

2. ZBA24-0161, 605 LINCOLN ROAD UNIT 800RF

PREVIOUSLY CONTINUED APPLICATIONS 1

MIAMI BEACH

Land Use Boards

Board of Adjustment

TO: Board of Adjustment
FROM: Thomas Mooney, Director
DATE: November 1, 2024
TITLE: ZBA24-0161, 605 LINCOLN ROAD UNIT 800RF

PROPERTY

605 LINCOLN ROAD UNIT 800RF

FILE NO.

ZBA24-0161

APPLICANT

Upper Deck, LLC

IN RE:

An application has been filed appealing an administrative decision of the Planning Director, in connection with Zoning Interpretation Letter No. ZONE1023-1191, regarding a determination that 'entertainment' is not an approved use for the roof deck portion of the property located 605 Lincoln Road. This appeal has been filed pursuant to Section 2.9.2 of the Land Development Regulations. **[Continued from the October 11, 2024 meeting per the request from the applicant. [The item is requested to be continued to February 7, 2025.]**

PRIOR ORDER NUMBER:

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

PREVIOUSLY CONTINUED APPLICATIONS 1

MIAMI BEACH

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 ZBA24-0161			
<input checked="" type="radio"/> Board of Adjustment <input type="checkbox"/> Variance from a provision of the Land Development Regulations <input checked="" type="checkbox"/> Appeal of an administrative decision		<input type="radio"/> Design Review Board <input type="checkbox"/> Design review approval <input type="checkbox"/> Variance	
<input type="radio"/> Planning Board <input type="checkbox"/> Conditional use permit <input type="checkbox"/> Lot split approval <input type="checkbox"/> Amendment to the Land Development Regulations or zoning map <input type="checkbox"/> Amendment to the Comprehensive Plan or future land use map		<input type="radio"/> Historic Preservation Board <input type="checkbox"/> Certificate of Appropriateness for design <input type="checkbox"/> Certificate of Appropriateness for demolition <input type="checkbox"/> Historic district/site designation <input type="checkbox"/> Variance	
<input type="checkbox"/> Other:			
Property Information – Please attach Legal Description as “Exhibit A”			
ADDRESS OF PROPERTY 605 Lincoln Road, Unit 800RF			
FOLIO NUMBER(S) 02-3234-168-0470			
Property Owner Information			
PROPERTY OWNER NAME Tanja, Inc.			
ADDRESS 450 Alton Rd., #606	CITY Miami Beach	STATE FL	ZIPCODE 33139
BUSINESS PHONE 305-527-6886	CELL PHONE	EMAIL ADDRESS Geraldmia@gmail.com	
Applicant Information (if different than owner)			
APPLICANT NAME The Upper Deck LLC			
ADDRESS 605 Lincoln Rd., Units 270 & 800	CITY Miami Beach	STATE FL	ZIPCODE 33139
BUSINESS PHONE 305-527-6886	CELL PHONE	EMAIL ADDRESS Geraldmia@gmail.com	
Summary of Request			
PROVIDE A BRIEF SCOPE OF REQUEST Administrative appeal relating to property located at 605 Lincoln Road, Unit 800RF, Miami Beach, FL 33139.			

Project Information			
Is there an existing building(s) on the site?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the project include interior or exterior demolition?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Provide the total floor area of the new construction.			SQ. FT.
Provide the gross floor area of the new construction (including required parking and all usable area).			SQ. FT.
Party responsible for project design			
NAME		<input type="checkbox"/> Architect <input type="checkbox"/> Contractor <input type="checkbox"/> Landscape Architect <input type="checkbox"/> Engineer <input type="checkbox"/> Tenant <input type="checkbox"/> Other _____	
ADDRESS		CITY	STATE ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	
Authorized Representative(s) Information (if applicable)			
NAME		<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
Carter McDowell			
ADDRESS		CITY	STATE ZIPCODE
1450 Brickell Ave., Suite 2300		Miami	FL 33131
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	
3053502355		cmcdowell@bilzin.com	
NAME		<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
Nicholas Noto			
ADDRESS		CITY	STATE ZIPCODE
1450 Brickell Ave., Suite 2300		Miami	FL 33131
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	
3053502398		nnoto@bilzin.com	
NAME		<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
James Rauh			
ADDRESS		CITY	STATE ZIPCODE
600 Brickell Ave., Suite 3600		Miami	FL 33131
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	
3055104077		james.rauh@gmlaw.com	

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".
- 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

Gerald Bouhana

PRINT NAME

5/28/24

DATE SIGNED

OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF _____

COUNTY OF _____

I, _____, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for remove this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this _____ day of _____, 20____. The foregoing instrument was acknowledged before me by _____, who has produced _____ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

NOTARY PUBLIC

My Commission Expires: _____

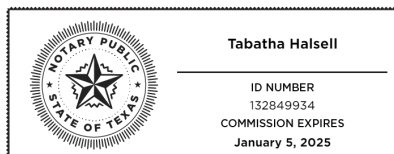
PRINT NAME**ALTERNATE OWNER AFFIDAVIT FOR CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY**STATE OF TexasCOUNTY OF Harris

I, Gerald Bouhana, being first duly sworn, depose and certify as follows: (1) I am the Director (print title) of Tanja, Inc. (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (7) I am responsible for remove this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this 31st day of May, 2024. The foregoing instrument was acknowledged before me by Gerald Bouhana, who has produced DRIVER LICENSE as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

**NOTARY PUBLIC**My Commission Expires: 01/05/2025

Tabatha Halsell Notary Public, State of Texas

PRINT NAME

Electronically signed and notarized online using the Proof platform.

