parking throughout the Sunset Harbour area.

9

Q. I'm asking you what numerical analysis --

11 A. I did not use a numerical analysis. I used a 12 circulation pattern.

13 Q. And so basically other than this document, Exhibit 15, do you have any documents that back this 15 up, this pattern that you showed here?

MR. REISS: Form, argumentative.

17 THE WITNESS: You just have to drive through 18 the street to see where you are going.

19 BY MR. BUCKNER:

20 Q. But in terms of what percentage of cars coming 21 into --

A. I'm not making an assumption.

Q. I have to finish the question. You have to 24 let me finish.

In terms of what percentage of cars coming

Susana Alonso September 06, 2018

Page 142 Page 144 1 into Sunset Harbour from the north on Alton Road will A. Yes. 1 go to the garage versus using one of the other streets 2 Q. What? to look for street parking? Do you have any opinion on A. Garage, vacant properties. 4 that? Q. Vacant properties and a garage? 5 5 A. I'm not making an assertion as to volume. A. Yes. Some sort of -- it used to be a repair 6 Q. You are just showing one possible route to the garage building. 7 7 Q. Okay. garage. 8 8 A. Yes. A. A couple of empty ones. 9 9 Q. And from the south, these are all just Q. So there is vacant lots and small buildings on possible routes, but you're not making any assertion as 10 it. 10 11 to volume. 11 A. Yes. 12 A. I'm not making any assertion as to volume. 12 Q. So as far as you know, how many people are 13 Q. These are just possible routes. 13 going there on a given day, do you know? 14 A. Right. 14 A. Today, zero. 15 15 Q. So where you show no -- on Bay Road, for Q. Are you sure? example, where you show towing activities, you don't A. No, but I would assume zero. 16 16 17 mean to suggest by not having a red line there that 17 Q. So you are assuming? there is no vehicular traffic --18 18 A. Yes. You can look at the traffic report and 19 find it, but I would assume nobody is going to a vacant A. No. As a matter of fact, the traffic report 20 shows 27 going through there. 2.0 lot. 21 O. Northbound. 21 Q. You said there are buildings there, too. 22 A. Northbound. 22 A. They have been closed for a while. 23 Q. And then let's go to Exhibit 16. If I 23 Q. Have you been there? understood your report, Exhibit 16 reflects what the 24 A. Yes, I have them closed for a while, yes. I know them to be closed for a while. resulting traffic pattern would look like with the Page 145 Page 143 1 construction of the project that is at issue in this Q. So it's your testimony that all the buildings case, right? on the Assemblage are not in use. 3 4 Q. So first of all, you removed the municipal Q. Is there anybody going to the Assemblage lots garage from the diagram. Why? or properties at all at the present time? 6 A. Because it's no longer the terminus of the 6 A. I wouldn't know. I wouldn't know without 7 trips that we are talking about. looking at your traffic report and I haven't looked for Q. It's still the terminus for some trips, right? it right now. 9 9 Q. What you're showing on Exhibit 16 is, I take

- A. Sure, but we are not talking about those right
- 10 now.

13

- 11 Q. So these two diagrams are different things
- 12 because there is no building on Exhibit 15, right?
 - A. There is a building on Exhibit 15.
- 14 Q. Let me strike that. Let me come back.
- 15 The project we are talking about, it isn't on
- 16 Exhibit 15.
- 17 A. Not the current one, no.
- 18 Q. No one is going to the project because it 19 doesn't currently exist.
- 20 A. And there would be a building there or maybe
 - more -- it would be a series of buildings smaller in
- scale, less than 15,000 square feet that don't require
- 23 any parking.
- 24 Q. Do you know what is on the Assemblage right
- 25 now?

- it, the proposed project with the parking garage
- 11 included, correct?

12

13

15

16

- A. Say what again.
 - Q. Exhibit 16 shows the proposed project on the
- 14 Assemblage with the parking garage included.
 - A. Yes, sir.
 - Q. Okay. So on Exhibit 15, you've got people --
- 17 these are not people coming to the Assemblage.
- 18 A. These are people coming to the Assemblage, 19 yes.
- 20 Q. I thought you said you assumed nobody was coming to the Assemblage at present.
- 22 A. Exhibit 15 is not a current condition. It is
- the current condition, but it's the preferred condition 23
- 24 for the future as well.
 - Q. Exhibit 2 on your report says existing

Page 146

- 1 vehicular circulation. Is that not right?
 - A. We wanted to keep it like that, yeah.
- 3 Q. This is how things are now.
- A. And this is how they should remain. That's
- 5 what we are trying to assert. So yes, now and future.
- 6 Q. What you are advocating for is that the
- 7 traffic pattern not change in this area.
- 8 A. Yes, sir.
- 9 Q. And what I'm trying to figure out is, so
- Exhibit 15 shows the traffic pattern as you understand 10
- it at present. 11
- 12 A. Exhibit 15 is, as I understand it, at present,
- 13 yes.

2

- 14 Q. In the Sunset Harbour area.
- A. Yes. 15
- 16 Q. At least as it relates to these specific trips
- 17 on these specific roads.
- 18 A. Yes.
- 19 Q. Exhibit 16 is what you understand the traffic
- pattern will look like if the project is built as 20
- 21 planned.
- 22 A. In its current form, yes.
- 23 Q. And so in terms of Exhibit 15, are any of the
- people accessing Sunset Harbour using those red lines
- that you have there coming to the Assemblage where the

Page 148

Page 149

- Q. Exhibit 15 shows people coming into Sunset
- Harbour for any purpose.
- A. Well, for purposes of uses that don't have any
- parking on their site. It excludes Publix, it excludes
 - Fresh Market.
 - Q. So now we have a higher level of detail and I
 - appreciate that. Just so I understand, Exhibit 15
- shows people coming into Sunset Harbour who are going
- 9 to patronize businesses that don't have their own 10
 - parking.

11

13

19

23

24

- A. That don't have separated parking, yes.
- 12 Q. And what do you mean by separated parking?
 - A. Nothing. Misspoke. It just means parking
- 14 that is dedicated for just them.
- 15 Q. So what you were trying to represent in
- Exhibit 15 is the movement of traffic into Sunset 16
- 17 Harbour by people who are going to businesses that
 - don't have their own parking.
 - A. Yes.
- 2.0 Q. In Exhibit 16, you are trying to show the
- movement of traffic into Sunset Harbour for people who 21
- 22 are coming to the project.
 - A. Yes.
 - Q. But not all traffic into Sunset Harbour.
- 25 A. Not all, right.

Page 147

- project is going to be?
- A. Are we are back to 15?
- 3 O. Yes.
- 4 A. Yes.
 - O. Some are?
- 6 A. Yes.

5

7

- Q. Okay. And it's your or is it your testimony
- then that all the people coming to the Assemblage at
- 9 present park in the municipal garage?
- 10 A. Again, assuming that some people are coming to
- 11 the Assemblage?
- 12 Q. Well, that's what I just asked you.
- A. I wouldn't know. If anybody that is coming to 13
- the Assemblage right now, they would have to park in
- 15 the garage or some street parking, some form of street
- 16 parking.

19

- 17 Q. But in terms of whether anybody is coming to
- 18 the Assemblage coming now, you don't know.
- 20 Q. Okay. Exhibit 16 is with the Assemblage

A. I wouldn't know, no.

- built, but it is obviously different because -- well,
- 22 strike that.
- 23 Exhibit 15 shows people coming into Sunset
- Harbour for any purpose, correct?
- 25 A. Exhibit 15 shows what?

- Q. Okay.
- A. Yes, exactly.
- Q. And so help me understand. You have an arrow
- northbound on West Avenue crossing the, is that a
- 5 canal?

10

15

18

- 6 A. Yes.
 - Q. Crossing the West Avenue bridge over the canal
- in Exhibit 16, but going north past the project.
- - Q. So that's not actually coming to the project.
- A. Right. It would be -- I think a little arrow
- got erased. It's a way into the neighborhood, but a
- little arrow got erased as a turning right there.
- 14 Q. You mean turning left to go to the project.
 - A. Yeah. Left.
- 16 Q. So you're saying people would come up West and
- 17 make a left somewhere --
 - A. On 18th.
 - Q. But you didn't represent it on here.
- 20 A. It should have been there.
- 21 Q. And if I'm correct that the ingress and egress
- to the garage has now been changed in the newest report
- to a right-hand entrance and a right-hand exit, that
- 24 would change your analysis here, wouldn't it?
- 25 A. Somewhat. It would still put all the traffic,

22 place where you mixing them up on purpose, the conflict

Q. Okay. The City of Miami Beach designated the

is more likely to arise.

Assemblage lot as CD-2, right?

	D 150		D 150
1	all the volume on it would just change it slightly	1	Page 152 Q. What I'm asking you is how much additional
2	on the geometry, not so much.	2	traffic would there be if people circulating looking
3	Q. You wouldn't have cars coming north on Bay and	3	for parking if we built a 120,000 square foot
4	making a left going into the garage, right?	4	A. That's a great question for your traffic
5	A. Right, but they would be coming through the	5	engineer.
6	building. So it would still go through the Bay area,	6	Q. You have no data on that.
7	the block between 18th and Dade Boulevard.	7	A. I would have no opinion on that. I would look
8	Q. On Bay?	8	for data based on the traffic engineer.
9	A. Right.	9	Q. But you have no data or opinion on that.
10	Q. But just southbound.	10	A. Or maybe a psychologist as whether people
11	A. Yes. They would be going in a different	11	choose to look for parking before they actually go into
12	direction, assuming that's all.	12	a parking garage. I don't really have an opinion on
13	Q. Okay. That is all I'm asking. Have you done	13	that.
14	any analysis similar to Exhibit 16 for what the	14	Q. You don't have an opinion on any of that.
15	circulation pattern would look like if instead of	15	A. No.
16	building the proposed project, the owners of this	16	Q. Why don't we do this. It 2:30. Let's take a
17	property built 120,000 square feet of commercial space?	17	break and let me see if I can streamline what I got
18	A. Without parking?	18	left.
19	Q. Without parking.	19	MR. REISS: Sure.
20	A. Yes, it would look like that.	20	(Thereupon a recess was taken in
21	Q. It would look like what?	21	deposition, after which the
22	A. Exhibit 15.	22	deposition continued as follows:)
23	Q. And what's your basis to conclude that?	23	BY MR. BUCKNER:
1 04	A Thora rould be no terminim to the tring there	24	O Bods on the control Way and the little and the
24	A. There would be no terminum to the trips there,	44	Q. Back on the record. You are still under oath.
25	so no trips would finish at the Bay Road area. They	25	Q. Back on the record. You are still under oath. A. Yes, sir.
	so no trips would finish at the Bay Road area. They		A. Yes, sir.
	_		· .
25	so no trips would finish at the Bay Road area. They Page 151	25	A. Yes, sir. Page 153
25	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere.	25	A. Yes, sir. Page 153 Q. So we took a little break and I took an
25 1 2	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road?	25 1 2	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what
25 1 2 3	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit.	25 1 2 3	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a
25 1 2 3 4	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces?	25 1 2 3 4	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new
25 1 2 3 4 5	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little.	25 1 2 3 4 5	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in
25 1 2 3 4 5 6	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many?	25 1 2 3 4 5 6	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there.
25 1 2 3 4 5 6 7	so no trips would finish at the Bay Road area. They Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot.	25 1 2 3 4 5 6 7	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean?
25 1 2 3 4 5 6 7 8	page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked?	25 1 2 3 4 5 6 7 8	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that.
1 2 3 4 5 6 7 8 9 10	page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there	25 1 2 3 4 5 6 7 8 9	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight.
25 1 2 3 4 5 6 7 8 9 10 11 12	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy.	25 1 2 3 4 5 6 7 8 9 10 11 12	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph,
25 1 2 3 4 5 6 7 8 9 10 11 12 13	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay.	25 1 2 3 4 5 6 7 8 9 10 11 12 13	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and
1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited.	1 2 3 4 5 6 6 7 8 9 10 11 12 13 14	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with
25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know whether some of the people coming to 120,000 square	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about Sunset Harbour, right?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know whether some of the people coming to 120,000 square feet of commercial space would try to find parking.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about Sunset Harbour, right? A. In general.
25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know whether some of the people coming to 120,000 square feet of commercial space would try to find parking. A. I'm sure. I'm positive some would.	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about Sunset Harbour, right? A. In general. Q. And what does that mean?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know whether some of the people coming to 120,000 square feet of commercial space would try to find parking. A. I'm sure. I'm positive some would. Q. And that would create circulation around the	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about Sunset Harbour, right? A. In general. Q. And what does that mean? A. That when you are mixing different uses and
25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Page 151 would all finish elsewhere. Q. Is there street parking on Bay Road? A. A little bit. Q. How many spaces? A. Very little. Q. How many? A. I don't know, but there is not a lot. Q. Have you checked? A. Not lately. I haven't counted them, but there is a lot of driveways and a lot of areas that are loading zones, so I tried to park there in the past. It's not easy. Q. But there is some street parking on Bay. A. Limited. Q. Okay. And as you sit here, you don't know whether some of the people coming to 120,000 square feet of commercial space would try to find parking. A. I'm sure. I'm positive some would.	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Yes, sir. Page 153 Q. So we took a little break and I took an opportunity two read your new report I want to see what you covered that I haven't looked at before. I have a few questions for you. On page eight of your new report, we marked it as Exhibit 6. It should be in your pile there. A. My neat pile you mean? Q. You did a nice job with that. A. Page what? Q. Eight. A. Eight. Q. All right. You say here on the top paragraph, you say the mixture of residential, commercial and industrial uses is a delicate urban condition with potential for use conflict. You are talking about Sunset Harbour, right? A. In general. Q. And what does that mean?

