

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>6/6/2013</b>
File #	<b>2013-03157</b>

IN RE:

PETITION FOR DECLARATORY STATEMENT  
TO THE DEPARTMENT OF ALCOHOLIC  
BEVERAGES AND TOBACCO

On behalf of BOTTLE CLUB, LLC,  
d/b/a EYZ WIDE SHUT II

Petitioner.

**DS 2013-005**

**DECLARATORY STATEMENT**

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco (hereinafter "Division") pursuant to Section 120.565, Florida Statutes. The Petitioner, Bottle Club, LLC d/b/a Eyz Wide Shut (hereinafter "EWS") has filed a Petition for Declaratory Statement, containing a statement of facts, and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement is attached hereto and incorporated by reference.

**ISSUE PRESENTED**

The Petitioners present the following issue to the Division:

Whether Florida's Beverage Law prohibits EWS, a Florida corporation holding an alcoholic beverage license and doing business in Hillsborough County, from using the licensed premises of a third party – BYOB Club, Inc., the proposed holder of a bottle club license – as the entrance to its licensed premises.

**FACTS**

1. On January 22, 2013, Petitioner filed with the Division a Petition for Declaratory Statement, thereby giving the Division ninety days to respond from the date

of the petition. Upon consideration of the Petition, the Division discovered undisclosed facts which might prohibit Petitioner's business plan, and as a result, required increased time to conduct more detailed research. However, upon inconclusive results, the Division now renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement.

2. The conclusion of this Declaratory Statement is based on the facts described in Petitioner's Petition for Declaratory Statement (hereinafter "the Petition"), research by the Division, and the particular factual assertions described therein. All of the facts presented in the Petition were duly considered and form the basis for this Declaratory Statement. A summary of the facts stated in the Petition for Declaratory Statement is as follows:

Bottle Club, LLC, d/b/a Eyz Wide Shut (hereinafter 'EWS') is the holder of a Florida alcoholic beverage license, series 4COP, which it operates in Hillsborough County. EWS leases its licensed premises – two suites – from JLA Investment Corp., which, after an extended legal battle, has obtained "wet" zoning for its property. EWS now proposes to reduce and amend its license premises to one of these two suites, while a third party, BYOB Club, Inc., would obtain a bottle club license and place it in the other.

According to the proposed business plan, EWS and BYOB would operate at different hours – EWS would operate its 4COP from 7 a.m. until 3 a.m., while BYOB would operate from 3 a.m. until 7 a.m. During the hours when BYOB is closed, its facilities would be roped off, and EWS would use BYOB's suite as an entrance to its own licensed premises – essentially using BYOB's inactive licensed premises as a 'lobby' area.

According to SunBiz.org, JLA Investment Corp. is an active Florida corporation, listing one Andrew Harrow as President and one Susan Harrow as Vice President. According to the same, Bottle Club, LLC is an active Florida corporation that lists one Alvara Cardona as President and one Susan Harrow as Secretary; BYOB Club, Inc. is an active Florida corporation that lists one Andrew Harrow as President.

EWS now proposes to implement this business model in the state of Florida, and has filed a Petition for Declaratory Statement for official approval.

### **CONCLUSIONS OF LAW**

1. The Division has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08, 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapter 561, Florida Statutes.

2. Section 561.08, Florida Statutes empowers and directs the Division to enforce the provisions of the Beverage Law and perform such acts as may be necessary to carry out the provisions thereof. Pursuant to this authority, the Division is empowered to enforce the provisions of the beverage law and implement the rules necessary to carry out the purpose and intent of the beverage law statutes. Accordingly, it is the Division that construes and interprets the alcoholic beverage laws of the State of Florida and makes the determination as to whether they are applicable to a specific set of facts.

3. Petitioner EWS is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

4. Section 120.565, Florida Statutes, provides:

Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

4. Rule 28-105.001, F.A.C., provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. Petitioner is a Florida alcoholic beverage licensee and is directly or indirectly engaged in the sale of alcoholic beverages. Petitioner generates or receives revenue based upon the sale of alcoholic beverages and, therefore, needs a Florida alcoholic beverage license to engage in any of the proposed business operations based upon the findings of fact of this Order and the facts as stated in the submitted Petition for Declaratory Statement.

6. Rule 61A-3.017, Florida Administrative Code, provides:

(1) All business conducted on the licensed premises under the beverage law shall be managed and controlled at all times by the licensee or managed by his authorized employee or employees.

7. Petitioner proposes that EWS would use the BYOB Club suite as an entrance during the hours in which BYOB is closed. Without management and control by BYOB or an authorized employee thereof, the use of BYOB's licensed premises is impermissible under Rule 61A-3.017, F.A.C.