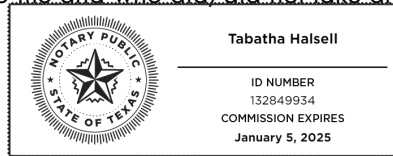
POWER OF ATTORNEY AFFIDAVITSTATE OF TexasCOUNTY OF Harris

I, Gerald Bouhana, being first duly sworn, depose and certify as follows: (1) I am the owner or representative of the owner of the real property that is the subject of this application. (2) I hereby authorize Mr. McDowell, Noto, & Rauh to be my representative before the Board of Adjustment Board. (3) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (4) I am responsible for remove this notice after the date of the hearing.

Gerald Bouhana**PRINT NAME (and Title, if applicable)****SIGNATURE**

Sworn to and subscribed before me this 31st day of May, 2024. The foregoing instrument was acknowledged before me by Gerald Bouhana, who has produced DRIVER LICENSE as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

**NOTARY PUBLIC**My Commission Expires: 01/05/2025Tabatha Halsell

Notary Public, State of Texas

PRINT NAME

Electronically signed and notarized online using the Proof platform.

CONTRACT FOR PURCHASE

If the applicant is not the owner of the property, but the applicant is a party to a contract to purchase the property, whether or not such contract is contingent on this application, the applicant shall list the names of the contract purchasers below, including any and all principal officers, stockholders, beneficiaries or partners. If any of the contact purchasers are corporations, partnerships, limited liability companies, trusts, or other corporate entities, the applicant shall further disclose the identity of the individuals(s) (natural persons) having the ultimate ownership interest in the entity. If any contingency clause or contract terms involve additional individuals, corporations, partnerships, limited liability companies, trusts, or other corporate entities, list all individuals and/or corporate entities.

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.

Tanja, Inc. _____

NAME OF CORPORATE ENTITY

NAME AND ADDRESS	% OF OWNERSHIP
Gerald Bouhana - 450 Alton Rd., #606, Miami Beach 33139	100
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The Upper Deck, LLC _____

NAME OF CORPORATE ENTITY

NAME AND ADDRESS	% OF OWNERSHIP
Tanja, Inc.	100
Gerald Bouhana (as Director of Tanja, Inc.)	100
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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
Carter McDowell	1450 Brickell Ave., Ste. 2300, Miami 33131	3053502355
Nicholas Noto	1450 Brickell Ave., Ste. 2300, Miami 33131	3053502398
James Rauh	600 Brickell Ave., Ste. 3600, Miami 33131	3055104077

Additional names can be placed on a separate page attached to this application.

APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT (1) AN APPROVAL GRANTED BY A LAND DEVELOPMENT BOARD OF THE CITY SHALL BE SUBJECT TO ANY AND ALL CONDITIONS IMPOSED BY SUCH BOARD AND BY ANY OTHER BOARD HAVING JURISDICTION, AND (2) APPLICANT'S PROJECT SHALL COMPLY WITH THE CODE OF THE CITY OF MIAMI BEACH AND ALL OTHER APPLICABLE CITY, STATE AND FEDERAL LAWS.

APPLICANT AFFIDAVIT

STATE OF Texas

COUNTY OF Harris

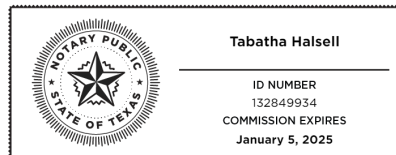
I, Gerald Bouhana, being first duly sworn, depose and certify as follows: (1) I am the applicant or representative of the applicant. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.

[Signature]

SIGNATURE

Sworn to and subscribed before me this 31st day of May, 2024. The foregoing instrument was acknowledged before me by Gerald Bouhana, who has produced DRIVER LICENSE as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



Tabatha Halsell

NOTARY PUBLIC

My Commission Expires: 01/05/2025

Tabatha Halsell Notary Public, State of Texas

PRINT NAME

Electronically signed and notarized online using the Proof platform.

CITY OF MIAMI BEACH
BOARD OF ADJUSTMENT

IN RE: ADMINISTRATIVE APPEAL OF ZONING INTERPRETATION
ZONE1023-1191, PUBLISHED MAY 1, 2024

_____/

PETITION IN SUPPORT OF ADMINISTRATIVE APPEAL

Pursuant to Section 2.9.1(a) of the Miami Beach Resiliency Code (the “Code”), The Upper Deck, LLC (the “Applicant”) submits this Petition in Support of Administrative Appeal of Zoning Interpretation ZONE1023-1191 (the “2024 Interpretation”). See Zoning Interpretation ZONE1023-1191 attached as Exhibit “A”.

STATEMENT OF THE CASE AND BACKGROUND FACTS

Applicant is the operator of a Hall for Hire located at 605 Lincoln Road, Unit RF800, Miami Beach, Florida 33139 (the “Hall” or the “Property”). The Hall is at the rooftop level of the building commonly known as the “Sony Building,” which is within the CD-3, Commercial, High Intensity District and has a future land use designation of High Intensity Commercial (CD-3) under the City of Miami Beach (the “City”) 2040 Comprehensive Plan.

In 2012, Applicant applied for a change of use for the Property from Photo Studio to Hall for Hire. The City approved this change of use pursuant to Permit B1202641 (the “Permit”). See Permit B1202641 Summary attached

as Exhibit “B”. The City and Applicant agreed to eight (8) conditions concerning the Hall for Hire use, all of which are recited in the Planning Department’s review and approval comments to the Permit. *Id.*

Shortly after the approval of the change of use, the City issued a Business Tax Receipt (“BTR”) to Applicant for the Hall for Hire use. The BTR incorporates the same eight (8) conditions as the Permit. See Applicant’s BTR attached as Exhibit “C”. Applicant’s BTR has been continuously renewed since its issuance, most recently on October 30, 2023.