24

Q. And it would create circulation around the

A. A little. That's just natural. There are

25 people looking for parking all the time.

22

24

23 area on Bay.

Page 156

Page 154 1 diagram, figure two. You say thus, at present, there 1 A. CD-2, yes. 2 Q. One of the things that can be built on CD-2 is is little relative use of Bay Road for entering the 3 mixed use, residential and commercial. neighborhood and most likely most of the activity 4 A. Yes. reflected on the study can be reasonably attributed to 5 Q. So one presumes that the City, when it made the existing businesses on Bay Road. You are talking those new zoning designations, took that into account, about the Traf Tech study. 6 7 right? A. Yes, and also the Alcoholics Anonymous site 8 8 and there are a couple of more businesses on Bay Road. A. Yes. 9 9 Q. In terms of your assertion that most of the Q. And those new designations occurred, that was in 1989, right? traffic -- that most of the traffic activity on Bay is 10 10 11 A. Yes. likely activity reflected by people going to those 12 Q. Further in that same paragraph you say the use 12 existing businesses. 13 13 of the municipal parking garage at 1900 Bay Road as a Do you have any data that backs that up? 14 14 main vehicle storage facility keeps the commercial A. Most likely, I mean the block between 18th and 15 trips to the neighborhood concentrated in the periphery 15 Dade Boulevard. 16 where the mostly the commercial and residential 16 Q. On Bay. corridors, Purdy Avenue and 20th Street are located. 17 17 A. Yes. What is that based on? 18 18 Q. And what I'm asking you is do you have any 19 A. The comprehensive land use map and the zoning data that backs up that those cars going up and down 20 that street are going -map. 20 21 21 A. No, that's why I say most likely. Q. Okay. But you're talking here about commercial trips. What data are you relying on to say 22 Q. Okay. So you don't have any data. 23 that most of those commercial trips are kept on Purdy 23 A. We are assuming. We are assuming from the -and 20th? also from the traffic report we are assuming that most 24 25 A. That's where most of the commercial activity of those don't go through. Page 155 1 is. 2 Q. But have you done any traffic analysis --A. I don't do traffic analysis. traffic engineer and me, yes. Q. So in terms of, that's where the commercial

activity is, but in terms of where the cars are going, 6 you don't know. 7 A. The cars are going where the parking is. Q. You and I have discussed over the course of 9 today there is street parking throughout Sunset 10 Harbour, right? 11 A. Limited. 12 Q. Okay. But there is some. A. Some, but if you are asking where 500 cars are 13 14

going, 500 cars are not parking on the street. 15 Q. Okay. I understand they are parking in the garage, but at any one time, can you tell me how many 17 people are going directly to the garage versus how many 18 are using the streets and looking for parking?

19 A. I'm sure whoever finds a parking spot on the 20 street they use it. Other than that, they go to the 21 garage.

22 Q. But in terms of how much of each, you can't 23 quantify.

24 A. No, we couldn't.

25

Q. You say further down right before your

Page 157 Q. Okay. And that's an assumption you're making.

A. It's an assumption we are both making, the

Q. Okay. First of all, as you sit here, you don't know whether people currently are using Bay Road to park on. Some people could drive there to do that, correct? Just the limited street parking.

A. All five of them? I mean, there is very few parking spaces on Bay Road. 10

Q. Are there five?

11 A. No, I don't really know the exact number. I 12 think if there is -- no, I don't really know the exact 13 number.

14 Q. Okay. You don't know how many people are using Bay to transit other parts of Sunset Harbour.

16 A. Again, looking at the traffic report submitted 17 by you guys, very few.

Q. Okay.

A. At present.

20 Q. And that's your analysis of the traffic

21 report.

18

19

22 A. That's my interpretation of the traffic

23 report, yes.

24 Q. Okay. Any other data besides the traffic report?

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Page 158 Page 160 A. No, the traffic report was sufficient for that 1 contracts with the City. 1 2 one. A. Yes. 3 Q. On page nine of your report, you're showing Q. I'm asking you what that's based on. the traffic pattern, as you discussed it with me, what A. It stands to reason that adding 1,000 trips on you hypothesized the traffic pattern will be going to 5 a small road. the project if it's built, correct? Q. Okay. 7 A. Yes. 7 A. Would create conflict. Q. But this is obviously only if people can turn Q. Well, do you know if you added that 1,000 8 9 into the garage, both making a left and right 9 trips to that road, 1,054, do you know how that road obviously, right? usage would compare, for example, to Purdy. 10 11 A. Yes. The geometric configuration would be a 11 A. It depends on -- can you repeat the question? little different if different turns were not allowed, 12 12 Q. Sure. Do you know how that 1,054 additional 13 but it still would suffice as to most of the trips 13 trips a day compares to the total trips per day on would be on Bay Road. 14 14 Purdy? Q. Okay. How much traffic per P.M. peak hour 15 15 A. In what regard? would be coming to our garage? 16 Q. Well, is it more or less than Purdy handles? 16 17 A. It's not something that -- it has no bearing. A. According to your traffic guy? 17 Q. Yes. Do you know? 18 18 Q. So you don't know. 19 19 A. It doesn't matter. A. I can look it up. O. Okay. Q. Well, I understand you may think it doesn't 2.0 2.0 21 A. It's not something I have off the top of my matter. Do you know or not? 21 22 head, but I'm sure it's in your traffic report. 22 A. Do I know how it compares to what Purdy is 23 Q. Okay. That's fine. So you would rely on 23 doing right now? It's probably more than what Purdy is whatever is on the traffic report. 24 handling right now. 24 25 25 A. Oh, for sure. Q. Okay. And that's based on what? Page 159 Page 161 1 Q. You say here it's your professional opinion A. The traffic report. What does the traffic that this additional number of additional daily trips report say? would create a significant disservice to the safe and Q. I'm asking you. orderly operations of Beach Towing as required by their A. I don't know. contract with the City. Q. As you sit here, you don't know --6 What's that conclusion based on? A. I did not --7 A. Can you point me again to where it was? Q. Let me finish the question before you get to 8 Q. Sure. We are on page nine of your report. 8 answer. 9 A. I'm a visual person. I need to see it. 9 As you sit here, you don't know whether the 10 O. Okay. additional trips that are thought to be coming to this 11 A. The new report. project will make the traffic on Bay Road more 12 Q. It's the new one. voluminous or less voluminous than the traffic on 13 13 A. Exhibit 6 you said? Purdy, do you? 14 Q. Yes. You had it like a second ago. 14 A. The traffic on Purdy currently or the traffic 15 A. I know. Yes, right here. Can you repeat the 15 on Purdy then? 16 page number, please. 16 Q. Let's go with the traffic on Purdy in 2020. 17 17 Q. Right before the next bold subject heading. A. I didn't look at that. 18 A. That's page nine? 18 Q. How about the traffic on Purdy currently? A. I didn't look at that either. 19 Q. Yes. You say it's your professional opinion 19 20 the addition of 1,054 daily trips on Bay Drive, and I 20 Q. And when you say create a significant 21 assume you meant Bay Road? disturbance, what does that mean? A. Yes. 22 22 A. Disturbance. Problem. 23 Q. Between Dade Boulevard and 18th Street will 23 Q. Disturbance, does that have a definition create a significant disturbance to the safe and 24 within planning? orderly operations of Beach Towing as required by their 25 A. It's common. It's a common word.

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Page		n	_

- Q. Okay. I'm trying to find out, it's not a 1
- 2 traffic term, right?
- 3 A. It's not a traffic term.
- Q. It's not a planning term.
- 5 A. No, it's a common term. I'm trying to write
- 6 in lay terms.
- 7 Q. That's fine. So what amount of additional
- traffic on Bay would not causes a significant 8
- 9 disturbance to Beach Towing?
- A. Obviously as little as possible. There is 10
- 11 no --
- 12 Q. So you're saying any traffic at all on Bay
- 13 Road would be a disturbance to Beach Towing.
- A. For sure. I'm sure they would prefer to have 14
- no traffic on Bay. I'm sure they would prefer the road 15
- to be entirely closed. 16
- 17 Q. Okay. But I'm asking your professional
- 18 opinion. Is it your professional opinion that Bay Road
- 19 can handle no additional traffic without disturbing
- 20 Beach Towing?
- 21 A. It's my opinion that there is already some
- 22 disturbance to Beach Towing from current conditions.
- 23 Any additional traffic would cause more disturbance.
- 24 There would be an increase in disturbance.
- 25 Q. So any additional traffic on Bay Road at all

Page 164

- 1 meaning 1,054 cars. They are meaning somewhere between
- 950 and 1,200. There is a lot of variable in here.
 - Q. I'm asking you something different.
 - A. It's a difference in the way you're asking.
 - Q. You rendered an opinion that the 1,054 daily
- trips, and is that the way traffic engineers analyze
- 7 things, based on daily trips?
 - A. Traffic engineers like to put in exact
- 9 numbers.
 - Q. But do they work off of daily trips or peak
- hour trips? 11
- 12 A. They work out of both. Sometimes out of one
- 13 and sometimes a combination of the two and they make
- 14 extrapolations based on both.
- 15 Q. You only listed the total daily trips here.
 - A. Right. That's what he put in his report as
- 17 well. He also talked about peak hour.
- Q. Is there any of his chart that show daily 18
- trips, any of his maps that show daily trips? They are
- 20 all peak hour trips, right?
 - A. That's when he took his measurements, but yes,
- 22 he does talk about daily trips as well.
- 23 Q. What I'm asking you is, what amount of
- additional daily trips on Bay Road between Dade and
 - 18th Street would not create a significant disturbance

Page 163

- would be an additional disturbance to Beach Towing.
- 2 A. Sure.
- 3 Q. Your opinion is there should be no additional
- traffic on Bay Road of any kind.
- 5 A. That's not my opinion. That's not what I
- 6 said.
- 7 Q. What is your opinion on that?
- 8 A. I don't have -- it's not about volume again.
- 9 It's how that volume happens.
- 10 Q. Well, you just said any additional traffic on
- 11 Bay Road would cause a disturbance to Beach Towing.
- 12

13

23

- Q. What I'm asking you is, is it your opinion
- 14 then that there should be no additional traffic on Bay
- 15 Road to avoid a disturbance to Beach Towing?
- 16 A. No, that's not my opinion.
- 17 Q. Okay. So even one additional car per hour,
- 18 would that create a significant disturbance to the safe
- 19 and orderly operation of Beach Towing?
- 20 A. That probably would be negligible and probably
- variable. When you are talking about statistics, it's

Q. That's what I'm trying to figure out.

- 22 hard to really ascertain one car versus 10 cars.
- 24 A. This is all statistics. They are talking
- about exact numbers of cars, but they are not really

- Page 165
- to the safe and orderly operation of Beach Towing?
 - A. That's not a question I would answer.
- Q. Okay. So you just think 1,054 would cause a
- significant disturbance.
 - A. Sure.
- Q. But as to whether 500 would or would not, you
- don't have an opinion.
- 8 A. Probably 500, too. That would probably be a
- large number as well.
 - O. How about 200?
- 11 A. Probably that would cause a little bit or a
- 12 lesser disturbance.
 - Q. Okay. That's 200 over a 24 hour period.
- 14 A. That's quite a few cars.
- 15 Q. How many cars per hour is that?
 - A. It has no bearing. It could be all
- 17 concentrated in one hour. It can all spread out
 - through the day.
- 19 Q. When you say 1,054 trips --
- 20 A. They are not spread out evenly throughout the
- 21 day.
 - Q. Okay. When are those --
- 23 A. That's the crux of the question.
 - Q. I'm asking you.
 - A. That's what you would read in your traffic

