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HANK N. ROVILLARD  
EDWARD O. LIND III (NJ & PA BAR)

E-mail: [edwardlind@comcast.net](mailto:edwardlind@comcast.net)

August 16, 2021

Casino Reinvestment Development Authority (CRDA)  
Attn.: Monica de los Rios, General Counsel  
15 South Pennsylvania Ave.  
Atlantic City, NJ 08401  
Via Certified Mail RRR # 7018 2290 0001 2351 9161

and by email to:

Monica De Los Rios: [mdelosrios@njcrda.com](mailto:mdelosrios@njcrda.com)  
Robert L. Reid: [rreid@njcrda.com](mailto:rreid@njcrda.com)

**Re: Appeal of Denial of Application for Certificate of Land Use Compliance  
Atlantic 7, Inc. DBA Taboo  
1544 Atlantic Ave.  
Block 151 / Lot 2  
Atlantic City, NJ 08401  
CLUC Application No. 2021-08-3043**

Dear Ms. de los Rios:

I am an attorney representing the owner of the above referenced property, Myron Kaminsky, with regards to his appeal of the denial of the application for a Certificate of Land Use Compliance to maintain and operate the General Retail establishment which has a non primary use which includes the sale or rental of adult materials, novelties and the operation of ten (10) viewing booths, and which has continuously and lawfully operated since July 1, 1997.

The owners of the subject property were issued a CLUC to operate the business on July 1, 1997, and it has been operated without any changes in its character or operations continuously and without interruption at all times through the current date. The owner and operators of the business at this location have paid all municipal fees, taxes and maintained all required licenses at all times through the present date. The City of Atlantic City, the owner of the property, and the then current operator of the business located on the subject property were involved in litigation filed in both State and Federal District Court which was resolved by way of the parties entering into a binding and legally enforceable Settlement Agreement whereby the City of Atlantic City agreed that the operations as conducted at the property would be deemed a legally permissible use, and that all required licenses would be issued by the City, subject to certain

conditions, which conditions have been abided by at all times since. Subsequent to this Settlement Agreement being entered into and filed with the Federal District Court, District of New Jersey, the owners of the subject property were issued a CLUC in 1999.

In 2011 a new tenant, Atlantic 7 Inc., took over the operations of the business and was issued a CLUC at that time.. In August of 2019 the ownership of the tenant entity Atlantic7 Inc. changed and subsequently, the tenant / operator of the business was informed he would be required to apply for a new CLUC. The initial application for a new CLUC was filed by Indika Subeappu Kankanamalage and denied on August 6, 2021. The letter accompanying this denial sets forth as the reasons for denial various assertions as to the use of the property being in violation of the provisions of N.J.S.A. 2C:34-7, as not having ever been a permitted use pursuant to the Land Use Ordinance within the City of Atlantic City, that the use is not permitted pursuant to N.J.A.C. 19:66, and that the "original" CLUC issued November 10, 1997 included a condition of approval as to compliance with N.J.S.A. 2C:34-7. What is not acknowledged in the denial letter is the fact that in 1999, the CLUC and Certificate of Non Conformity were issued in conjunction with the settlement of litigation between Francine, Inc. Myron & Suzanne Kaminsky and the City of Atlantic City, docketed in the Federal District Court, District of New Jersey as case 98-cv-2335(JEI) and in the Superior Court of New Jersey as LT-4318-98. The original CLUC was issued July 1, 1997, by Jay T. Fiedler, and includes as a condition of approval only that "The applicant submit a signage plan prior to the installation of any signs". Copy of July 1, 1997 CLUC attached hereto as Exhibit "A" Applicant submitted floor plans including ten (10) viewing booths on July 17, 1997, which was approved that same date. Copy of floor plan submission and approval attached hereto as Exhibit "B".


The fully executed Settlement Agreement by and between the owner of the subject property and the City of Atlantic City, attached hereto as Exhibit "C" provides in relevant part as follows:"The City shall grant all licensing necessary for Francine to operate its business in the premises on the terms and conditions set forth herein." "Francine acknowledges that N.J.S.A. 2C:34-7 restricts the location of sexually oriented businesses within the municipality. Francine further acknowledges and represents that the operation of its business at 1544 Atlantic Avenue shall not be considered a sexually oriented business as defined by N.J.S.A. 2C:34-8. The sale or rental of adult materials shall not become the principal business purpose on the premises." "It is expressly agreed by the City that the operation of Francine's business in the premises in accordance with the terms described in this Settlement Agreement, i.e., the General Retail Section being operated in the location identified as Section "A" on Exhibit "A" to this Agreement, is not violative of N.J.S.A. 2C:34-7 and that for so long as Francine's business shall be so operated in the Premises there shall exist no grounds for revocation of Francine's license." Further, the Settlement Agreement provides that "The Kaminskys, their heirs, successors and assigns shall be given the same rights given to Francine pursuant to this Settlement Agreement to exercise in the event that Francine does not, for any reason, operate pursuant to this Agreement. In the event that the license granted pursuant to this Settlement Agreement to Francine is revoked as a result of Francine's breach of this Agreement, the Kmainkys, their heirs, successors and assigns (other than Francine, a principal of Francine), shall be permitted to receive licensing and operate pursuant to this Agreement."