The Permit and BTR conditions include the following:

3. Live or amplified music played at **entertainment** levels shall be prohibited and all music played at the establishment shall be limited to ambient, background music at a level that does not interfere with normal conversation, except as permitted through any special event permit.
5. The maximum long-term sound system levels shall be limited to 78.7 dBA as calibrated by The Audio Bug, Inc. on April 26, 2012 (**see attached report**).

See Exhibit “C” (emphasis added).

Attached to both the Permit and the BTR was an April 26, 2012 report from The Audio Bug (the “Sound Study”). As demonstrated in Figure A below, the Sound Study expressly anticipated that, consistent with the conditions, a DJ could operate at the Hall by playing recorded music through

the setup receiver. See Sound Study attached as Exhibit “D,” Sheet 03, entitled “External Control Box” (red graphic box and arrow added).

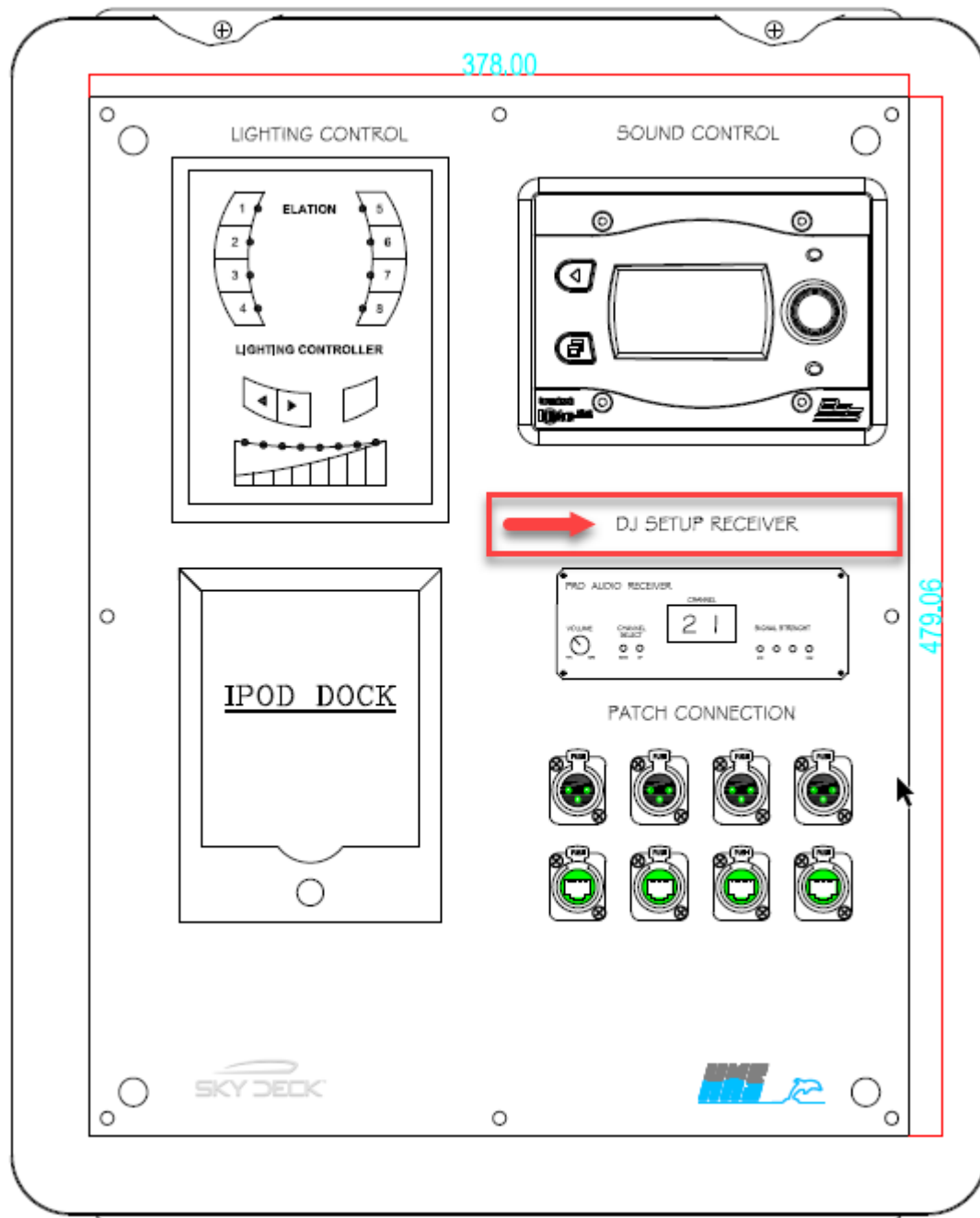


Figure A: Sound Study Sheet 03

When the Permit and BTR were issued, the definition of an “entertainment establishment” was defined in Chapter 114 of the Municipal Code. While this definition is now housed in Section 1.2.2.4 of the Code, the definition has not changed since it was first adopted by the City in 1999, by Ordinance 99-3222. See Ordinance 99-3222 attached as Exhibit “E”. The definition states:

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (**excepting** television, radio and/or **recorded background music, played at a volume that does not interfere with normal conversation**, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b) in General Ordinances.

See Section 1.2.2.4 of the Code (emphasis added); Exhibit “E”.

On July 3, 2013, then-Planning Director Lorber issued an interpretation of the meaning of “entertainment establishment” (“Lorber Interpretation”). The Lorber Interpretation confirms that a DJ is not encompassed within the meaning of “entertainment establishment,” and therefore does not require an entertainment license, as long as:

1. No formal DJ booth is on the plans;
2. No formal advertising of the performances by the DJ;
3. No microphone is used by the DJ; and

4. The music will not interfere with conversation and conform to the City statute on background music.

See Lorber Interpretation attached as Exhibit “F”. Thus, since its creation in 1999, through the 2013 confirmation by then-Planning Director Lorber, and up until recently, a DJ playing recorded background music at a volume that does not interfere with normal conversation (and otherwise meeting the other stipulations in the Lorber Interpretation) did not constitute an “entertainment establishment” in the City’s eyes.