September 06, 2018 166 to 169 Page 166 Page 168 A. Again, I'm sure they would prefer to have zero 1 report. 2 Q. But it's your professional opinion. I'm not trips on that street, but that's not realistic. concerned about Mr. Vargas' opinion at this point. I'm Q. Right. In your professional opinion, which is concerned about yours, and what I'm asking you is, you what you're offering here. It's the only thing you can 5 say those 1,054 additional daily trips would cause offer here. significant disturbance. What time of the day do those In your professional opinion, forget what 6 6 7 trips occur? Beach Towing would like. I want to know your A. It would be reflected on the traffic report. professional opinion. What number of daily trips would 8 9 9 not create a significant disturbance? Q. So as you sit here, you don't know. 10 A. I can read it in the traffic report. It's not MR. REISS: Asked and answered, argumentative. 10 something I have memorized or it's something that I 11 THE WITNESS: That's a fuzzy line. There is 11 12 have reflected on my report. 12 not a magic number. 13 13 Q. Let me ask you this differently. If it was BY MR. BUCKNER: 200 daily trips on the same distribution as those 14 14 Q. So you can't answer that for me. 1,054, would that be a significant disturbance? 15 A. I don't think anybody could. 15 A. It would probably be a lesser disturbance. Q. Okay. But you can't. 16 16 17 Q. But would it be a significant disturbance? 17 A. Certainly not. A. It would be lesser disturbance. MR. REISS: Can I take a short break? 18 18 19 19 MR BUCKNER: Yes Q. I understand, but you're not answering my question. You used the term significant disturbance 2.0 (Thereupon a recess was taken in 20 21 and I'm trying to figure out where that line is. 21 deposition, after which the A. It's a fuzzy line. You are trying to look for 22 22 deposition continued as follows:) 23 a line where it's really fuzzy. It depends on a lot of 23 BY MR. BUCKNER: variables. 24 24 Q. Okay. I'm trying to bounce around a little 25 Q. What variables does it depend on? 25 because I want to clear up a few things. Page 167 Page 169 1 A. It depends on the time of the day, it depends Am I correct that a conditional permit is 2 on -required for all projects in the City of Miami Beach 3 Q. Okay. But you're the expect here and it's over 50,000 square feet? 4 your opinion --A. Not true. 5 A. I'm not a traffic expert, though. I'm a Q. What parts of the City is that required? planning expert. So my concern is more with how -- not A. Sunset Harbour. 7 so much with specific numbers, which I'm taking your Q. Just Sunset Harbour. traffic expert numbers. I'm not contesting his A. No, and other places, too, but I'm not sure. numbers. I'm just using them to infer other things. Q. Okay. Sunset Harbour and other parts of the 10 Q. What I'm asking you is, am I reading your City, but not the entire City. 11 statement in your report incorrectly? 11 A. I don't think in the entire City, no. 12 A. No, you're not. 12 Q. But are you sure? A. No, I'm not sure. I have to check the code 13 Q. So it is your professional opinion that the 13

A. Again, it depends if you're only talking for 24 Beach Towing. 25 Q. I'm asking for your professional opinion.

14 addition of 1,054 daily trips on Bay Road between Dade

Boulevard and 18th Street will create a significant

Towing as required by their contracts with the City.

daily trips on that same roadway would not create a

That is your expert professional opinion?

A. Yes.

significant disturbance?

disturbance to the safe and orderly operations of Beach

Q. Okay. What I'm asking you is, what number of

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A. I only read the code specific to Sunset

Associates requires additional relief from the City of

Q. And this is your analysis of the proposal

about the development proposal by Sunset Land

Miami Beach boards to be approved.

Q. Here in the last part of your report, you talk

for that.

Harbour.

O. Okay.

A. Yes.

under the code.

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Page 170 Page 172 1 July, which I believe has changed slightly. Q. I see. I misunderstood. Your assessment of 2 Q. Okay. So you analyzed the proposal as of July their July plans were it doesn't provide enough and what you did was you applied the code to it. parking. 3 4 A. Yes. A. Yes. 5 5 Q. So, if you would, summarize for me what you Q. How much does it provide? think. Let me break this into pieces. A. It provides only parking for the residential 6 6 7 As you sit here, based on your analysis of the portion. plan submitted by Sunset Harbour -- strike that. 8 Q. And how much do you think they shall have 9 As you sit here having analyzed the plan 9 under the code? submitted by Sunset Land Associates back in July, the A. They should provide parking for all the 10 10 plans you looked at. By the way, are those plans in additional commercial areas. I haven't calculated the 11 12 the materials you gave me on the flash drive? number, but enough for 19,000 square feet of commercial 13 A. Yes. that add some restaurants. 14 14 Q. Okay. So whatever plans --Q. But as you sit here, you haven't calculated 15 A. Whatever is in there is what I saw. 15 what that number is? 16 Q. Let's take this in pieces. With regard to A. No, but significantly more parking that it's 16 17 those plans what, if anything, do you think is 17 currently serving. incorrect about them? 18 18 Q. What else about the plan that you reviewed 19 A. Incorrect? Define incorrect. 19 cannot be approved in current form? 2.0 Q. I'm trying to find a way to ask this. I want A. The height and the parking. 20 Q. So when you say the height, it's the five 21 to use your phrase. 21 Did you see anything in those plans that you 22 22 feet. 23 thought could not be approved because it doesn't comply 23 A. Yes. with the code? 24 24 Q. And the parking is the additional spaces. 25 25 A. Right now, yes. A. Yes. Page 171 Page 173 1 Q. Tell me what they are. Q. That we just talked about. Other than that, A. It would need additional relief from the City. anything else? 3 Q. What would they need? MR. REISS: Form. 4 A. They would need approval from the planning THE WITNESS: Define anything else. board for sure. BY MR. BUCKNER: 6 Q. Okay. 6 Q. Okay. 7 A. And the design review board. A. I didn't find anything else. 8 Q. Okay. What else? Q. You didn't find anything else that would not 9 A. And that would include the five extra feet of comply with the current code. 10 height. 10 MR. REISS: Form. 11 Q. So they would have to get five extra feet of 11 THE WITNESS: Not in the previous version, no. 12 height approved by those boards. 12 BY MR. BUCKNER: A. A-ha. 13 13 Q. I know you haven't reviewed the current 14 Q. Is that a yes? 14 version. I'm just asking about the one you reviewed. 15 A. Yes. That's a yes. 15 A. There has been a lot of versions. 16 Q. What else? 16 Q. You say on page 10 of your report, in order to 17 A. Let me remind myself what else. 17 be approved, the project would have to add a minimum of 18 Q. Sure. 44 additional parking spaces to satisfy its parking 19 A. Also the fact that they are not proposing any 19 requirements. parking on the site right now, I don't believe it's 20 20 A. I get -- that would be based on the previous correct. I think the town code requires all parking to numbers of the -- the previous numbers of the proposal, 22 be provided, including for all the commercial parcels. 22 so not on the current proposal, yes.

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25

the July plans.

Q. I'm only asking about the one you reviewed,

A. Yeah, there would be. I guess I did calculate

23

24

Q. The current plans have a parking garage.

residential part. It's not sufficient parking.

A. It's only providing required parking for the

	DCPCCIIDCI	-	0, 2010
1	Page 174 it.	1	Page 176 Have you previously reviewed this?
2	Q. And can you tell me how you came up with that	2	A. I read it, yes.
3	number?	3	
4	A. Following the parking requirements for	4	Q. Thank you. And I asked you what, if anything, you disagreed with in Exhibit 17.
5	commercial and restaurants.	5	A. I don't disagree with it.
6	Q. And you also, in the course of your expert	6	Q. Okay. And you may have answered this.
7	work in this case, you reviewed Mr. Vargas' declaration	7	Forgive me if you did. We were talking a moment ago about the plans you reviewed, the July plans for the
8	with regard to the three hypotheticals	8	
9	A. Yes.	9	project.
	Q. One is the current I guess it's three hypotheticals. You reviewed that?	11	A. A-ha. Approximately
11			Q. I'm not holding you. Whatever ones in the
12	A. I reviewed that, yes.	12	flash drive, that's the one you read, right?
13	Q. With regard to Mr. Vargas' expert declaration,	13	A. Yes.
14	do you have any disagreement with his analysis?	14	Q. And I wasn't sure if I asked you this or not,
15	A. No, not necessarily with the analysis.	15	but you brought up it's got to get planning board and
16	Q. Do you have any disagreement with it at all?	16	design review board approval.
17	A. I have a disagreement with the underlying	17	A. Yes. Sometimes they go together, but yes.
18	premise.	18	Q. They need the five extra feet of height
19	Q. Which is?	19	approved.
20	A. Two of the two of the cases had no parking	20	A. Yes.
21	on them. Let me go back. Can you point to me where it	21	Q. And they need a minimum of 44 additional
22	is?	22	parking spaces.
23	Q. Actually, I don't think we have	23	A. Yes.
24	A. I want to be specific.	24	Q. Other than those things, is there anything
25	Q. That's the one thing I may not have a copy of.	25	else that in your reading of the plans that the project
	Page 175		Page 177
1	Let's go off the record.	1	needs, but does not have?
2	Let's go off the record. (Discussion off the record.)	2	needs, but does not have? MR. REISS: Form.
2 3	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17.	2 3	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't
2 3 4	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17. (The document referred to	2 3 4	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't looked at. There are things I haven't considered.
2 3 4 5	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17. (The document referred to was thereupon marked as	2 3 4 5	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't looked at. There are things I haven't considered. Like those are the big ticket items.
2 3 4 5 6	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17. (The document referred to was thereupon marked as Plaintiff's Exhibit Number	2 3 4 5 6	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't looked at. There are things I haven't considered. Like those are the big ticket items. BY MR. BUCKNER:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17. (The document referred to was thereupon marked as Plaintiff's Exhibit Number 17 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Mr. Vargas' report. A. I'm ready when you are. Q. A couple of things about this. We talked earlier today, you said that under 130-33 of the code, the Assemblage, at least theoretically could have up to	2 3 4 5 6 7 8 9 10 11 12 13 14	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't looked at. There are things I haven't considered. Like those are the big ticket items. BY MR. BUCKNER: Q. I just want to know if there is anything I missed. MR. REISS: Form. THE WITNESS: I'm sure there is a lot of things you missed, but not that I can think of right now. BY MR. BUCKNER: Q. Okay. And is there anything well, strike that.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Let's go off the record. (Discussion off the record.) MR. BUCKNER: Exhibit 17. (The document referred to was thereupon marked as Plaintiff's Exhibit Number 17 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Mr. Vargas' report. A. I'm ready when you are. Q. A couple of things about this. We talked earlier today, you said that under 130-33 of the code, the Assemblage, at least theoretically could have up to 120,000 square feet of commercial on it.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	needs, but does not have? MR. REISS: Form. THE WITNESS: There are some things I haven't looked at. There are things I haven't considered. Like those are the big ticket items. BY MR. BUCKNER: Q. I just want to know if there is anything I missed. MR. REISS: Form. THE WITNESS: I'm sure there is a lot of things you missed, but not that I can think of right now. BY MR. BUCKNER: Q. Okay. And is there anything well, strike that. Are there any in talking about your
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	Page 178		Page 180
1	Q. Is there anything that would explain how	1	A. Yes, sir.
2	one strike that.	2	Q. And your experience working for the City of
3	Is there any reference material, scholarly	3	Miami Beach?
4	literature or the like that explains how one does the	4	A. Yes.
5	circulation analysis that you were describing before?	5	Q. And also your personal presence in the City of
6	A. Again, you do it in architecture school, you	6	Miami Beach?
7	do it in urban planning school. That's one thing we	7	A. Yes.
8	get trained to do, yes. So I'm sure there is plenty	8	MR. BUCKNER: Objection, leading.
9	written out there.	9	MR. REISS: It's cross.
10	Q. But as you sit there, nothing comes to mind?	10	MR. BUCKNER: It's your witness.
11	A. No, I wouldn't be referencing one particular.	11	MR. REISS: You called the witness here today.
			-
12	It's more of a scale than anything.	12	I'm taking cross.
13	Q. Okay. What kind of continuing education do	13	BY MR. REISS:
14	you take to keep up with those skills?	14	Q. You see where the Beach Towing property is?
15	A. I'm required to take continuing education.	15	A. Yes.
16	Q. What is the requirement?	16	Q. It says Beach Towing.
17	A. I forget. 36 credits of this and I have to	17	A. Yes.
18	take some planning law and I have to some	18	Q. So there is a building?
19	transportation points. It's a long list.	19	A. Yes.
20	Q. And is that required by your job or required	20	Q. And then there is a paved storage area?
21	by a license?	21	A. Yes.
22	A. My certification. My certification.	22	Q. There is no vacant lot there at all, is there?
23	Q. As a planner.	23	A. Oh, no.
24	A. As a planner, yes.	24	Q. It's not vacant land as defined by the code,
25	MR. BUCKNER: Okay. I actually have no more	25	is there?
	Page 179	1	Page 181
1	questions.	1	A. No, sir.
2	questions. CROSS EXAMINATION	2	A. No, sir. Q. In fact, the building itself is part of the
2 3	questions. CROSS EXAMINATION BY MR. REISS:	2 3	A. No, sir. Q. In fact, the building itself is part of the towing business, correct?
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	Dependen		<u> </u>
	Page 182 dated August 30th, 2018 that Beach Towing's use of the	1	Page 184 conflict may arise.
2	property located at 1349 Dade Boulevard is a legal	2	Q. Is traffic a concern in the planning
3	nonconforming use?	3	department in the City of Miami Beach?
4	A. Yes, sir.	4	A. Yes, sir.
5	Q. Do you agree with that?	5	Q. Was it when you worked there?
6	A. I agree with it.	6	A. Yes, sir.
7	Q. And in your capacity as an expert planner, do	7	Q. As a city planner, is traffic a consideration?
8	you agree with the determination of Thomas Mooney on	8	A. It consumes us.
9	August 30th, 2018 that Beach Towing's use of the	9	Q. Is that one of the primary issues a planner
10	property located at 1349 Dade Boulevard is a legal	10	deals with?
11	nonconforming use?	11	A. Yes.
12	A. Yes, sir.	12	Q. And in the ordinary course in your profession
13	Q. If I understand your testimony, you are	13	as an expert in and planning, do you ordinarily rely on
14	currently the planner for what city?	14	traffic reports?
15	A. The town of Miami Lakes.	15	A. Yes, sir.
16	Q. And so if I understand your testimony, you	16	Q. Do you orderly rely on reports and read
17	hold the position analogous to Thomas Mooney, but up in	17	reports like the ones produced by Mr. Vargas in this
18	Miami Lakes. Is that correct?	18	case?
19	A. Yes, sir.	19	A. Yes, sir.
20	Q. Do you consider yourself to be an expert in	20	Q. You mentioned do we have his whole report
21	city planning, correct?	21	here? Do you have it printed out with his appendix?
22	A. Yes.	22	A. Yes.
23	Q. I think you were talking during your direct	23	Q. You mentioned and we were talking about
24	examination with Mr. Buckner about what you did in 2010	24	whether you found any mistakes. Is that the new report
25	to determine what other companies pre-1989 were in the	25	or the old report? Which date is that?
1	Page 183 C-5 and C-6 district doing towing. Do you remember	1	Page 185 A. This is the March, 2018 and I have the new one
2	that?	2	in another folder. The new one is in this folder.
3	MR. BUCKNER: Object to form.	3	Q. With the appendix?
4	THE WITNESS: Yes.	4	Q. With the appendix:
5			A Veg
6	MR REISS: What's the matter with the form?	5	A. Yes.
	MR. REISS: What's the matter with the form? MR. RUCKNER: I think you are	5	Q. Can you go to Vargas 557?
	MR. BUCKNER: I think you are	6	Q. Can you go to Vargas 557? A. 557 you said?
7	MR. BUCKNER: I think you are mischaracterizing the testimony.	6 7	Q. Can you go to Vargas 557? A. 557 you said? Q. Yes. What's your understanding of that
7 8	MR. BUCKNER: I think you are mischaracterizing the testimony. BY MR. REISS:	6 7 8	Q. Can you go to Vargas 557? A. 557 you said? Q. Yes. What's your understanding of that document?
7 8 9	MR. BUCKNER: I think you are mischaracterizing the testimony. BY MR. REISS: Q. Did I mischaracterize your testimony?	6 7 8 9	Q. Can you go to Vargas 557? A. 557 you said? Q. Yes. What's your understanding of that document? A. It's a diagram of an intersection.
7 8	MR. BUCKNER: I think you are mischaracterizing the testimony. BY MR. REISS: Q. Did I mischaracterize your testimony? A. Okay. A little bit.	6 7 8	Q. Can you go to Vargas 557? A. 557 you said? Q. Yes. What's your understanding of that document?
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. BUCKNER: I think you are mischaracterizing the testimony. BY MR. REISS: Q. Did I mischaracterize your testimony? A. Okay. A little bit. Q. Okay. What did you testify to? A. I said we did some research into what previous licenses had existed at the site. Q. Okay. At just that site or at C-5 and C-6? A. Just in that site, yes. Q. Okay. When you worked at the City of Miami Beach in the planning department, was traffic circulation an issue that you dealt with? A. Yes. Q. In what respect? A. I did the when I did parking analysis, one of the things that we looked at a lot was where valet	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Can you go to Vargas 557? A. 557 you said? Q. Yes. What's your understanding of that document? A. It's a diagram of an intersection. Q. It's part of Mr. Vargas' report? A. Yes. Q. And is that some of the data that he relies on to reach his conclusions? A. Yes. Q. Is that accurate, that page? A. No. Q. What's not accurate about it? A. Is says the intersection is not signalized and this intersection happens to have a light on it. Q. Okay. Is that significant? A. Yes. Q. Okay. If it's part of the report, how do you