8. Section 561.01(11), Florida Statutes, provides:

"Licensed premises" means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the are embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law.

9. Section 562.14(2), Florida Statutes, provides:

Except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages, shall allow the licensed premises, as defined in s. 561.01(11), to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited.

10. Petitioner EWS proposes to utilize the BYOB Club suite as an entrance to its facility and will exert some dominion and control thereover. As such, despite the proposed ownership by BYOB Club, § 561.01(11) mandates the suite's inclusion on EWS' registered and licensed premises. While Petitioner EWS proposes that BYOB Club would operate in this suite between the hours of 3 a.m. and 7 a.m., pursuant to § 562.14(2), F.S., EWS cannot allow the use of its licensed premises during hours in which the sale of alcoholic beverages is prohibited.

11. Section 561.14(6), Florida Statutes, provides:

Any person operating a bottle club must be licensed pursuant to this chapter and may not hold any other alcoholic beverage license for such premises while licensed as a bottle club.

12. Section 561.17(1), Florida Statutes, provides:

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in duplicate on forms provided to the district licensing personnel by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part.

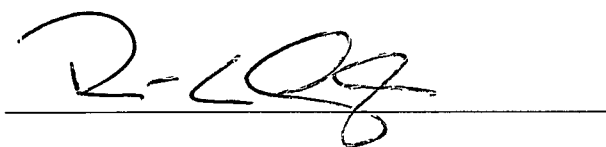
13. According to research by the Division, corporate officers from Bottle Club, LLC and BYOB Club, Inc. are also corporate officers for JLA Investments Corp., the property lessor. Though Petitioner alleges EWS and BYOB would be separate companies, the Division lacks the appropriate facts to make a determination as to the proposed business plan's compatibility with §§ 561.14(6) and 561.17(1), Florida Statutes.

### **CONCLUSION**

14. In conclusion, based upon the facts set out in the submitted Petition for Declaratory Statement, Petitioner's proposed business model – to use another licensed premises as the entrance to its own – is impermissible under Florida law.

15. This conclusion is based on the facts described in the Petitioner's Petition for Declaratory Statement and legal research by the Division. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change.

Dated this 4 day of June, 2013.

A handwritten signature in black ink, appearing to read "R-ADG", is written over a horizontal line.


Robert Allen Douglas, Director  
Division of Alcoholic Beverages and Tobacco  
1940 North Monroe Street  
Tallahassee, Florida 32399-1020

**RIGHT TO APPEAL**

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH SARAH L. WACHMAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Joshua A. Harrow, Esq., 412 East Madison Street, Suite 800, Tampa, Florida 33602 on this 6 day of June, 2013.

  
\_\_\_\_\_  
Michael W. Ross  
Chief Attorney.

2013-003711

DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO  
PETITION FOR DECLARATORY STATEMENT TO DEPARTMENT OF  
ALCOHOLIC BEVERAGES AND TOBACCO

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/22/2013
File #	

Petitioner, BOTTLE CLUB LLC d/b/a EYZ WIDE SHUT II ("EYZ WIDE SHUT"), pursuant to §120.565 Fla. Stat., files this petition for declaratory statement ("Petition") to obtain an opinion from the DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO'S ("DABT"), regarding the situation described below:

**DS 2013-005**

PARTIES

1. EYZ WIDE SHUT is a Florida corporation doing business in Hillsborough County, Florida. They are located at 8504 E. Adamo Drive, Suite 150 & 160, Tampa, Florida 33619, and their telephone number is (813) 620-1234.

2. The DABT is a governmental organization created by the Laws of Florida, and exists and operates under §561-569 Fla. Stats.

FACTS

3. This Petition was precipitated by an action<sup>1</sup> that was before the Honorable James D. Arnold of the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County.

4. On or before January 14, 2005, Free Choice Florida LLC ("Free Choice"), a tenant of JLA Investment Corporation's ("JLA"), applied to Hillsborough County, Florida for an Adult Use Special Use Permit classification for "Suite P" of JLA's property. In order for Free Choice to secure the adult use permit it needed to lease "Suite P" of JLA's property, that suite's wet zoning had to be canceled. As owner of the premises, JLA executed its consent to that

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<sup>1</sup> *JLA Investment Corporation v. Hillsborough County*, Case No. 08-CA-025560

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application, in the form of an affidavit. This affidavit was submitted pursuant to Hillsborough County's instructions to JLA. After this affidavit was submitted, Hillsborough County claimed that JLA revoked the wet zoning at both "Suite F" and "Suite P."