Applicant has held many events at the Hall since the BTR was issued, many of which included the open and obvious use of a DJ. Additionally, there have been multiple documented inspections by code compliance which have acknowledged the use of a DJ without ever issuing a violation for that use. This use (together with other salient facts) is documented in the Declaration of the Applicant attached as Exhibit “G”.

On October 26, 2023, Applicant submitted a Request for Administrative Zoning Interpretation (the “Request”). See Request attached as Exhibit “H”. The Request sought confirmation from the City that Applicant was permitted to have a DJ playing ambient, background music at a level that does not interfere with normal conversation and otherwise consistent with the conditions of the BTR. Unfortunately, Applicant was in for a surprise.

On April 30, 2024, the Planning Director reversed the Lorber Interpretation. The 2024 Interpretation now concludes: “No business operator on the Property has been issued a Certificate of Use or BTR for ‘entertainment’¹ as defined in Chapter 1 of the Land Development Regulations of the City Code (LDRs); therefore, entertainment is not an approved use for the Property.”

The 2024 Interpretation further stated:

A Certificate of Use or BTR for outdoor entertainment could potentially be approved on the Property subject to conditional use approval from the Planning Board. However, as of the date of this letter, the Applicant has neither requested nor obtained approval for “entertainment.” Based on the foregoing, (i) ***live music or any other live performance, including but not limited to a disc jockey (DJ)***, or (ii) any music, whether live or recorded, that is played at a volume level exceeding ambient, background levels, ***would not be permitted on the premises***.

See Exhibit “A” (emphasis added).

Because the City fully reversed its interpretation of the definition of “entertainment establishment” to prohibit DJ’s from playing recorded music at ambient levels without a license or certificate, and because Applicant has relied upon that definition for over a decade, Applicant has been unfairly prejudiced. Applicant now appeals.

¹ “Entertainment” per se is not a defined term in Chapter 1 of the Code. The Planning Director likely intended to refer to the definition of “entertainment establishment” discussed above.

ARGUMENT

- I. The 2024 Interpretation should be quashed because only the Board of Adjustment—not the Planning Director—has authority to deviate from the Lorber Interpretation.**

Residents and business owners should not have to fear arbitrary, complete reversals in the interpretation of the City Code. For that reason, the Code provides that “[a]ny decision of the planning director pertaining to the interpretation of the land development regulations may only be reversed or modified by the board of adjustment.” See Article III, “Interpretation and Enforcement”, Section 1.3.6, “Administration of Regulations”, Subsection h. This ensures that interpretations do not capriciously whipsaw from one planning director to the next.

The Board of Adjustment never reversed or modified the Lorber Interpretation. Nor has the definition of “entertainment establishment” been modified by the City Commission since the Lorber Interpretation. Unless and until either the Board of Adjustment or the City Commission takes such action, the Lorber Interpretation binds the City staff, including successor planning directors.

Therefore, the Planning Director did not have the authority to render the 2024 Interpretation and override the Lorber Interpretation. The 2024 Interpretation must be quashed and the Lorber Interpretation reinstated,

allowing the Applicant to have events at the Hall with a DJ consistent with the conditions of the Lorber Interpretation, the Permit, and the BTR.

II. The Planning Director's Interpretation Is Plainly Incorrect.

Under Section 2.9.1, a written determination by the Planning Director can be appealed for an “error.” The Planning Director’s conclusion that the playing of recorded music at an ambient level by a DJ constitutes live music is plainly such an error.

The Planning Director acknowledges that the “definition of ‘entertainment’ excludes recorded background music played at an ambient volume level, which is a level that does not interfere with normal conversation. Accordingly, the above noted conditions [in the CU and BTR] indicate that ***recorded music is permitted at the premises***, provided such music is played at an ambient, background level that does not interfere with normal conversation.” See Exhibit A at p. 2 (emphasis added). Yet the Planning Director then follows with a non-sequitur, concluding without explanation that a DJ constitutes a “live” performance.

Of course, a DJ does not play live music, whether by singing or playing an instrument. To the contrary, the purpose of a DJ is to play recorded music.

The term DJ is short for “disc jockey,”² which in turn is defined as “a person who introduces and plays **recorded** music (especially popular music) on a show (such as a radio program).”³

As long as the DJ plays the recorded music at an ambient, background level that does not interfere with normal conversation, then the DJ fits squarely within the BTR conditions. Therefore, the Planning Director erred by concluding that a DJ does not play recorded music.

III. The 2024 Interpretation should be quashed under longstanding equitable principles.

Florida courts employ a host of equitable doctrines to ensure that justice will be even-handed and the rules of fair play will prevail. These doctrines, individually and collectively, lend support to Applicant’s argument that the 2024 Interpretation should be quashed.

² See Merriam-Webster’s dictionary, *available at* <https://www.merriam-webster.com/dictionary/DJ> (last visited May 24, 2024). See also *Level 3 Commc’n, LLC v. Jacobs*, 841 So. 2d 447, 455 n.4 (Fla. 2003) (looking to Merriam-Webster’s Dictionary to define a term that was undefined in the administrative code; “When necessary, the plain and ordinary meaning can be ascertained by reference to a dictionary.”).

³ See *id.*, *available at* <https://www.merriam-webster.com/dictionary/disc%20jockey#h1> (last visited May 24, 2024) (emphasis added).