Page 186 Page 188 Q. I'm asking because I think you mentioned to 1 is that referring to? 1 2 Mr. Buckner that you didn't find any other mistakes in A. It's referring to the same intersection. 3 the report and I don't think you mentioned that. Q. It says what about whether there is a signal? 4 If you go to the previous page, 556. Is that A. It is not signalized. 5 about the same intersection? Q. As a professional planner, you said one of the 6 A. 556 is about the same intersection? It would major issues you deal with is traffic, right? 7 A. Yes. appear, yes. 8 8 Q. And what does it say? Q. Is there anything mysterious about your 9 9 conclusion that if there is more cars on a street, A. Not signalized. 10 Q. So that's wrong, too. there is more accidents? 10 11 A. Yes. 11 A No 12 Q. So the data is flawed in this report. 12 Q. That's something that requires data to --13 13 A. Yes. A. Common knowledge, yeah. 14 Q. So how can you rely on a report when the data 14 Q. Also, we were talking about the -- let's go to is obviously flawed? your report. Actually, let's go to your diagram, 15 A. I have to rely on what I have. 16 Exhibit 15. 16 17 Q. Okay. So you relied on it despite the fact 17 If I understand what you're trying to show that it's flawed. here, this is generally the traffic circulation, in 18 A. I believe so. 19 your professional opinion, that would more often than 2.0 Q. How about as a professional planner in not be followed if they built this project with no general, if you got this on your desk at the City of parking garage, correct? 21 21 22 22 Miami Lakes, would you question the --A. Yes. 23 A. I would question him. 23 Q. And you felt it was in Beach Towing's best 24 Q. Is that something normally a planner does when interest that there not be the parking garage at the not reviewing but when reading --Sunset Harbour project that they are contemplating Page 187 Page 189 1 A. Yes. because that would direct most of the traffic away from Q. -- a traffic report? the road where they are towing trucks. Is that A. Yes. correct? 4 Q. Go to page 548 in Vargas' report. What is MR. BUCKNER: Object to form. 5 THE WITNESS: Rephrase. that? 6 A. Same problem. It's another diagram of an BY MR. REISS: 7 intersection. Q. Okay. It's my understanding that Exhibit 5 is 8 Q. How many intersections does this report intended to demonstrate that if they built their 9 approximately analyze? project without a parking garage component, the 10 A. Five or six. majority of the traffic going to their project would be 11 Q. Five or six and two of them he doesn't know redirected away from Bay Road to the municipal garage. 12 whether or not there is a signal there. 12 A. Yes. A. Yes. 13 13 MR. BUCKNER: Object to form. 14 Q. What intersection is on page 548? 14 BY MR. REISS: 15 A. 548 is the intersection of Dade Boulevard and 15 Q. Is that the conclusion you are trying to 16 Purdy Avenue. depict? 17 Q. To your personal knowledge, there is, in fact, 17 A. That's the conclusion I'm trying to depict, 18 a signal there. 18 yes. 19 A. Yes. I sat at that signal quite a few times. 19 Q. And this is a -- and that's your opinion as a 20 Q. It's just a blatant error. 20 certified planner, correct? 21 A. Yes. 21 A. Yes, sir. 22 Q. So how can you rely on the traffic count if 22 Q. And is it your -- you say in your report they don't know if there is a light there or not? having considered all the materials on page seven of 23 24 A. Yes, exactly. 10, you say adding vehicles to Bay Road and access

Q. The page before that, 547. What intersection

roads around Beach Towing would slow in and out

Page 190 Page 192 1 operations and increase opportunity for accidents to Q. And in this project, it's a proposed garage. complete towing vehicles in privately operated Would your opinion be the same if they were putting a parking lot across the street? vehicles. In conclusion, it is my professional opinion it would serve Beach Towing's interest to restrict or A. Definitely. curtail any parking in its immediate vicinity. 5 5 Q. Would your opinion be the same if they were 6 A. Yes. putting a storage facility across the street? 7 7 Q. And when you say any parking, would you A. Yes, sir. include curtailing a parking lot across the street? 8 8 Q. Would your opinion be the same if they were 9 9 A. Yes. putting a tow truck company across the street? 10 Q. Would that include a storage in a facility 10 A. Yes. across the street? 11 11 Q. That's because the terminus of the trips, to 12 A. Yes. use whatever language, I don't know if it's parking or 13 Q. Would that include another tow truck company if it's traffic or planning, would be across the across the street? 14 14 street. 15 15 A. Oh, definitely, yes. A. Yes. 16 Q. And has there been any change in circumstances 16 Q. So the more Beach Towing can keep the terminus in the neighborhood since 2003 to today that would 17 17 away from across the street on Bay Road where there is change your opinion in that regard? no other exit between 18th and Dade Boulevard, the 18 19 A. No, sir. 19 better it is for Beach Towing. 2.0 Q. Traffic has been an issue in Miami Beach since 2.0 A. Definitely. Yes, sir. 21 you started working there when? 21 Q. It's your opinion that Beach Towing's use of 22 A. Yes, sir. 2010. the building and parking storage area adjacent to it at O. So traffic has been an issue then and it's an 23 23 1349 Dade Boulevard is a legal nonconforming use. 24 issue now. 24 A. Yes. 25 25 A. It's an issue. Q. Do you anticipate, as a city planner, for the Page 191 Page 193 1 Q. And it's a matter of degree, right? It could foreseeable future, that Beach Towing will continue to always be worse. The idea is to try to keep traffic have an interest in keeping traffic on Bay Road to a 3 flowing as best you can, correct? minimum? 4 A. Yes. A. Yes, sir. 5 Q. And no change in conditions in Sunset Harbour Q. Do you think anything changing -- do you 6 over the last 15 years has changed that, has it? foresee any changes in the neighborhood in the future 7 A. No, not at all. that will undermine that interest? 8 Q. Since 2003 to the present, it's your A. Quite the opposite. professional opinion it would be -- that Beach Towing 9 Q. Why? has an interest in keeping as much traffic away from 10 A. Probably more interest as the neighborhood 11 Bay Road as possible, correct? 11 becomes more congested. 12 A. Yes, sir. 12 Q. And just because it's getting more congested, 13 Q. Even if it helps a little bit, it's still in does that, as a city planner, does that mean that you 14 Beach Towing's best interest, correct? 14 stop trying to keep it from getting worse? 15 15 A. Yes, sir. A. No. 16 Q. So Exhibit 16, I believe it shows a depiction 16 Q. The worse it gets, actually the more you try 17 of, if the proposed project goes up, it will be just a 17 to keep it to a minimum, correct? general description of increased traffic on Bay Road 18 A. Right. 19 19 where the two tow truck companies are, right? Q. Not the opposite. 20 20 A. Yes, sir. A. Right. 21 Q. And you agree with Mark Festa that the less 21 Q. You looked at the affidavit of Ms. Dougherty 22 traffic on Bay Road the better, right? and she listed some changes from allegedly -- she lists

24

25

two sets of changes allegedly in the neighborhood. Do

you remember going over that?