As I am sure you are aware, settlement agreements entered into between parties to litigation are made with the intent that they remain binding and controlling unless breached. There has been no change in the operations of the subject premises at any time since the issuance of the original CLUC on July 1, 1997, and no instance of any event by the owner or operator of

the premises at any relevant time which could be claimed as a breach of the Agreement. The litigation was concluded by all parties on the condition that the Settlement Agreement be adhered to. The parties thereto explicitly acknowledging that they intended to be legally bound and that the Agreement was entered into in exchange for good and valuable consideration. As such, the City of Atlantic City is compelled to issue the proper licenses, including the CLUC, to this applicant. For the aforementioned reasons, applicant respectfully submits that the denial of the CLUC was in error and must now be issued.

Thank you for your time and consideration of this matter. In the event you should require any further information or documentation, please do not hesitate to contact my office.

Sincerely,



Edward O. Lind III, Esq.

cc: M. Kaminsky  
B. Kaminsky  
S. Kaminsky  
I. Kankanamalage

**EXHIBIT "A"**



1000 PLANNING  
L - SUITE 500  
CITY, NEW JERSEY 08401  
7-5404  
9) 347-5345

Form revised: 5/95

# CERTIFICATE OF LAND USE COMPLIANCE

FEE: COMMERCIAL \$32.00 RESIDENTIAL: \$16.00  
CHECKS OR MONEY ORDER PAYABLE TO CITY OF ATLANTIC CITY

NOTES: 1) This Certificate does not substitute for a Certificate of NonConformity, Building Permit, Mercantile License or other Federal, State or local permit or approval required. 2) The Owner, by his "signed consent" (below), also authorizes the release of the Property Record Cards and any other documents to the Applicant.

### TO BE COMPLETED BY THE APPLICANT

Applicant's (Your) Name: SUZANNE B. KAMINSKY Phone: 609-822-6144  
 Applicant's (Your) Address: 217 N. ARGYLE AVE, MARGATE N.J. 08402  
 Owner's Name: MYRON + SUZANNE B. KAMINSKY Phone: (609) 822-6144  
 Owner's Address: 217 N. ARGYLE AVE, MARGATE N.J. 08402  
 Owner's Signed Consent: Suzanne B. Kaminsky Date: 6-11-97  
 Name and Address of Professional Consultant(s): MARK MOROWITZ - ACCOUNTANTS  
4425 ATLANTIC AVE, ATLANTIC CITY, NJ

Street Address of Subject Property: 1544 ATLANTIC AVE, ATLANTIC CITY, N.J. 08402

Zoning Classification: C.B.2 Block(s) 28 Lot(s) 61

Present Use (include total number of units, describe fully): ONE (1) 20'x100' FULLY  
FIXTURED. FORMERLY RETAIL APPAREL, JEWELRY, SUMMERS.  
VACANT AT PRESENT

This Application is For (fully describe proposed use and or signage, including total number of units): ADULT ESTABLISHMENT, ADULT VIDEO, PUBLICATIONS, ETC.  
Video rental + sales, Books, Magazines,  
Novelties + other retail items.

### FOR OFFICE USE ONLY

APPROVED: \_\_\_\_\_ DENIED

Conditions of Approval: The applicant must submit a  
signage plan prior to the installation  
of any signs.