A. The Planning Director Is Equitably Estopped from Reversing the Lorber Interpretation.

The doctrine of equitable estoppel is ingrained in Florida law and is applicable in this case:

[T]he doctrine of equitable estoppel will preclude a municipality from exercising its zoning power where [a] property owner (1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired.

Hollywood Beach Hotel Co. v. City of Hollywood, 329 So. 2d 10, 15-16 (Fla. 1976).

The classic statement of the doctrine is found in *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975):

Stripped of the legal jargon which lawyers and judges have obfuscated it with, the theory of estoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances and commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds.

All elements of equitable estoppel are satisfied here. As set forth in the Applicant's Declaration (attached as Exhibit G), in 2020, the current

owner of the Property, Tanja, Inc., purchased all of the membership interests of Applicant, in good faith reliance of its then-7-year track record of established use as a Hall for Hire in accordance with the BTR. See Exhibit G ¶ 13. Applicant has also relied in good faith on its Permit, its BTR, and the Lorber Interpretation for over a decade in the operation of its Hall for Hire business activities. See *id.* ¶¶ 14–15. Moreover, Applicant has spent over \$100,000 on sound equipment and other upgrades in reliance upon the previous approvals of a DJ in the Permit, its BTR, and the Lorber Interpretation. See *id.* ¶ 16.

Now, over a decade later, the City, through its 2024 Interpretation, attempts to pull out the ‘welcome mat’ from under Applicant to its detriment. In order for Applicant to continue its business operations with a DJ playing recorded background music at a volume that does not interfere with normal conversation, the 2024 Interpretation provides Applicant with only two, inadequate options.

First, the 2024 Interpretation provides that Applicant can seek a special event permit on a case-by case basis any time that it seeks to have a DJ play recorded background music at a volume that does not interfere with normal conversation. Pursuant to Section 12-5 of the City’s Code of Ordinances, a special event permit would require the Applicant to submit a

special event application which includes, at a minimum, “an application form, site plan, fees, deposits, insurance and indemnification.” Further, all of these application requirements must be submitted no less than 60 days in advance of the event. This would impose not only a financial burden, but also a practical impossibility for the Applicant to operate its business.

It gets even worse. Pursuant to Policy II.B.I of the City’s Special Events Requirements and Guidelines, entitled the “Consecutive-Day Clause/ Limit of permissible events per venue”, the Applicant is limited to only five (5) special event permits per calendar year. Thus, due to the 2024 Interpretation the Applicant’s ability to operate its business under the BTR has drastically diminished from 365 days per year to five, and even then only at a significant cost and overly-burdensome application process.

The only other option suggested by the 2024 Interpretation is to seek a conditional use approval from the Planning Board as an outdoor entertainment establishment. This suggestion would subject the Applicant to a six to eight month application process and thousands of dollars in costs for plans, studies, legal fees, etc., all just for the mere ***possibility*** to receive an approval at a public hearing for the same business practice Applicant had been entitled to from 2013 until now.

The 2024 Interpretation extinguishes the Applicant's use rights for the Property provided by the Permit, BTR, and the Lorber Interpretation, subjecting Applicant to the exact type of obligation and expense that the Florida Supreme Court warned about in *Hollywood Beach*. Thus, even if the 2024 Interpretation is permitted to stand as a general matter, at the very least the Board of Adjustment should apply the doctrine of equitable estoppel and determine, as applied to Applicant and its BTR, Applicant is entitled to rely on the previous assurances and commitments of the City.

B. The Doctrine of Administrative Finality Requires That The Lorber Interpretation Be Reinstated.

For similar reasons, the doctrine of administrative finality applies here. "The doctrine of administrative finality is based on principles similar to those supporting res judicata and collateral estoppel." *Pumphrey v. Dep't of Children & Families*, 292 So. 3d 1264, 1266 (Fla. 1st DCA 2020). In *Metro. Dade Cty. Bd. of Comm'rs v. Rockmatt Corp.*, 231 So. 2d 41, 44 (Fla. 3d DCA 1970), the Court articulated how res judicata applies in the administrative setting:

The doctrine [of *res judicata*] is applicable to rulings or decisions of administrative bodies, and to rulings of such bodies dealing with zoning regulations unless it can be shown that since the earlier ruling thereon there has been a substantial change of circumstances relating to the subject matter with which the ruling was concerned, sufficient to prompt a different or contrary

determination, and no such showing was made or attempted in this instance.

There has not been a substantial change in circumstances since the Lorber Interpretation was issued. As noted above, the definition of an “entertainment establishment” remains the same, as does the meaning of a DJ. The only change has been the opinion of the Planning Director. Under black-letter law, a change in personnel in the government is not enough to undermine the principles of estoppel, administrative finality, and *res judicata*:

The basic concepts of equitable estoppel, held by the prior cited case to be applicable to municipalities as to individuals, preclude the notion of such instability in municipal action merely because its business is conducted through a body whose membership is subject to change.

Sakolsky v. City of Coral Gables, 151 So. 2d 433, 435 (Fla. 1963).

Therefore, under principles of administrative finality, the Planning Director should be barred from upending the Lorber Interpretation. *See, e.g., Holiday Inns, Inc. v. City of Jacksonville*, 678 So. 2d 528, 530 (Fla. 1st DCA 1996) (quashing circuit court decision and remanding for entry of order reversing the board’s decision; holding that, in the absence of a substantial change in circumstances, the board “was without power to reverse its previous determination concerning liability.”).

The interpretation of whether a DJ plays recorded music, and thus can be excepted from the definition of an “entertainment establishment,” was

already ruled upon by then-Planning Director Lorber. That ruling should remain settled. See *Felder v. Dept. of Mgmt. Servs.*, 993 So. 2d 1031, 1035 (Fla. 1st DCA 2008) (noting that the doctrine of administrative finality's particular "emphasis is on [a party's] need to have confidence in the authority of an administrative order.").