A. Yes.

23

24

25

A. Yes.

A. Yes, sir.

Q. At least for Beach Towing anyway.

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	Page 194		Page 196
1	Q. Does any of that have any relationship to	1	Q. And that's why it says figure two, existing
2	whether or not Beach Towing would have an interest in	2	vehicular circulation.
3	keeping traffic on Bay Road its sole means of ingress	3	A. Yes, sir.
4	and egress to a minimum?	4	Q. Exhibit 15 is figure two from your report,
5	A. No, it has no bearing.	5	correct?
6	Q. So all these changes in the neighborhood have	6	A. Yes, sir.
7	nothing to do with Beach Towing's interest in keeping a	7	Q. Okay. Mr. Reiss asked you, and I don't have
8	terminus end of a trip for parking from across the	8	Vargas 556 and 557, what intersection, we were talking
9	street.	9	about the signalized intersection. Do you recall that?
10	A. No, sir.	10	A. One is Purdy Avenue and the other one is on
11	Q. No, I'm wrong or it doesn't change your	11	West, West and Dade Boulevard.
12	opinion?	12	Q. West and Dade
13	A. No, it doesn't change anything.	13	A. Purdy and Dade, yeah.
14	MR. BUCKNER: You have a call, Allan.	14	Q. Okay. He asked you whether those were
15	MR. REISS: I know. I pushed it off a little	15	mistakes in the report, correct?
16	bit. They are all waiting. I know you have	16	A. They are mistakes in the data, yes.
17	redirect, so I'm just trying to wrap. Did I create	17	Q. We are talking about Mr. Vargas' traffic
18	a nightmare? Are you going to go here for another	18	analysis for the City, not his expert report here,
19	hour?	19	correct?
20	MR. BUCKNER: No.	20	A. It's what was submitted in the March version
21	MR. REISS: Did you put that all on the	21	of the report, yes.
22	record?	22	Q. The March report to the City.
23	THE REPORTER: Unless you tell me to go off.	23	A. I would assume it's the one submitted to me.
24	MR. REISS: You're right. I'm wrong. I'm	24	I don't know where else he has submitted it.
25	speaking to the court reporter.	25	Q. I want to make sure that what we are not
1	Page 195 BY MR. BUCKNER:	1	Page 197 referring to is Exhibit 17.
2	Q. To your knowledge, where were you before 1989?	2	A. We are not referring to Exhibit 17, no.
3	A. High school.		
	3	3	
4	MR. REISS: That's all I have.	3 4	Q. And have you asked Mr. Reiss or Mr. Andrade to
			Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there
4 5	MR. BUCKNER: It's up to you. Do you want me	4	Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there was anything wrong with the Vargas traffic study?
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4 5 6	MR. BUCKNER: It's up to you. Do you want me	4 5 6	Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there was anything wrong with the Vargas traffic study? A. It has been discussed, yes.
4 5 6 7	MR. BUCKNER: It's up to you. Do you want me to do it or do you want to take your call? MR. REISS: Can you do it in 10 minutes?	4 5 6 7	Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there was anything wrong with the Vargas traffic study? A. It has been discussed, yes. Q. Did you ask them to do it?
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. BUCKNER: It's up to you. Do you want me to do it or do you want to take your call? MR. REISS: Can you do it in 10 minutes? MR. BUCKNER: I can try. REDIRECT EXAMINATION BY MR. BUCKNER: Q. Let me ask you a few things. First of all, Mr. Reiss asked you about Exhibit 15. Do you recall that? A. Yes, sir. Q. Exhibit 15, according to your report, is the existing vehicular circulation in Sunset Harbour, is it not? A. Yes. Q. That's what it is. A. It's how the existing circulation functions,	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there was anything wrong with the Vargas traffic study? A. It has been discussed, yes. Q. Did you ask them to do it? A. It wouldn't be me to ask them. Q. Okay. Were you comfortable rendering your opinion today based on Mr. Vargas' reports without having a new report done? A. I'm comfortable using his data with the caveat that there is some data that may be not quite great. Q. Okay. So you were willing to come in here A. So on a general generally yes, I still keep that in the back of my mind that there is some mistakes in the collection of data. Q. And the two mistakes you found were two intersections not at issue here, that he had as not signalized that actually are signalized, correct? A. I don't agree with that. Q. Okay. Neither one of them is Bay Road.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MR. BUCKNER: It's up to you. Do you want me to do it or do you want to take your call? MR. REISS: Can you do it in 10 minutes? MR. BUCKNER: I can try. REDIRECT EXAMINATION BY MR. BUCKNER: Q. Let me ask you a few things. First of all, Mr. Reiss asked you about Exhibit 15. Do you recall that? A. Yes, sir. Q. Exhibit 15, according to your report, is the existing vehicular circulation in Sunset Harbour, is it not? A. Yes. Q. That's what it is. A. It's how the existing circulation functions, yes. Q. Today right now.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. And have you asked Mr. Reiss or Mr. Andrade to go have someone do a new traffic study to see if there was anything wrong with the Vargas traffic study? A. It has been discussed, yes. Q. Did you ask them to do it? A. It wouldn't be me to ask them. Q. Okay. Were you comfortable rendering your opinion today based on Mr. Vargas' reports without having a new report done? A. I'm comfortable using his data with the caveat that there is some data that may be not quite great. Q. Okay. So you were willing to come in here A. So on a general generally yes, I still keep that in the back of my mind that there is some mistakes in the collection of data. Q. And the two mistakes you found were two intersections not at issue here, that he had as not signalized that actually are signalized, correct? A. I don't agree with that.

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Q. Well, before you told me earlier in your

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A. Without any changes, yes.

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24 25 Page 200

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- 1 testimony when I was asking you to compare Bay to
- 2 Purdy, that Purdy was irrelevant. One of those
- 3 intersections is Purdy and Dade, right?
 - A. I did not say the word irrelevant.
- 5 Q. So Purdy, the traffic on Purdy is important in 6 your analysis.
- 7 A. I didn't say that either. My analysis, I was
- 8 not looking at Purdy directly. I was more concerned
- 9 with Bay Road. However, for purposes of the traffic
- 10 study, yes, Purdy is very important. I did not
- 11 microanalyze Purdy.
- 12 Q. For purposes of your expert opinion in this
- 13 case, did you look at Purdy Road or not?
- 14 A. I glanced at it.
- 15 Q. Okay. So whether there is a mistake with
- 16 regard to signalizing or not signalizing on Purdy,
- 17 since you just glanced at it, it doesn't affect your
- 18 opinion.
- 19 A. It makes me worry about what else is wrong in
- 20 the report, yes. It makes me look at it more closely.
- 21 Q. So other than those two areas, did you find
- 22 any others?

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- 23 A. I didn't go through it with a fine tooth comb.
- 24 Those were very obvious.
 - Q. Okay. So the answer to my question is no, you

- 1 faulty data, correct?
 - A. No.
 - Q. Is that correct?
 - A. Yes, that's correct.
 - Q. Okay. So you were willing to come in here
- 6 based on Mr. Vargas' data, correct?
- 7 A. I am not testifying based on Mr. Vargas' data.
 - I'm testifying that I have looked at Mr. Vargas' data
- 9 and his numbers inform my opinion, but I'm not basing
 - my opinion based on his data solely.
- 11 Q. Well, when you say his numbers inform your
- 12 opinion, do you have any other traffic count numbers
- 13 from any other source other than Mr. Vargas' report?
- 14 A. My opinions don't necessarily come only from
- 15 traffic counts.
 - Q. Okay. There are traffic counts in your
- 17 report, are there not?
 - A. Yes, and I'm citing Mr. Vargas' numbers.
- 19 Q. So you relied on his report.
- 20 A. It is the report that has been submitted to
- 21 the City, so that is the report that the City is going
- 22 to be working off of, yes.
 - Q. And you relied on that report.
 - A. The City is relying on that report.
 - Q. And you relied on that report.

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- 1 found no other errors.
- 2 A. I found no other errors.
- 3 Q. And you were willing to come in here and
- 4 render do an expert opinion and do an expert report
- 5 based on Mr. Vargas' traffic studies, correct?
- 6 A. Sure.
 - Q. And you didn't demand a new traffic study to
- 8 be done before you were willing to render your expert
- 9 opinion, correct?
- 10 A. It is not my place to require traffic studies.
- 11 Q. You are here as an expert witness, right?
- 12 A. Yes, sir
- 13 Q. You were being asked to testify. This is your
- 14 first time testifying as an expert, right?
- 15 A. Yes, sir.
- 16 Q. And if you were being asked to testify as an
- 17 expert based on data that you found faulty, would you
- 18 agree to do that?
- 19 A. Probably not.
- 20 Q. Probably not?
- 21 A. Well --
- 22 Q. Are there circumstances under which you would
- 23 come in and testify based on faulty data?
- 24 A. No.
- Q. So you would not testify as an expert based on

- A. I'm fighting. I'm quoting it.
 - Q. Okay. When you include it in your expert
- 3 report, you don't think you are relying on it?
 - A. I am quoting it.
 - Q. Do you expect the court to ignore that part of
- 6 your expert opinion where you talk about traffic
 - counts?
 - A. My report is not about the traffic counts.
- 9 I'm just quoting the traffic report. So if the traffic
- 10 counts are right or wrong, I'm not saying that those
- 11 traffic counts are right or wrong. The traffic study
- 12 will say whether those counts are right or wrong. I
 - don't have an opinion as to whether they are right or
- 14 wrong.

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- 15 Q. So is it your practice as an expert to include 16 data that you have questions about in your report?
- 17 A. I'm quoting it, yes.
 - Q. Okay. Where in your report does it say I have questions about this data?
- 20 A. It doesn't say that, no.
 - Q. And so as you sit here, you have no questions about this data, do you?
- 23 A. I have questions about this data.
 - Q. So you have questions about this data, but you haven't put it anywhere in your report that you have

			0, 2016 202 to 205
	Page 202		Page 204
1	questions about this data.	1	Q. Those are scenarios Mr. Reiss just gave you,
2	A. No, I haven't put that in my report.	2	right?
3	Q. You submitted this report as part of your	3	A. Yes.
4	testimony as an expert in this case, but you haven't	4	Q. So the scenario in Exhibit 16 is the proposal
5	told the court that you have questions about the data	5	to build the project that Sunset land plans to build,
6	that you're submitting.	6	correct?
7	MR. REISS: Objection. That's just nasty and	7	A. Yes.
8	argumentative. She's not telling the court	8	Q. But if under Mr. Reiss' hypothetical, there
9	anything, but go ahead and answer the question.	9	was a parking lot there, the entry and egress point
10	THE WITNESS: I'm testifying to it right now.	10	could be on Purdy Road, for example, right?
11	BY MR. BUCKNER:	11	A. Could be.
12	Q. Okay. And if you had questions strike	12	Q. It could be on 18th Street, correct?
13	that.	13	A. Could be.
14	Have you asked Mr. Reiss or Mr. Andrade or	14	Q. And if it was a tow truck company, the entry
15	anybody on their side of the case to go get you new	15	and exit point could be on Purdy, correct?
16	data?	16	A. Could be.
17	A. I have asked them to consider it, yes.	17	Q. And it could be on 18th, correct?
18	Q. Have they done it?	18	A. No.
19	A. I think they are looking for someone.	19	Q. Why couldn't it be on 18th?
20	Q. Okay. But as you sit here right now, you are	20	A. Because the block on 18th is already built
21	testifying based on what's in Mr. Vargas' report.	21	out, so you would have to assemble those lots as well.
22	MR. REISS: Objection. It's been answered	22	Q. Okay. So it could be on we are talking
23	like four times.	23	about the proposed garage. Doesn't it go all the way
24	THE WITNESS: It's the only data available.	24	to 18th Street?
25	So yes, I'm basing conclusions on data that was	25	A. No.
- 1			
	Page 203		Page 205
1	Page 203 found in the report submitted by the plaintiff,	1	Page 205 Q. Is there a building or something in between
1 2		1 2	9
	found in the report submitted by the plaintiff, yes. BY MR. BUCKNER:		Q. Is there a building or something in between
2 3 4	found in the report submitted by the plaintiff, yes. BY MR. BUCKNER: Q. Okay. Mr. Reiss asked you about Exhibit 16,	2 3 4	Q. Is there a building or something in between the proposed garage
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2 3 4 5 6 7 8	found in the report submitted by the plaintiff, yes. BY MR. BUCKNER: Q. Okay. Mr. Reiss asked you about Exhibit 16, the project with the proposed garage. Do you remember those questions? A. 16, yes. Q. On Exhibit 16, you show the entry and exit	2 3 4 5 6	Q. Is there a building or something in between the proposed garage A. Yes. Q and 18th Street? A. Yes. Q. It does not abut 18th? A. No, it does not. Q. So if you had a storage yard on the proposed
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	found in the report submitted by the plaintiff, yes. BY MR. BUCKNER: Q. Okay. Mr. Reiss asked you about Exhibit 16, the project with the proposed garage. Do you remember those questions? A. 16, yes. Q. On Exhibit 16, you show the entry and exit from the garage. Actually, you just show two points of entry into the garage on Bay Road. A. Yes. Q. Now, if there was a parking lot there instead of a garage, there could be the entrance could be on Purdy for example, right? A. That is not the scenario that was submitted. Q. I'm not asking you that. Mr. Reiss asked you about parking lots. Do you remember that? A. Yes. Q. And he asked about storage yards. A. Yes. Q. He asked you about tow truck companies.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Is there a building or something in between the proposed garage A. Yes. Q and 18th Street? A. Yes. Q. It does not abut 18th? A. No, it does not. Q. So if you had a storage yard on the proposed project site, the entry and exit point to that storage yard could be on Purdy, correct? A. It could potentially be anywhere. Q. It doesn't have to be on Bay. A. It doesn't have to be on Bay. Q. And if it was on any of those other streets, it wouldn't affect traffic on Bay. A. I would have to see I would have to see what it looked like and do an analysis of how people enter and exit. Q. Okay. So as you sit here, if someone put a parking lot, a storage yard or tow truck company on that proposed space instead of the project that's

A. Not that I know of.

25 configured. Again, it's a hypothetical that I would be

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- 1 uncomfortable answering.
- Q. Well, you answered Mr. Reiss' hypotheticals.
- 3 I'm asking you the same hypotheticals.
- 4 A. Yes, but his hypotheticals did not include
- 5 geography and geometric questions. It's a little
- 6 different.
- 7 Q. Let me ask you this. Instead of putting the
- 8 project on the site, if somebody put a parking lot, is
- 9 there any scenario you can envision under which that
- 10 parking lot would not affect traffic on Bay Road?
- 11 A. It is difficult to answer. It would depend
- 12 how it would be designed.
 - Q. You would need to know a lot more.
- 14 A. I would need a lot more information.
- 15 Q. As you sit here today, you cannot tell me
- 16 unequivocally that no matter what a storage yard or
- 17 parking lot or a tow truck company was placed on that
- 18 property, it would definitely affect traffic on Bay
- 19 Road.

