

DECLARATION OF KEITH MARKS

My name is Keith Marks. My wife Sonia and I have owned and resided in our 50 South Pointe Drive Condominium unit on Miami Beach since 2008. I am the President of the Continuum Master Association and North Tower Association representing 527 homeowners.

Continuum on South Beach Master Association along with 301 and 321 Ocean Drive have filed a motion to intervene in the federal lawsuit brought by Menin Entertainment the owners of Bakehouse challenging the zoning land use rights of the City of Miami Beach.

As a professional realtor, I am familiar with the Supreme Court of the United States decision that established the rights of a city to establish zoning in the 1926 case of *Euclid v Ambler Realty*. Since that point in time, land use zoning has helped to provide homeowners across the country with a level of stability and self-determination as to the type of neighborhood in which they reside. In the case of Continuum on South Beach, homeowners purchased properties knowing that our high residential zone prohibits entertainment within all commercial properties that have obtained land use permits since 2009.

The amendment being considered by this Committee is, in my opinion, a logical extension of the current well-conceived comprehensive zoning in place in the South of Fifth neighborhood, including the restrictions on entertainment. In contrast, any expansion of entertainment here would create conditions that would cause harm to our residential quality of life. This is very clear to the residents of our condominium associations. Continuum sits across from one of the few "Grandfathered" entertainment businesses in our zone, Nikki's Beach. We fully understand what would happen to our resident's peace and way of life if we allowed day and night time entertainment to operate next to the high-density property's South of Fifth.

Nikki's Beach is a daily problem for Continuum Unit Owners in regards to day and night time music and alcohol producing a steady mixture of Noise Violations, Safety Concerns, Traffic Violations, and Public Intoxication. It is our little slice of what occurs daily in the established MXE entertainments zones north of 5th street within the City of Miami Beach. Not a week goes by where the Continuum Master Association does not get a resident complaint concerning Nikki's Beach day and night entertainment operations.

As I stated in my declaration in support of intervention in the Bakehouse litigation, we, the citizens of Miami Beach who live at Continuum on South Beach, are very upset that a business that agreed at the time it obtained its conditional use approval it would not allow entertainment, would now challenge that law in the courts via the subterfuge of a 1st Amendment claim. Bakehouse

asks as a remedy the removal of the right of the City of Miami Beach to enact zoning for the safety and welfare of a residential community zone. If the owners believe they have a better plan for the welfare of the community, they should invoke the established process in the City for making land-use decisions governed by state law, the comprehensive plan, and our local zoning code, and seek a community consensus based on evidence and quality of life considerations.

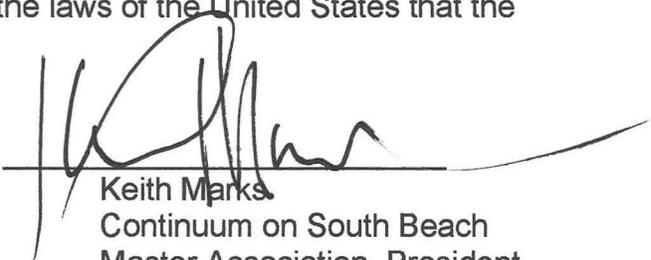
The South of Fifth Neighborhood is an Ultra High Density residential zone containing some of the highest priced condominium residences in Miami Beach. We also have many of the most successful restaurants in the country operating within the South of Fifth zone without entertainment. Continuum on South Beach sits on 12 acres with 527 residential properties. If our HOA consisted of single-family homes, it would reside on over 100 Acres of land. High Density Vertical condominium living requires everyone including our commercial neighbors to respect each other rights to safety, privacy and the quiet enjoyment of our property. Yes, our property values are potentially at risk as well, but the right to protect one's home and property is fundamental, and for many their homes here represent their most important asset by far.

No one is fooled by the action to remove our entertainment zone restrictions nor will we sit quietly while our property rights are trampled upon solely for perceived commercial gain.

We ask that the mayor and commissioners enact the clarifying provisions of our zoning ordinance and make my comments part of the permanent record in support of the entertainment prohibition within our zone, along with my declaration in support of intervention in the Federal litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct

Dated May 9th, 2017



Keith Marks
Continuum on South Beach
Master Association, President