CONCLUSION

In light of the foregoing, the Interpretation directly conflicts with prior determinations and the City Code, and is therefore void and should be quashed.

Respectfully submitted,

Carter N. McDowell

Carter N. McDowell

**BILZIN SUMBERG BAENA PRICE &
AXELROD LLP**

1450 Brickell Avenue, 23rd Floor

Miami, FL 33131-3456

Tel. (305) 350-2374

Fax (305) 351-2204



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rdrmiami.com | diana@rdrmiami.com | 305.498.1614

May 21, 2024

City of Miami Beach
Planning Department
1700 Convention Center Dr.
Miami Beach, FL 33139

Re: Property owners within 375 feet of:

SUBJECT: 605 Lincoln Road, Miami Beach, FL 33139

FOLIO NUMBER: 02-3234-168-0001

This is to certify that the attached ownership list, map and mailing labels are a complete and accurate representation of the real estate property and property owners within 375 feet radius of the external boundaries of the subject property listed above, including the subject property. This reflects the most current records on file in the Miami-Dade County Property Appraisers' Office.

Sincerely,

Diana B. Rio

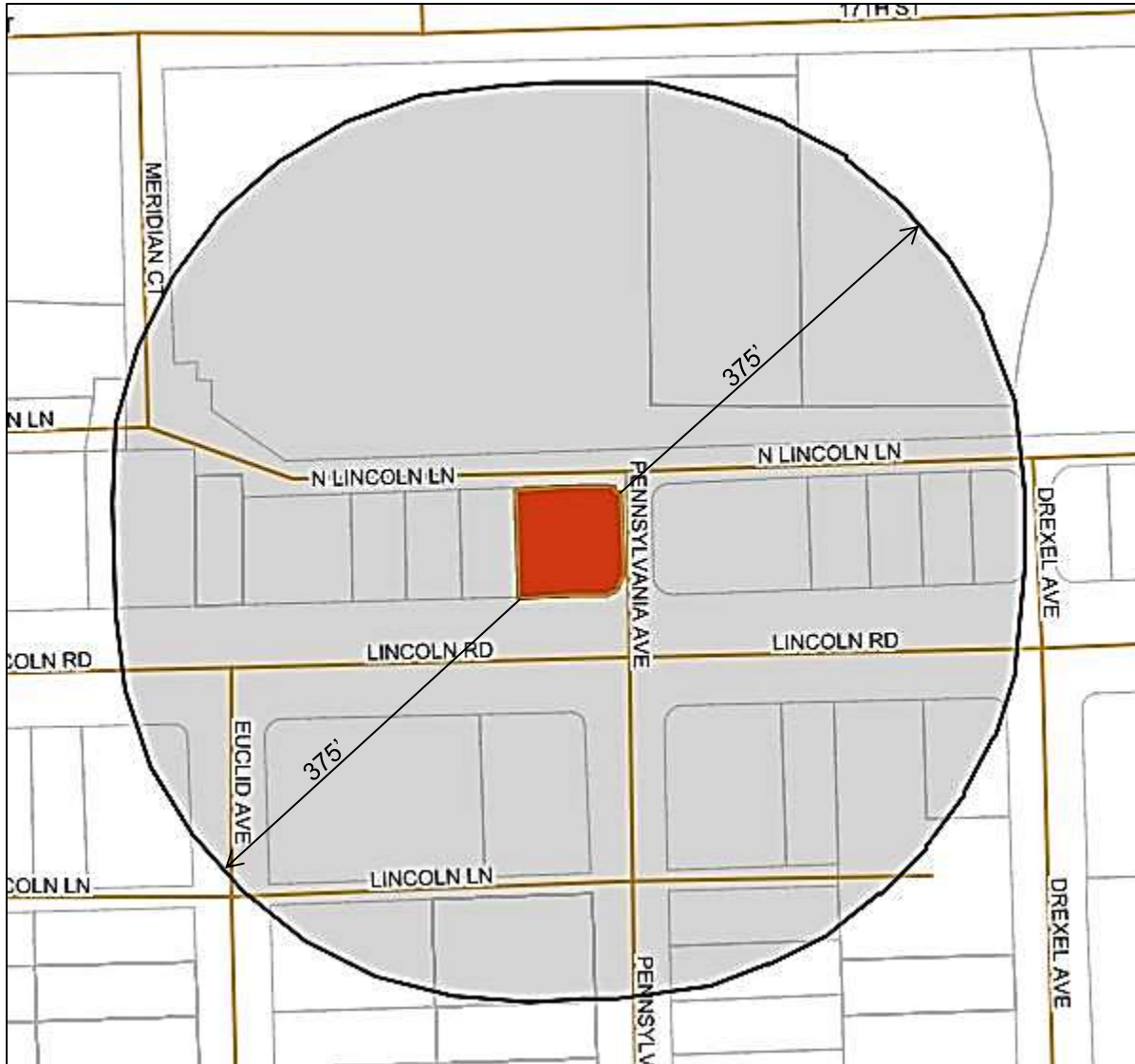
Total number of property owners without repetition: **62, including 3 international**



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certified lists of property owners within a specific radius + radius maps + mailing labels + mailouts + notice of public hearing site posting
rdrmiami.com | diana@rdrmiami.com | 305.498.1614

375' RADIUS MAP (N.T.S.)