13

- 20 A. I don't understand that question.
- 21 Q. Okay. As you sit here right now --
- 22 A. I'm sitting.
- 23 Q. Hypothetically if the proposed site of this
- 24 project was instead a storage yard parking lot or a tow
- 25 truck company, can you say unequivocally that if it was

- 1 affect on Bay Road.
 - A. Yeah, but very particularly if you include --
- Q. Anything built on that lot. Your testimony is
- 4 anything built on that lot is going to affect traffic
 - on Bay Road.
 - A. To more degree or less, yes.
- Q. Anything you do with that lot, anything at all
- will increase traffic on Bay Road.
- 9 A. There is a natural increase of traffic that
- 10 happens anyway, and when you increase density in a
- neighborhood, traffic volumes go up naturally. So yes,
- 12 any increase in density will have an increase in Bay
- 13 Road.
- 14 Q. I didn't say increase --
- 15 MR. REISS: You are interrupting her.
- 16 THE WITNESS: If you are adding any use in a 17 currently vacant land, any use that you add in a
- 18 currently vacant land is going to increase
- 19 intensity in the neighborhood. Once you start
- 20 increasing intensity in the neighborhood, you are
- 21 increasing the volume of traffic in the
- 22 neighborhood and that is naturally going to
- 23 increase the traffic on Bay Road as an organic way.
- 24 Is there ways in which you can configure land uses
 - to not impact one side more than the other? Yes.

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- 1 any of those three things, it would definitely affect
- 2 traffic on Bay Road?
- 3 A. Definitely?
- 4 Q. Yes.

5

- A. Definitely, as in like?
- 6 Q. Unequivocally, definitely, no set of
- 7 circumstances under which it would not affect traffic
- 8 on Bay Road.
- 9 A. Anything you build on that lot is going to 10 affect traffic on Bay Road.
- .
- 11 Q. So you're saying that that lot should be left
- 12 completely undeveloped in order to protect --
- 13 A. There is no -- I have no assertion as to
- 14 whether or not it should be developed at all.
- 15 Q. You are saying any use, any use of that lot at 16 all would affect traffic on Bay Road.
- 17 A. That is natural, yes. Any use on any lot in
- 18 the surrounding neighborhood has bearing on any other
- 19 use in the neighborhood, yes. Uses have bearings on
- 20 other uses, yes.
- 21 Q. So if park was built on that lot, would that 22 affect on the road?
- 23 A. Yes, it would affect anything that were built
- 24 on any lot would have.
- 25 Q. So anything built on that lot is going to

- BY MR. BUCKNER:
 - Q. So your testimony is any use put to the
- 3 Assemblage -- strike that.
 - Any use put to the land that's subject to the
 - covenant here is going to increase traffic on Bay Road.
 - A. Some uses more than others.
 - Q. But is the answer to my question yes?
 - A. In a relative way, yes.
 - Q. Okay. Some uses will have more --
 - A. There are so many caveats on that that I could
- 11 be here all day.
- 12 Q. But that's my question because you don't want
- 13 to say there is any use that could not increase
- 14 traffic. I'm trying to make sure I understand you.
- Is there any use that could be put to the property subject to the covenant that would not
- 17 increase traffic on Bay Road?

uncomfortable going to.

- 18 A. Again, that's an absolute that I'm
- 20 Q. So you can't answer my question.
 - A. It's too absolute.
- 22 Q. Mr. Reiss asked you if you put a parking lot
- 23 on the covenant properties, would that increase traffic
- 24 on Bay Road. Your answer was yes.
 - A. Yes.

Page 210 Page 212 Q. And that would be whether -- no matter where 1 1 A. In this map. 2 the entrance or exit point was for that parking lot. Q. Other than this map, anything else? 3 A. There would be preferred options for it if we A. No, that's it. had to choose, but any parking on that lot would Q. There are no traffic counts on this map. 4 5 increase traffic on Bay Road, yes. A. I'm not a traffic engineer, so I don't do 6 Q. No matter where the entrance point was. traffic counts. 7 7 A. Again, some configurations would be preferred. Q. So you don't know what impact -- well, let me 8 Q. That wasn't my question. ask you. Where on this map does it show what the 9 9 MR. REISS: She can answer it and you can ask affect of putting a storage yard on the covenant 10 your next question, but you can't interrupt her. property would be? 10 11 Finish your answer. 11 A. I didn't do the individual, every individual 12 THE WITNESS: The configuration is key in this 12 or every variation of an individual. It would be 2,800 13 whole thing. It's really not about, sometimes it's pages if I did that. not about -- it is about what you put on it and 14 Q. The only thing you studied was whether the 15 then how you configure it on the lot. proposed project, that's the only thing you actually 16 BY MR. BUCKNER: 16 studied. 17 17 Q. Okay. So if I put a parking lot on the A. Yes. covenant property and I configure it so that the 18 18 MR. BUCKNER: No further questions. 19 entrance and exit point was on Purdy, would that 19 RECROSS EXAMINATION 20 increase traffic on Bay Road? BY MR. REISS: 2.0 21 21 A. Yes. Q. Okay. 22 Q. If I put a storage yard on the -- strike that. 2.2 MR. BUCKNER: You don't get re-recross. 23 If I put storage yard on the covenant property 23 MR. REISS: You can object. 24 and the entry and exit point was only Purdy, would that MR. BUCKNER: I object to this entirely. increase traffic on Bay Road? BY MR. REISS: Page 211 Page 213 1 A. Yes. Q. He was asking you about impact if he put the Q. And if I put anything on the covenant ingress and egress for various projects over on Purdy. property, regardless of where the entry and exit point On their proposed project, if they put the entrance is, would that increase traffic? over on Purdy instead of Bay, would that reduce the 5 A. If there is any vehicles arriving onto the impact on Bay? covenant properties, whether they are entering from 6 A. Yes, sir. 7 7 Purdy or Bay Road, there is still going to be maybe a MR. REISS: No further questions. lesser impact, but there is still going to be an impact 8 MR. BUCKNER: No further questions. We are 9 on Bay Road. 9 done. 10 Q. Let's say I have no parking on the property, 10 MR. REISS: She will read. but I build something there. Is that going to impact 11 MR. BUCKNER: I'll get back to you. 12 traffic on Bay Road? 12 MR. REISS: You can e-mail me a copy if he 13 A. That's probably what's going to impact it the 13 orders. 14 least. 14 (The deposition was concluded at 4:30 p.m.) 15 Q. Okay. But it will still impact traffic on Bay 15 (Reading and signing of the deposition was not 16 Road. 16 waived by the witness and all parties.) 17 17 A. Again, any use on the vacant land will 18 increase traffic on Bay Road, but it's on a gradient. 18 19 19 So the gradient will be on the lesser side. 20 20 Q. Okay. Have you done an analysis of those hypotheticals that Mr. Reiss gave you to determine 21 which of them would be the most or least cause of 22 23 increased traffic on Bay Road? 23 24 A. Yes, I've done a quick analysis. 24

Q. Where is that analysis reflected?

25

1	Page 214	1	Page 216
2	STATE OF FLORIDA	1	September 24, 2018
3	COUNTY OF DADE	2	
4	COUNTY OF DADE		Susana Alonso, AICP
		3	c/o Allan S. Reiss, Esq. Levine & Partners
5	I, Victor Selvaggi, Jr., Florida Professional	4	3350 Mary Street
6	Reporter, Notary Public, State of Florida, certify that		Miami, Florida 33133
7	SUSANA ALONSO, AICP, personally appeared before me on	5	In Re: Sunset Land Associates v. Mark Festa
8	September 6, 2018 and was duly sworn.	6	In Re. Suiset Land Associates V. Mark resta
9	Signed this 24th day of September, 2018.		Deposition taken on September 6, 2018
10	12/1	7	U.S. Legal Support Job No. 1792134
11	Victor Selangs J.	8	The transcript of the above-referenced proceeding has been prepared and is being provided to your office for
12		9	review by the witness.
	Victor Selvaggi, Jr.	10	We respectfully request that the witness complete their
13	Florida Professional Reporter	11	review within 30 days and return the errata sheet to
	Notary Public, State of Florida	11	our office. Sincerely
14	Commission No.: DD879317	13	Victor Selvas J.
	Expires: May 10, 2021		Victor Selvaggi, Gr., GSR, FPR
15		14	U.S. Legal Support One Southeast Third Avenue
16		15	Miami, Florida 33131
17			(305)373-8404
18		16	David M. Buckner, Esq.
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1	Page 215	1	Page 217
	CERTIFICATE OF REPORTER		ERRATA SHEET DO NOT WRITE ON THE TRANSCRIPT
2	CERTIFICATE OF REPORTER STATE OF FLORIDA	1 2	ERRATA SHEET
2	CERTIFICATE OF REPORTER		ERRATA SHEET DO NOT WRITE ON THE TRANSCRIPT ENTER CHANGES ON THIS PAGE IN RE: Sunset Land v. Mark Festa Susana Alonso, AICP
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EXHIBIT "J"

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:

<u>Section 1.</u> 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 T 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 <u>urban</u> light industrial district are those uses that are consistent with the district purpose including the following:

- 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.);
- Light manufacturing, including: ceramic products, glass products, hand tools, and electronic equipment;
- Professional, business, research or administrative offices, either as a main permitted use or as part of a permitted industrial use;
- Printing, engraving, lithographing, and publishing;
- Wholesale businesses and sales, warehouses, mini and other storage buildings, and distribution facilities, except those storing or distributing flammable or explosive materials;
- Automobile service stations, including car wash, auto repair, and towing services;
- Machine shop, welding shop, furniture, cabinet and wood working shops, glass blowing shop;
- Plumbing, electrical, and other similar type shops, which may wholesale and store parts on site;
- Tailoring services, including dry cleaning;
- Main Use Parking Garages and Parking Lots:
- 11. Utilities:
- Landscaping services, including nursery facilities;
- 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;
- Marine-related uses; and
- 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 <u>urban</u> light industrial district are any use <u>which that</u> 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 <u>urban</u> 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 <u>urban</u> 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.
- 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 (<u>urban</u> 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.	
	Matt	Herrera Bower,	MAYOR
ATTEST: Parelus			
CITY CLERK Robert Parcher		APPROVE	
		FORM AND LAN	
	/ he	Lt 6/2	6 08
- (1/90	tity Attorney	Date
First Reading: April 16, 2008 Second Reading: June 25, 2008	Jon		
1			
Verified by: Jorge G. Gomez AICP			
Planning Director			
Underscore denotes new language			
T:\AGENDA\2008\June 25\Regular\1830 - Urban Light Indu	strial Ord.doc		

EXHIBIT "K"

ORDINANCE NO. <u>2009-3663</u>

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:

<u>Section 1.</u> 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 <u>not utilizing heavy machinery</u>, 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, <u>not utilizing heavy machinery</u>, 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 <u>light-industrial</u> use;
- (4) Printing, engraving, lithographing, <u>media services</u> and publishing, <u>not</u> 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 <u>Hand</u> car wash <u>services</u>, autorepair, 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, <u>air</u> 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;
- 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;
- <u>(11)</u> 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 <u>when abutting a residential district</u>, <u>otherwise none.</u>
- (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	Buch
Matti Herrera Bower	MAYOR

ATTEST:

Mul fardur

CITY CLERK Robert Parcher

APPROVED AS TO FORM AND LANGUAGE SOR EXEGUTION

1/2/00

First Reading: September 9, 2009

Second Reading: October 14, 2009

Verified by:

Jorge G. Gomez, AICF

Planning Director

<u>Underscore</u> denotes new language

T:\AGENDA\2009\October 14\Regular\I-1 ordinance FINAL ADOPTED 10.14-09 ORD.doc

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

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

LICENSE NUMBER: RL-85017671

Beginning: 10/04/2018

Expires: 09/30/2019

Parcel No: 0232330120680

TRADE ADDRESS: 1349 Dade Blvd

Code	Business Type
95008302	AUTOMOBILE/TRUCK: BODY SHOP, GARAGE, STORAGE

Repair Shops: #Locations	1

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

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:

BEACH TOWING SERVICES OF MIAMI INC

DBA:

BEACH TOWING SERVICES OF MIAMLING

IN CARE OF:

ADDRESS: 1349 Dade Blvd

MIAMI BEACH, FL 33139-1420

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

LICENSE NUMBER: RL-10003672

Beginning: 10/04/2018

Expires: 09/30/2019

Parcel No: 0232330120680

TRADE ADDRESS: 1349 Dade Blvd, #B

Code	Business Type
95021400	WRECKER/TOWING SERVICE

Truck/Wrecker Service: #Trucks	1

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

BEACH TOWING SERVICES OF MIAMI INC 1349 Dade Blvd, #B MIAMI BEACH, FL 33139-1420

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:

BEACH TOWING SERVICES, INC.