Application Number: 10,753  
Date Filed: 10-13-97

Fee Received: \$22.00  
Date Issued: 7/1/97

Authorization: [Signature]  
Jay T. Fiedler: Land Use Administrator, City of Atlantic City

Distribution: Building Department	<input checked="" type="checkbox"/>	City Engineer	_____
Code Enforcement	<input checked="" type="checkbox"/>	Fire Department	_____
Mercantile Office	<input checked="" type="checkbox"/>	Tax Assessor	_____
V.I.P. Program	_____	Other	_____

# **EXHIBIT "B"**

1544 ATLANTIC AVENUE  
ATLANTIC CITY, NEW JERSEY 08401

JULY 17, 1997

CITY OF ATLANTIC CITY  
CITY HALL - SUITE 510  
ATLANTIC CITY, N.J. 08401  
(609) 347-5404

JAY T. FIEDLER: LAND USE ADMINISTRATOR,  
CITY OF ATLANTIC CITY

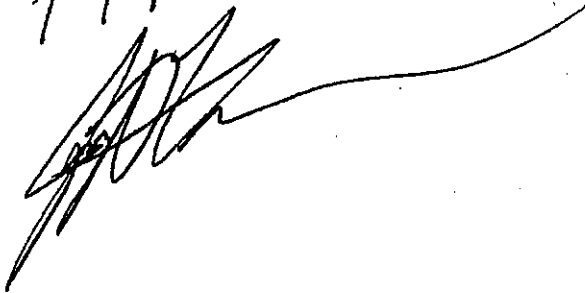
DEAR MR. FIEDLER,

THIS LETTER IS TO ACKNOWLEDGE YOUR APPROVAL  
OF THE FLOOR PLAN SUBMITTED FOR TEN (10)  
VIEWING BORTHS. APPROVED APPLICATION NUMBER  
10,753.