SUBJECT: 605 Lincoln Road, Miami Beach, FL 33139

FOLIO NUMBER: 02-3234-168-0001

ALEBELL SAS DI PIETRO DELAINI
VIA IV NOVEMBRE 25121
BRESCIA
ITALY

COLLINS EIGHTH LLC
730 LEXINGTON LLC
905 HODGE ST
MONTREAL QC H4N 2B3
CANADA

TIZIANA BRAZZIOLI
33 GILGORM RD
TORONTO ON M5N 2M4
CANADA

1620 PENNSYLVANIA AVE UNIT 103
LLC
9499 COLLINS AVE PH8
SURFSIDE, FL 33154

500 LINCOLN ROAD INC
1620 DREXEL AVE
MIAMI BEACH, FL 33139

530 LINCOLN OWNER LLC
801 GRAND AVE
DES MOINES, IA 50392

605 LINCOLN LLC
605 LINCOLN RD UNIT #210
MIAMI BEACH, FL 33139

650 LINCOLN RD 250 LLC
605 LINCOLN RD 250
MIAMI BEACH, FL 33139

8383251 US INC
605 LINCOLN RD #200
MIAMI BEACH, FL 33139

AJB CAPITAL INC
605 LINCOLN RD STE 440
MIAMI BEACH, FL 33139

ALAN TEMPKINS
605 LINCOLN RD 301
MIAMI BEACH, FL 33139

ALFREDO GARCIA DE SANTAMARINA
1620 PENNSYLVANIA AVE 106
MIAMI BEACH, FL 33139

ALTONSTAR LLC
C/O SOUTH BEACH TRISTAR CAPITAL
1407 BROADWAY 41 FL
NEW YORK, NY 10018

AMELIA LILLIS
1620 PENNSYLVANIA AVE 202
MIAMI BEACH, FL 33139

ANDREW LA CERVA
605 LINCOLN RD #260
MIAMI BEACH, FL 33139-2935

ARCPE 11 LLC
1900 SUNSET HARBOUR DR ANNEX 2
MIAMI BEACH, FL 33139

BELL & ROSS INC
605 LINCOLN RD #300
MIAMI BEACH, FL 33139

BLINK CHARGING INC
407 LINCOLN RD 704
MIAMI BEACH, FL 33139

BRG LINCOLN 303 LLC
605 LINCOLN RD 303
MIAMI BEACH, FL 33139

CHABAD HOUSE ON WHEELS INC
3134 ROYAL PALM AVE
MIAMI BEACH, FL 33140

CHASE FERNANDO CAMAROTTI
GABRIELA MARIE CAMAROTTI
1620 PENNSYLVANIA AVE 101
MIAMI BEACH, FL 33139

CITY OF MIAMI BEACH
NEW WORLD SYMPHONY LESSEE
500 17 ST
MIAMI BEACH, FL 33139

CITY OF MIAMI BEACH
FLA BAY SHORE CLUB COURSE
MIAMI, FL 33125

CITY OF MIAMI BEACH
1700 CONVENTION CENTER DR
MIAMI BEACH, FL 33139

CITY OF MIAMI BEACH FLA
CITY HALL
1700 CONVENTION CENTER DR
MIAMI BEACH, FL 33139

COMCO LLC
1261 20 ST
MIAMI BEACH, FL 33139

DOWNTOWN MIAMI DADE
ENTERPRISES LLC
9860 SW 32 AVE
MIAMI, FL 33165

FASHION SKYLINE INCORPORATED
605 LINCOLN RD UNIT 420
MIAMI BEACH, FL 33139

FEDERICO PORRI
OMBRETTA TIBERI
1620 PENNSYLVANIA AVE 104
MIAMI BEACH, FL 33139

G ONE LLC
16508 NE 27 AVE
NORTH MIAMI BEACH, FL 33160

GALCO MAHEBA USA LLC
90 ALTON RD 101
MIAMI BEACH, FL 33139

H F F LLC
605 LINCOLN RD #400
MIAMI BEACH, FL 33139

H F F LLC
605 LINCOLN RD #410
MIAMI BEACH, FL 33139-2902

J BERENS & SONS DEV CORP INC
9623 E BROADVIEW DR
BAY HARBOR ISLANDS, FL 33154

JAN TAWAKOL &
TASNIM KHAN JTRS
5302 EAST DOUBLETREE RD
PARADISE VALLEY, AZ 85253

LES JARDINS 204 LLC
1620 PENNSYLVANIA AVE 204
MIAMI BEACH, FL 33139

LINCOLN 511 LLC
% JENEL MGMT CORP
275 MADISON AVE STE 702
NEW YORK, NY 10016

LINCOLN CENTER ASSOCIATES
1300 COLLINS AVE STE 100
MIAMI BEACH, FL 33139-4234

LINCOLN CENTURION RETAIL LLC
500 5 AVE FL 39
NEW YORK, NY 10110

LINCOLN ROAD 450 LLC
1000 S POINTE DR 1902
MIAMI BEACH, FL 33139

LINCOLN ROAD PENTHOUSE LLLP
C/O W PROPERTIES INC
3109 GRAND AVE 282
MIAMI, FL 33133

MARCH FIRST 605 LLC
605 LINCOLN RD 240
MIAMI BEACH, FL 33139

MASSIMILIANO LINGUA
1620 PENNSYLVANIA AVE #107
MIAMI BEACH, FL 33139

MIAMI BEACH COMMUNITY CH INC
1620 DREXEL AVE
MIAMI BEACH, FL 33139

MORECO CORP
12970 BIG BEAR BLUFF
BOYNTON BEACH, FL 33473-3302

OCEANSIDE RESORTS INC
605 LINCOLN RD #320
MIAMI BEACH, FL 33139-2934

PETER O SILVA
640 HEMPSTEAD AVE
ORLANDO, FL 32803

PN SOUTH LLC
1620 PENNSYLVANIA AVE #105
MIAMI BEACH, FL 33139

PPF 723 LINCOLN LANE LLC
C/O LINCOLN LANE MM
55 MIRACLE MILE STE 330
CORAL GABLES, FL 33134

PPF LRIII PORTFOLIO LLC
C/O LINCOLN ROAD MM LLC
55 MIRACLE MILE #330
CORAL GABLES, FL 33134

RDB&J INVESTMENTS LLC
560 LINCOLN RD STE 204
MIAMI BEACH, FL 33139-2906

RUBBER 8 LLC
605 LINCOLN RD #230
MIAMI BEACH, FL 33139

SEVEN HUNDRED REALTY CORP LESSEE