DBA:

BEACH TOWING SERVICES, INC.

IN CARE OF:

ADDRESS:

1349 Dade Blvd

MIAMI BEACH, FL 33139-1420

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

LICENSE NUMBER: RL-86098263

Beginning:

10/04/2018

Expires: 09/30/2019

Parcel No: 0232330120680

TRADE ADDRESS: 1349 Dade Blvd

Code	Business Type
95021400	WRECKER/TOWING SERVICE
95021401	WRECKER/INMOBILIZATION SERVICE
95021100	WAREHOUSE

	
Truck/Wrecker Service: #Trucks	8

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

BEACH TOWING SERVICES, INC. 1349 Dade Blvd MIAMI BEACH, FL 33139-1420

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:

BAN GELBER, MAYOR

JLM/KGB/SF

T:\AGENDA\2017\December\Parking\TowingPermitExtension.reso.docx

GRANADO, CITY

APPROVED AS TO FORM&LANGUAGE OR EXECUTION

MIAMIBEACH

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.

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

- a 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.

- 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 onpremises 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 (I") 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):

- 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.
- 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 homs, 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 homs, 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 aforestated 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:

- name and agency of the law enforcement agency;
- date and time the hold is placed on the vehicle;
- 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
- 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

- (I) 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
 - (I) 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
- (I) 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) 1/2 inch alloy safety chains
 - (j) Tow bar equipped
 - (k) External air hookup and hoses to supply air to disabled vehicles

- (I) 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 holsted 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:

- Check of vehicle for any type of tag, tag record, temporary tag, or regular tag;
- 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);
- 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);
- Check of vehicle for inspection sticker or other stickers and decals that may indicate a state of possible registration; and
- 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:

- 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
- 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 sult 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:

Inside-Interio
()

	(a)	Motorcycles or Scooters	\$12.00			
	(b)	Any vehicle less than 20	\$30.00			
		feet in length and 8 feet in width				
	(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 3	\$140.00				
	2.	Unloc					
	3.	Dropp					
	4.	Whee					
	5.	Use o	Use of Dolly				
C.	Class	s "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	s "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 sce	ene	
		2.	Unlocking door		
		3.	Dropping/hooking up linka	ge	
G.	Use of Contractor's Boat Trailer, any length,				
		inclu	ading storage, per day:		
		1.	Trailer up to 18 feet in len	gth	\$ 50.00
		2.	Trailer 18 to 30 feet in len	gth	\$ 75.00
		3.	Trailer over 30 feet in leng	th	\$150.00
H.	Speci	ial and	additional charges:		
	1.	Extra labor or extra waiting time \$16.50 per hour			
after the first 30 minutes at the				cene and prorated	
	after the 1st hour in 15 minute increments.				
	2. Mileage charges:		age charges:	\$6.00 per mile, maximum of \$42	
				per tow	
	3. Administrative fee:		ninistrative fee:	\$35.00 maximum	per tow
	4.	Dolli	es 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

- 1. 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 aforestated 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 1st 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.

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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 date 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 Davices

- 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, selt resistant, ehock 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 e 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 shell locate the position of the vehicle in five second intervals.
- 1.7. The System shall start to track locations and trensmission of the data when the vehicle ignition is on.

2. Neer Reel-Time Communication

2.1. The Communication between the GPS Locetion and Communication devices shell be in near real-time in 30 second intervals.

3. Web Based System Administration, Monitoring, Mapping and Reporting System

- 3.1. This System shell be internet browser besed.
- 3.2. No epplication software shall be installed on any personel 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, end identify.

3.6. The System shall provide historical auto-pley feature with active breed crumb trail

3.7. The System shell display the vehicles with symbols according to their group and stetus. Status shall be but not limited to:

Alerts.

3.8. The System shell 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 cherge. Reports shall be besed on a single or a group of vehicles using their vehicle identification number. Reports shall be generated on a dally, weekly, and monthly basis by vehicle and vehicle group and will include miles driven and dates.

4. Data Storege

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 shell store the data on e secure server with minimum retention of one (1) year efter 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: 305-534-8328

Since 1971

Offering:

Transport / Towing

Storage

Private Parking Systems

Auto Selvego

Serving:

Miami Beach

Bei Harbor

Bay Harbor Islands

Surfside

North Bay Village

North Miami

Sunny leles

Hlaiceh

Haflandale

Aventura

Hollywood

Miemi

Storage Facilities Localed at: .

1349 Dade Boulevard Marri Beach, FL

1743 Purdy Avenue Mismi Beach, FL

8370 NW 7th Avenue Mami, FL

Maling Address:

1349 Dade Bouloverd Miami Bosch, FL 33139

Saul Frances Parking Director

City of Miaml Beach

1755 Meridian Avenue, 2nd Floor

Mlaml 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

EXHIBIT B-2

TREMONT TOWING INC.
1747 Bay Rd. Miam! 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. 2nd Floor Miemi 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,

Keith Menin

PRESIDENT

EXHIBIT C

TOWING COMPANIES AGREED-UPON PROCEDURES

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 fectors for ellocating expenses are as follows:

- General expenses are to be allocated on the cost allocation method based upon the statistical data mentioned ebove.
- City Administrative fee expenses are to be ellocated 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 separeted 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% ellocated 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 egreed-upon allocations of expenses listed within this document are not all inclusive and are subject to change depending on the veriation 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 eppropriately. Additionally, that ait allocations are being done in the most reasonable method to ensure the most appropriate ellocations of expenses. Any new allocations should be revisited with City staff and the towing compenies' accounting and legal representatives.

Agreed-upon procedures will include the following:

- Review contracts with other municipalities to determine if there are any other spacific requirements which directly affect any allocation of costs to the City.
- Inquire from the towing company's representatives and obtain and review documentation on the nature of the allocations used batween Private and Public Tows Inquire about end document any major changes made during the period.
 - a. Review the methodology used by the towing companies.
 - b. Tle total costs and revenues to company's supplied general ledger and filed tax returns. The City agrees that any and alt documents and items made available by the towing companies to the City pursuant hereto, including, but not limited to, general ledgers and filed tex 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 egrees that the inspection end review of any documents made available by the towing compenies to the City shell et all times be in the presence of tha towing companies' representatives. The inspection and review notwithstending, the City agrees that the subject documents end items are being disclosed solely for the limited purposes stated herein and shall remein confidential and the exclusive property of the towing companies end 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.
- 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 Mlami Beach Rules and Regulations for the Polica and Parking Towing Permits and/or eny other rula or ragulation or ordinance, and do not relate to private tows, will be allocated 100% towards public tows.
- 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 efter 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.
- 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 ellocated 100% to public tows.
- Separate signage costs for private lots and allocate fully to private tows.
- 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.
- Review all other miscellaneous costs presented and determine how they should be classified between public end private tows.
- 11. Perform enalysis all costs and revenue components to arrive et an average cost and revenue of public tows:
 - a. Schedule out all direct costs and allocated cost as determined in above steps to arrive et total cost for public end private tows. Expenditures including and not limited to: Licenses and taxes expense, rent expense, legal end accounting coste, salaries and wages expenses, telephone axpensa, 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:
 - Companywide expenses % of City tows to the total tows
 - li. Clty of Mlami Beach exclueiva 100%
 - III. Other expenditures exclusive to other Municipalities or exclusive to non-public tows 0%
 - 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:
 - . Hook-up

- il. mileage
- III. labor
- iv. dollies/flatbed
- v. storage
- vi. administrative charges
- vil. 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.

MICHAEL A MESTA, PRESIDENT

ATTEST:

CITY:

DAN GELBER, MAYOR

ATTEST:

ATTEST:

SECRETARY APPROVED TO GRANA FORM & TANGUAGE

FORM& DINGUAGE
& FOR EXECUTION

City Attorney Date

CITY OF MIAMI BEACH ADMINISTRATIVE RULES AND REGULATIONS FOR

POLICE AND PARKING TOWING PERMITS

REVISED ON DECEMBER 13, 2017

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.

- 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 onpremises 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 (I") 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.
- 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.
- 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.
- 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 aforestated 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:

- name and agency of the law enforcement agency;
- 2. date and time the hold is placed on the vehicle;
- 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;
- the specific reason for placing the hold;
- 5. the condition of the vehicle;
- 6. the location where the vehicle is being held; and
- 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

- (I) 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
 - (I) 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
- (I) 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

- (I) 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:

- Check of vehicle for any type of tag, tag record, temporary tag, or regular tag;
- 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);
- 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);
- 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:

- 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	\$30.00
		feet in length and 8 feet in width	
	(c)	Any vehicle over 20 feet in length	\$40.00
(2)	Outsi	de-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

		,,		
	1,	First 3	30 minutes at the scene	\$140.00
	2.	Unloc	king door	
	3.	Dropp	ping/hooking up linkage	
	4.	Whee	el lift equipment	
	5.	Use o	f Dolly	
C.	Class	"В" То	w 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" To	w 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 R	ate Cla	ass "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	

Class "A" Car Carrier, including:

		6.	Under reach equipment		
F.	Tow I	Rate Cl	lass "B" or "C" Car Carrier		\$125.00
		includ	ling:		
		1.	First 30 minutes at the scen	ne	
		2.	Unlocking door		
		3.	Dropping/hooking up linkag	je	
G.	Use o	of Contr	ractor's Boat Trailer, any lenç	gth,	
		inclu	ding storage, per day:		
		1.	Trailer up to 18 feet in leng	th	\$ 50.00
		2.	Trailer 18 to 30 feet in length	th	\$ 75.00
		3.	Trailer over 30 feet in lengt	h	\$150.00
H.	Speci	al and	additional charges		
	1.	Extra	labor or extra waiting time \$	16.50 per hour	
		after t	he first 30 minutes at the sco	ene and prorated	
		after t	he 1st hour in 15 minute inc	rements.	
	2.	Mileag	ge charges:	\$6.00 per mile, ma	ximum of \$42
				per tow	
	3.	Admir	nistrative fee:	\$35.00 maximum	per tow
	4.	Dollies	s or Flatbed Services:	\$40.00	

6.

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 aforestated 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 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 1st 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.

F:\PING\\$ALL\SAUL\Towing Permits\2018\Towing Permit 2018 GNT final.doc

EXHIBIT "K"



PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, Florida 33139; Tel: 305.673.7550; Web: www.miamibeachfl.gov/planning

LAND USE BOARD HEARING APPLICATION

The following application is submitted for review and consideration of the project described herein by the land use board selected below. A separate application must be completed for each board reviewing the proposed project.