SINCERELY YOURS,  
Suzanne Kaminsky  
Maura Kaminsky

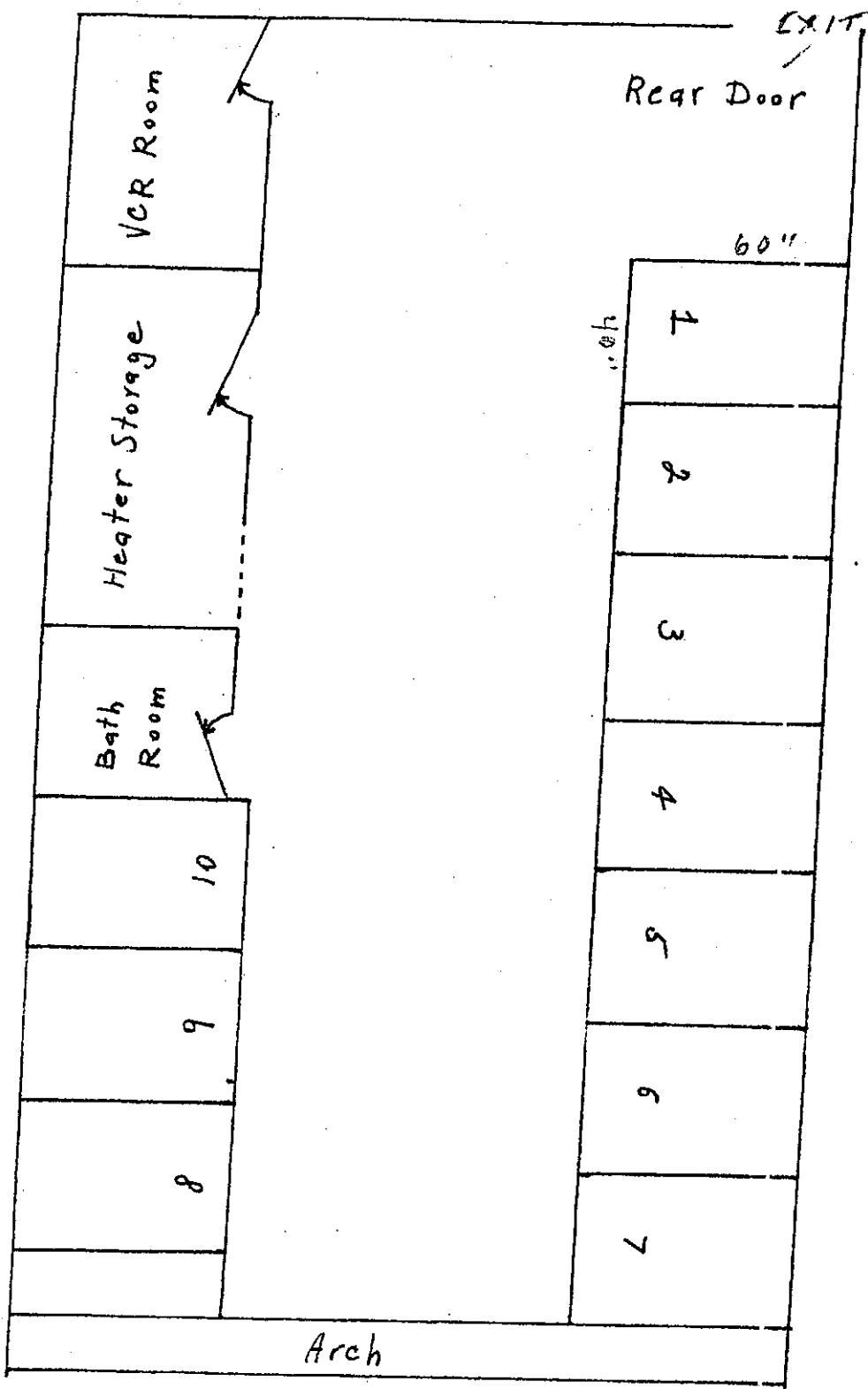
OK

Jay Fiedler  
7.17.97



11-2-11  
" " " "

1544 ATLANTIC AVE



VIEWING BOOTHS ✓

FLOOR PLAN

EXHIBIT  
F

APPROVED (PHONE 7-16-97)  
BY JAY FIEDLER

APPLICATION 10,753  
SUBMITTED TO KEITH MILLS  
FOR APPROVAL 7-11-97



# **EXHIBIT "C"**

SETTLEMENT AGREEMENT

THIS AGREEMENT dated this \_\_\_\_\_ day of March, 1999 by and between FRANCINE, INC., a New Jersey corporation ("Francine"), THE CITY OF ATLANTIC CITY, a body public and politic (the "City"), SUZANNE B. KAMINSKY AND MYRON KAMINSKY (the "Kaminskys").

WITNESSETH:

WHEREAS, Francine instituted an action against the City in the United States District Court for the District of New Jersey on May 18, 1998, entitled Francine, Inc. v. City of Atlantic City, Civil Action No. 98 cv 2335 (JEI) (the "Federal Court Action");

WHEREAS, Francine has also filed a third party complaint against the City in the action pending in the Superior Court of New Jersey in and for the County of Atlantic, entitled Kaminsky v. Francine, Inc., Docket No. LT-4318-98 (the "State Court Action");

WHEREAS, Francine's claims against the City arise from the failure and/or refusal of the City to grant licensing for Francine to carry on a sexually oriented business, as defined in N.J.S.A. 2C:34-6, at 1544 Atlantic Avenue, Atlantic City, Atlantic County, New Jersey (the "Premises");

WHEREAS, the operation of a sexually oriented business (as defined in N.J.S.A. 2C:34-6) at 1544 Atlantic Avenue appears to be in violation of the restrictions on locations of sexually oriented businesses as set forth in N.J.S.A. 2C:34-7;

WHEREAS, the Kaminskys are the owners of the Premises;

WHEREAS, Francine and the City desire to resolve the disputes which are the subject of the Federal Court Action and the State Court Action without further litigation;

EXHIBIT A

NOW, THEREFORE, with the foregoing recital paragraphs incorporated herein by this reference, and for other good and valuable consideration acknowledged to have been exchanged and received, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The City shall grant all licensing necessary for Francine to operate its business in the Premises on the terms and conditions set forth herein.
2. The main signage on the Premises shall be modified to omit the "XXX", such that the sign will read "Sensation Video, Open 24 Hours", and shall otherwise be subject to the City's approval which shall not be unreasonably withheld.
3. Francine shall be permitted to place a small sign in the front window which reads "Viewing Booths".
4. There shall be no restrictions on signs located inside the Premises which are not visible to persons in the "General Retail Section" of the Premises, as defined hereinbelow, or persons not inside the Premises.
5. The approved floor plan of the Premises shall be that set forth the architectural drawing which is annexed hereto as Exhibit A and incorporated herein by this reference. By reference to Exhibit A, Section A of the Premises shall be divided by a non-bearing wall, such that the approximately 8' x 21' area fronting Atlantic Avenue shall be segregated from the remainder of the Premises, and shall be designated as the "General Retail Section". There shall be a door in the above described non-bearing wall, on or near which shall appear signs which state: "Adults Only, Do Not Enter" and "You Must Be 21 Years of Age or Older to Enter".

5. The actual percentage of revenues attributable to adult versus non-adult materials shall be irrelevant to the original or continued licensing of Francine to operate its business in the Premises.

7. The actual percentage of total volume of materials devoted to adult versus non-adult materials shall not be determinative regarding the original or continued licensing of Francine to operate its business in the Premises.