% NATHAN NEWMAN AGENT
15499 WEST DIXIE HWY
N MIAMI BEACH, FL 33162-6031

SRA LINCOLN THEATER LLC
5345 PINE TREE DR
MIAMI BEACH, FL 33140

TANJA INC
450 ALTON RD 606
MIAMI BEACH, FL 33139

TERMINAL 3 INC
605 LINCOLN RD UNIT 215
MIAMI BEACH, FL 33139

THE DENISON CORP
% DR D QUITTNER
560 LINCOLN RD STE 204
MIAMI BEACH, FL 33139

THELMAR CORP
9225 COLLINS AVE APT-402
SURFSIDE, FL 33154-3038

THOR ASB 605 LINCOLN ROAD LLC
C/O RYAN LLC/PAOLA CASTILLO
2111 WILSON BLVD STE 300
ARLINGTON, VA 22201

TOROLUPA INC
525 LINCOLN RD
MIAMI BEACH, FL 33139-2913

TUCAN RESIDENCES LLC
1620 PENNSYLVANIA AVE #102
MIAMI BEACH, FL 33139

TWO TWENTY LLC
605 LINCOLN RD STE 230
MIAMI BEACH, FL 33139

Name	Address	City	State	Zip	Country
ALEBELL SAS DI PIETRO DELAINI	VIA IV NOVEMBRE 25121	BRESCIA			ITALY
COLLINS EIGHTH LLC 730 LEXINGTON LLC	905 HODGE ST	MONTREAL QC H4N 2B3			CANADA
TIZIANA BRAZZIOLI	33 GILGORM RD	TORONTO ON M5N 2M4			CANADA
1620 PENNSYLVANIA AVE UNIT 103 LLC	9499 COLLINS AVE PH8	SURFSIDE	FL	33154	USA
500 LINCOLN ROAD INC	1620 DREXEL AVE	MIAMI BEACH	FL	33139	USA
530 LINCOLN OWNER LLC	801 GRAND AVE	DES MOINES	IA	50392	USA
605 LINCOLN LLC	605 LINCOLN RD UNIT #210	MIAMI BEACH	FL	33139	USA
650 LINCOLN RD 250 LLC	605 LINCOLN RD 250	MIAMI BEACH	FL	33139	USA
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CITY OF MIAMI BEACH	FLA BAY SHORE CLUB COURSE	MIAMI	FL	33125	USA
CITY OF MIAMI BEACH	1700 CONVENTION CENTER DR	MIAMI BEACH	FL	33139	USA
CITY OF MIAMI BEACH FLA CITY HALL	1700 CONVENTION CENTER DR	MIAMI BEACH	FL	33139	USA
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H F F LLC	605 LINCOLN RD #400	MIAMI BEACH	FL	33139	USA
H F F LLC	605 LINCOLN RD #410	MIAMI BEACH	FL	33139-2902	USA
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LINCOLN 511 LLC % JENEL MGMT CORP	275 MADISON AVE STE 702	NEW YORK	NY	10016	USA
LINCOLN CENTER ASSOCIATES	1300 COLLINS AVE STE 100	MIAMI BEACH	FL	33139-4234	USA
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PPF LRIII PORTFOLIO LLC C/O LINCOLN ROAD MM LLC	55 MIRACLE MILE #330	CORAL GABLES	FL	33134	USA
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RUBBER 8 LLC	605 LINCOLN RD #230	MIAMI BEACH	FL	33139	USA
SEVEN HUNDRED REALTY CORP LESSEE % NATHAN NEWMAN AGENT	15499 WEST DIXIE HWY	N MIAMI BEACH	FL	33162-6031	USA
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TERMINAL 3 INC	605 LINCOLN RD UNIT 215	MIAMI BEACH	FL	33139	USA
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THELMAR CORP	9225 COLLINS AVE APT-402	SURFSIDE	FL	33154-3038	USA
THOR ASB 605 LINCOLN ROAD LLC C/O RYAN LLC/PAOLA CASTILLO	2111 WILSON BLVD STE 300	ARLINGTON	VA	22201	USA
TOROLUPA INC	525 LINCOLN RD	MIAMI BEACH	FL	33139-2913	USA
TUCAN RESIDENCES LLC	1620 PENNSYLVANIA AVE #102	MIAMI BEACH	FL	33139	USA
TWO TWENTY LLC	605 LINCOLN RD STE 230	MIAMI BEACH	FL	33139	USA

Carter N. McDowell
Tel 305-350-2355
Fax 305-351-2239
cmcdowell@bilzin.com

May 31, 2024

Thomas Mooney
Planning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach , FL 33139

Re: Administrative Appeal of Zoning Interpretation ZONE1023-1191, Published May 1, 2024

Dear Mr. Mooney:

This firm represents The Upper Deck, LLC (the "Applicant"), the operator of a Hall for Hire located at 605 Lincoln Road, Unit RF800, Miami Beach, FL (the "Property"). Please accept this correspondence as the Applicant's letter of intent in connection with the appeal of Zoning Interpretation ZONE1023-1191. Attached to this letter are our application materials and our formal Petition in Support of Administrative Appeal for the Board of Adjustment's consideration.

Sincerely,

Carter N. McDowell

Carter N. McDowell

CNM:NN

MIAMI 11570726.1 102311/305643