Application Informa	tion				
FILE NUMBER Is t			erty the primary resid		
			applicant/property owner? □ Yes □ No (if "Yes," provide		
		office of th	e Property Appraiser		•
	oard of Adjustment		1	gn Review Bo	oard
	rision of the Land Developme	ent Regulations	☐ Design review approval		
☐ Appeal of an adminis			☐ Variance		
	Planning Board		Historic Preservation Board		
☐ Conditional use perm	ut		☐ Certificate of Ap		
☐ Lot split approval			☐ Certificate of Appropriateness for demolition☐ Historic district/site designation		
	nd Development Regulations omprehensive Plan or future l		☐ Variance	site designation	
☐ Other:	imprehensive rian or foliore i	ana use map	L Variance		
	m Diames with the Land	Dosseintion as	//Exhibix A//		
•	n – Please attach Legal	Description as	EXNIDIT A.		
ADDRESS OF PROPERTY	Y				
FOLIO NUMBER(S)					
Property Owner Info	ormation				
PROPERTY OWNER NA					
TROTERT OVVINER INF	WYLL				
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL AD	DDRESS	- 1	
Applicant Information	on (if different than owr	204)			
APPLICANT NAME	on (ii dillereni ilidii owi	ier)			
APPLICANT NAME					
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	BUSINESS PHONE CELL PHONE EMAIL ADDRESS				
DOON VEGO TITOT VE	CLETTION	LIVIAIL ADDRESS			
2 45					
Summary of Reques					
PROVIDE A BRIEF SCOPE OF REQUEST					

Project Information					
Is there an existing building		☐ Yes	■ No		
Does the project include inte		☐ Yes	■ No		
Provide the total floor area	of the new construction.				SQ. FT.
Provide the gross floor area	of the new construction (include	ding required p	parking and all u	sable area).	SQ. FT.
Party responsible for p	roject design				
NAME		☐ Architect	\square Contractor	□ Landscape Arch	itect
		☐ Engineer	□ Tenant	☐ Other	
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		
Authorized Representat	tive(s) Information (if app	olicable)			
NAME	· · · · · · · · · · · · · · · · · · ·	☐ Attorney	□ Contact		
		☐ Agent	□ Other		
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		
NAME		☐ Attorney	□ Contact		
		☐ Agent	☐ Other		
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		
NAME	l	☐ Attorney	☐ Contact		
		☐ Agent	☐ Other		
ADDRESS		CITY		STATE	ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDR	ESS		

Please note the following information:

- A separate disclosure of interest form must be submitted with this application if the applicant or owner is a corporation, partnership, limited partnership or trustee.
- All applicable affidavits must be completed and the property owner must complete and sign the "Power of Attorney" portion of the affidavit if they will not be present at the hearing, or if other persons are speaking on their behalf.
- To request this material in alternate format, sign language interpreter (five-day notice is required), information on access for persons with disabilities, and accommodation to review any document or participate in any City sponsored proceedings, call 305.604.2489 and select (1) for English or (2) for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Please read the following and acknowledge below:

- Applications for any board hearing(s) will not be accepted without payment of the required fees. All checks are to be
 made payable to the "City of Miami Beach".
- All disclosures must be submitted in CMB Application format and be consistent with CMB Code Sub-part A Section 2-482(c):
 - (c) If the lobbyist represents a corporation, partnership or trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.
- Public records notice All documentation submitted for this application is considered a public record subject to Chapter
 119 of the Florida Statutes and shall be disclosed upon request.
- In accordance with the requirements of Section 2-482 of the code of the City of Miami Beach, any individual or group that will be compensated to speak or refrain from speaking in favor or against an application being presented before any of the City's land use boards, shall fully disclose, prior to the public hearing, that they have been, or will be compensated. Such parties include: architects, engineers, landscape architects, contractors, or other persons responsible for project design, as well as authorized representatives attorneys or agents and contact persons who are representing or appearing on behalf of a third party; such individuals must register with the City Clerk prior to the hearing.
- In accordance with Section 118-31. Disclosure Requirement. Each person or entity requesting approval, relief or other action from the Planning Board, Design Review Board, Historic Preservation Board or the Board of Adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided or committed, directly or on its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional service rendered or to be rendered. The disclosure shall: (I) be in writing, (II) indicate to whom the consideration has been provided or committed, (III) generally describe the nature of the consideration, and (IV) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board. Upon determination by the applicable board that the forgoing disclosure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then (I) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and (II) no application form said person or entity for the subject property shall be reviewed or considered by the applicable board(s) until expiration of a period of one year after the nullification of the application or order. It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements of this section.
- When the applicable board reaches a decision a final order will be issued stating the board's decision and any conditions imposed therein. The final order will be recorded with the Miami-Dade Clerk of Courts. The original board order shall remain on file with the City of Miami Beach Planning Department. Under no circumstances will a building permit be issued by the City of Miami Beach without a copy of the recorded final order being included and made a part of the plans submitted for a building permit.

The aforementioned is acknowledged by:	☐ Owner of the subject property	☐ Authorized representative
		SIGNATURE
		PRINT NAME
		DATE SIGNER

OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF		
COUNTY OF		
the property that is the subject of this application, including sketches, data, and other and belief. (3) I acknowledge and agree the development board, the application must be considered.	cation. (2) This application are supplementary materials, are at, before this application materials and all information sulach to enter my property for the subject of the	the and certify as follows: (1) I am the owner of and all information submitted in support of this e true and correct to the best of my knowledge and be publicly noticed and heard by a land bmitted in support thereof must be accurate. (4) the sole purpose of posting a Notice of Public this notice after the date of the hearing.
Sworn to and subscribed before me this acknowledged before me by identification and/or is personally known to me	day of , e and who did/did not take ar	SIGNATURE
NOTARY SEAL OR STAMP		NOTARY PUBLIC
My Commission Expires:	_	PRINT NAME
STATE OF		
COUNTY OF		
authorized to file this application on behalf of sapplication, including sketches, data, and other and belief. (4) The corporate entity named he acknowledge and agree that, before this application must be complete and all informations.	such entity. (3) This application er supplementary materials, ar rein is the owner of the prope cation may be publicly noticed on submitted in support therect for the sole purpose of posting	epose and certify as follows: (1) I am the (print name of corporate entity). (2) I am and all information submitted in support of this e true and correct to the best of my knowledge enty that is the subject of this application. (5) I d and heard by a land development board, the of must be accurate. (6) I also hereby authorize a Notice of Public Hearing on my property, as the hearing.
Sworn to and subscribed before me this acknowledged before me by identification and/or is personally known to me	day of , e and who did/did not take ar	SIGNATURE
NOTARY SEAL OR STAMP		NOTARY PUBLIC
My Commission Expires:	_	

PRINT NAME

POWER OF ATTORNEY AFFIDAVIT

STATE OF	
COUNTY OF	
I,, being first duly sworn representative of the owner of the real property that is the sauthorize the City of Miami Beach to enter my property for the sole property, as required by law. (4) I am responsible for remove this not	Board. (3) I also hereby purpose of posting a Notice of Public Hearing on my
PRINT NAME (and Title, if applicable)	SIGNATURE
Sworn to and subscribed before me this day of acknowledged before me by identification and/or is personally known to me and who did/did not	, 20 The foregoing instrument was, who has produced as take an oath.
NOTARY SEAL OR STAMP	NOTARY PUBLIC
My Commission Expires:	
	PRINT NAME
CONTRACT FOR PU	<u>RCHASE</u>
If the applicant is not the owner of the property, but the applicant is or not such contract is contingent on this application, the applicant including any and all principal officers, stockholders, beneficiarie corporations, partnerships, limited liability companies, trusts, or othe the identity of the individuals(s) (natural persons) having the ultima clause or contract terms involve additional individuals, corporations, corporate entities, list all individuals and/or corporate entities.	shall list the names of the contract purchasers below, as or partners. If any of the contact purchasers are recorporate entities, the applicant shall further disclose the ownership interest in the entity. If any contingency partnerships, limited liability companies, trusts, or other
NAME	DATE OF CONTRACT
NAME, ADDRESS AND OFFICE	% OF STOCK

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application if

filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

DISCLOSURE OF INTEREST CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY

If the property that is the subject of the application is owned or leased by a corporation, partnership or limited liability company, list ALL of the owners, shareholders, partners, managers and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

NAME OF CORPORATE ENTITY	_	
NAME AND ADDRESS		% OF OWNERSHIP
	_	
	_	
	_	
	_	
	_	
	_	
	-	
NAME OF CORPORATE ENTITY	_	
NAME AND ADDRESS		% OF OWNERSHIP
	-	
	-	
	_	
	_	
	_	
	-	
	_	

If there are additional corporate owners, list such owners, including corporate name and the name, address and percentage of ownership of each additional owner, on a separate page.

DISCLOSURE OF INTEREST TRUSTEE

If the property that is the subject of the application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

TRUST NAME	-	
NAME AND ADDRESS		% INTEREST
	_	
	-	
	-	
	-	
	-	
	-	
	-	

COMPENSATED LOBBYIST

Pursuant to Section 2-482 of the Miami Beach City Code, all lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Please list below any and all persons or entities retained by the applicant to lobby City staff or any of the City's land development boards in support of this application.

NAME	ADDRESS	PHONE
Additional names can be placed on a se	eparate page attached to this application.	
DEVELOPMENT BOARD OF THE C SUCH BOARD AND BY ANY OTH	OGES AND AGREES THAT (1) AN APPRO ITY SHALL BE SUBJECT TO ANY AND ALI HER BOARD HAVING JURISDICTION, AND OF THE CITY OF MIAMI BEACH AND ALL OT	L CONDITIONS IMPOSED BY (2) APPLICANT'S PROJECT
	APPLICANT AFFIDAVIT	
STATE OF		
COUNTY OF	<u> </u>	
or representative of the applicant. (2) Th	, being first duly sworn, depose and certify his application and all information submitted in supermaterials, are true and correct to the best of my kinds.	pport of this application, including
		SIGNATURE
Sworn to and subscribed before me this acknowledged before me byidentification and/or is personally known	s , 20, who has pront to me and who did/did not take an oath.	The foregoing instrument was oduced as
NOTARY SEAL OR STAMP		
		NOTARY PUBLIC
My Commission Expires:		PRINT NAME

EXHIBIT "L"

Madrid, Vanessa (MIA - X27453)

From: Williams, Steven - Planning <StevenWilliams2@miamibeachfl.gov>

Sent: Wednesday, September 26, 2018 10:09 AM

To: Madrid, Vanessa (MIA - X27453)
Cc: Slavens, Tracy R (MIA - X27642)

Subject: FW: Pre-Application Request – 1349 DADE BLVD

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, Ft. 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Williams, Steven - Planning

Sent: Thursday, September 13, 2018 4:38 PM

To: 'Tracy.Slavens@hklaw.com'; Mercy.Arce@hklaw.com

Cc: Madan, Rogelio; Kallergis, Nick

Subject: RE: Pre-Application Request - 1349 DADE 8LVD

Hi Tracy,

We will prepare the mailing labels. The application form should list the Beach Towing address under "property address," and your clients should be listed as the applicants.

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Tracy.Slavens@hklaw.com [mailto:Tracy.Slavens@hklaw.com]

Sent: Thursday, September 13, 2018 3:34 PM

To: Mercy.Arce@hklaw.com; Williams, Steven - Planning

Cc: Madan, Rogelio

Subject: RE: Pre-Application Request - 1349 DADE 8LVD

Hi guys, can you please confirm this for us? Thanks.

Tracy Slavens | Holland & Knight

Partner

Holland & Knight LLP

701 8rickell Avenue, Suite 3300 | Miami, FL 33131

Phone 305.789.7642 | Fax 305.789.7799

tracy.slavens@hklaw.com | www.hklaw.com

From: Arce, Mercy S (MIA - X22178)

Sent: Wednesday, September 12, 2018 3:45 PM

To: Williams, Steven - Planning < Slavens, Tracy R (MIA - X27642)

<Tracy.Slavens@hklaw.com>

Cc: Madan, Rogelio < Rogelio Madan@miamibeachfl.gov > Subject: RE: Pre-Application Request - 1349 DADE BLVD

Hi Steven,

Please confirm whether the property information (address, folio and legal description) listed on the application to appeal an administrative decision should be for the affected properties or for 1349 Dade 8lvd address? Also, please confirm that the City prepares the mailing labels for applications to appeal an administrative decision.

Thank you,

Mercy Arce | Holland & Knight

Land Use Planner

Holland & Knight LLP

701 8rickell Avenue, Suite 3300 | Miami, FL 33131

Phone 305.349.2178 | Fax 305.789.7799

mercy.arce@hklaw.com | www.hklaw.com

From: Williams, Steven - Planning [mailto:StevenWilliams2@miamibeachfl.gov]

Sent: Tuesday, September 04, 2018 1:00 PM

To: Slavens, Tracy R (MIA - X27642) < Tracy. Slavens@hklaw.com>

Cc: Arce, Mercy S (MIA - X22178) < Mercy.Arce@hklaw.com >; Madan, Rogelio < RogelioMadan@miamibeachfl.gov >

Subject: RE: Pre-Application Request - 1349 DADE 8LVD

Are you available Thursday, September 6th at 10am?

MIAMIBEACH

Steven Williams, Principal Planner

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, FL 33139 Tel: 305-673-7000, ext #6547 / Fax: 786-394-4428

www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrent, tropical, historic community.

From: EServices

Sent: Tuesday, September 04, 2018 12:44 PM
To: Williams, Steven - Planning; Madan, Rogelio
Cc: tracy.slavens@hklaw.com; PlanEnerGov

Subject: Pre-Application Request - 1349 DADE BLVD

PREAPP18-0037 1349 DADE BLVD

Applicant

Tracy Slavens appeal of administrative decision

Appeal of a staff decision: Please describe below Appeal of an administrative decision that was issued on August 30, 2018 for 1349 Dade Blvd

Please note that if you are requesting a variance for a single-family home constructed before 1942, a commercial/multifamily property, a property located within a local historic district, or an individually designated historic site, you may be required to file an application with the Design Review Board or Historic Preservation Board, as applicable. If you need further clarification please contact Board staff at 305-673-7550.

Please be advised that this is a request for a Pre-Application Meeting only. A Pre-Application meeting does not constitute a formal submittal of an application for Land Use Board approval. Staff will provide a file number during the Pre-Application meeting if the project can move forward. Please be reminded that applicable fees must be paid in order for the formal submittal to be considered complete.

By submitting this request I am confirming that I have read and understand the above disclaimer.

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.