8. Francine acknowledges that N.J.S.A. 2C:34-7 restricts the location of sexually oriented businesses within the municipality. Francine further acknowledges and represents that the operation of its business at 1544 Atlantic Avenue will not be considered a sexually oriented business as defined in N.J.S.A. 2C:34-8. The sale or rental of adult material shall not be the principal business purpose of Francine in operating a commercial establishment on the Premises. In the event the sale or rental of adult materials shall become the principal business purpose on the premises, the City shall have the right to revoke any license granted by the City.

9. It is expressly agreed by the City that the operation of Francine's business in the Premises in accordance with the terms described in this Settlement Agreement, i.e., the General Retail Section being operated in the location identified as Section "A" on Exhibit "A" to this Agreement, is not violative of N.J.S.A. 2C:34-7, and that for so long as Francine's business shall be so operated in the Premises there shall exist no grounds for revocation of Francine's license.

10. Francine shall dismiss its claims against the City and the Kaminskys in the Federal Court Action and the State Court Action.

CONTINUED P. 11 TO 15

1. Francine, the City and the Kaminskys hereby mutually release each other from any and all claims which arise from or relate in any manner to the subject matter of the Federal Court Action or the State Court Action.

2. Nothing in this Settlement Agreement shall prohibit any party from instituting an action to enforce the terms and conditions hereof.

3. The Kaminskys, their heirs, successors and assigns shall be given the same rights given to Francine pursuant to this Settlement Agreement to exercise in the event that Francine does not, for any reason, operate pursuant to this Agreement. In the event that the license granted pursuant to this Settlement Agreement to Francine is revoked as a result of Francine's breach of this Agreement, the Kaminskys, their heirs, successors and assigns (other than Francine, a principal of Francine), shall be permitted to receive licensing and operate pursuant to this Agreement.

4. If any provision of this Agreement is deemed unenforceable, the remainder of the Agreement shall remain in full force and effect.


5. A facsimile signature shall be deemed to have the full force and binding effect of an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Attest:

\_\_\_\_\_  
Secretary

FRANCINE, INC.


By:   
EZRA SHEMTOV, President

{Signatures continued on next page}

STATE OF NEW JERSEY, COUNTY OF ATLANTIC SS:

I CERTIFY that on April 6, 1999, EZRA SHEMTOV personally came before me and stated to my satisfaction that he: (a) is the maker of the attached instrument; and (b) is authorized to and did execute this instrument as the President of Franchise, Inc., the corporation named in this instrument.

Winston P. Young  
Notary Public, State of New Jersey  
No. 015160122  
Qualified in Atlantic County  
Commission Expires Jan. 05, 2000

  
Notary Public

STATE OF NEW JERSEY, COUNTY OF ATLANTIC SS:

I CERTIFY that on April \_\_\_\_\_, 1999, \_\_\_\_\_ personally came before me and stated to my satisfaction that (s)he: (a) is the maker of the attached instrument; and (b) is authorized to and did execute this instrument as the \_\_\_\_\_ of the City of Atlantic City, the body-public and politic named in this instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY, COUNTY OF ATLANTIC SS:

I CERTIFY that on April \_\_\_\_\_, 1999, MYRON KAMINSKY AND SUZANNE B. KAMINSKY personally came before me and state to my satisfaction that they: (a) are the makers of the attached instrument; and (b) executed this instrument as each of their own act.

\_\_\_\_\_  
Notary Public

04/15/1999

08:27

6093497000

PERSKIE#NEHW TRIL

PAGE 89

04/15/99

08:31 ZELLER AND BRYANT + 3464219  
6093472248 AC CITY SOLICITOR

NO. 365  
625 P07 APR 14 '99 1814

Witness of Arrest:

*Anthony Balmei*

Witness

Witness

CITY OF ATLANTIC CITY

By:

*Suzanne B. Kaminsky*  
SUZANNE B. KAMINSKY

*Myron Kaminsky*  
MYRON KAMINSKY

.5.

NO. 36

ZELLER AND BRYANT + 3472218

NO. 36

04/15/99

R

04/07/1999 09:20  
04/06/1999 13:15  
04/05/1999 11:57  
APR- 5-99 MO 9:34

68934F  
3856521000  
6893404219  
COOPER PERSKIE

PERSKIE\*NEHM RIL  
KAMINSKY/FRANCINE  
PERSKIE\*NEHMAD\*PERTIL  
FAX NO. 4490170

PAGE 02  
PAGE 06  
P. 07

Witness/Attest:

CITY OF ATLANTIC CITY

Witness

*[Handwritten signature]*

By:

*[Handwritten signature]*  
SUZANNE B. KAMINSKY

Witness

*[Handwritten signature]*

*[Handwritten signature]*  
MYRON KAMINSKY