5. On October 29, 2009, JLA filed suit against Hillsborough County for a declaratory judgment to resolve the improperly revoked wet zoning of "Suite F." In its complaint, JLA argued that it never intended to remove the "wet zoning" from both "Suite F" and "Suite P." Instead, it argued that it only intended to remove the "wet zoning" from "Suite P." (App. 1). Following a non-jury trial, on August 12, 2010, a Final Judgment was entered in favor of JLA. (App. 2).

6. After the Final Judgment was entered, JLA proceeded with its plans to continue operations at the former bottle club location in "Suite F," however, numerous situations arose which prevented JLA from opening a bottle club in "Suite F."

7. EYZ WIDE SHUT is currently leasing space from JLA and is now in a unique situation due to the circumstances surrounding the Final Judgment that was previously entered. Additionally, JLA has a potential tenant interested in opening a bottle club in "Suite F," BYOB Club, Inc. ("BYOB"). JLA is seeking a declaratory statement so that BYOB and EYZ WIDE SHUT can operate in accordance with any applicable statutes and rules.

8. A "substantially affected person" is allowed to seek a declaratory statement "regarding an agency's opinion as to the applicability of a statutory provision . . . as it applies to the petitioner's particular set of circumstances." §120.565 Fla. Stat. In this case, JLA prevailed in its case against Hillsborough County, regarding the bottle club that is at issue in this Petition. As explained above, that Final Judgment allowed JLA to continue operations in "Suite F" as a

bottle club. That Final Judgment has created an ambiguity in the law that can only be resolved by a declaratory statement from DABT.

**Particular set of circumstances which would entitle EYZ WIDE SHUT to a declaratory statement**

EYZ WIDE SHUT is currently operating as a 4-COP in both Suites "F" and "P", now known as Suites 150 and 160, respectively. Pursuant to the Final Judgment, JLA is entitled to lease Suite F a/k/a Suite 150 as a bottle club. As a result, EYZ WIDE SHUT is in the process of submitting an amended application to reflect the zoning changes and operate Suite F as a bottle club. Suite P will remain zoned as a 4-COP. EYZ WIDE SHUT's concern with this set-up involves the access to "Suite P."

As mentioned above, Hillsborough County wrongfully removed the bottle club zoning and it took years to resolve the dispute. In the meantime, EYZ WIDE SHUT began operations as a 4-COP so that the property would not stay vacant. During the time the lawsuit was resolved the 4-COP business has become an established business, and customers have become accustomed to a certain access point, which is located in the front of the building, on Adamo Drive. {EYZ }

{ WIDE SHUT and BYOB would like to use the same entrance for both the bottle club and the 4-COP. The zoning of the two business does not overlap and the only issue is: }

{ Can customers use the bottle club, during non-operating hours, as an entrance to the 4-COP business? }

The bottle club and the 4-COP have different operating hours, but the 4-COP would be located directly behind the bottle club, and the easiest and safest access point would be to walk through the bottle club. The bottle club will be open from 3 a.m. to 7 a.m., and the 4-COP will be open from 7 p.m. to 3 a.m. The bottle club's inventory will be locked away during non-

operating hours and will not be available until staff begins service at 3 a.m. Patrons will not be allowed entrance to the bottle club until 3 a.m., and prior to that time, the only area that will be available in "Suite F" (150) is a roped off area that will lead to the 4-COP in "Suite P (160)." Further, BYOB is not part of EYZ WIDE SHUT, and it will be owned by a different individual. The businesses are separated by a wall, but there is a door between the two units that will operate as the dividing barrier. Basically, patrons wishing to go to the 4-COP would walk through Suite F, which is going to be non-operational during that time, because the bottle club would not open until after the 4-COP closes. By the time the bottle club opens much later in the late morning hours, the 4-COP would be closed and the connecting door between the businesses would be locked, and patrons would simply walk into the bottle club. In this case, BYOB will not open until all patrons in EYZ WIDE SHUT have vacated the premises. The alternative is to require EYZ WIDE SHUT to provide a side entrance to the 4-COP which would require customers to walk around the side of the building into an unsightly and dimly lit area. This is not a practical solution, and it could also create a safety hazard for patrons.

In this case, EYZ WIDE SHUT's circumstances require a declaratory statement because the Final Judgment has created a unique situation. There is no other location in Florida that has the same set-up that EYZ WIDE SHUT currently has. Bottle clubs are not a common entity, and the addition of a 4-COP license only further complicates things. JLA, EYZ WIDE SHUT, and BYOB are trying to plan for their future business activities. "This is precisely the type of situation for which the declaratory statement was designed." *Id.* "The purposes of the declaratory statement procedure are to enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future

affairs." *Fla. Dept. of Bus. Reg. v. Invest. Corp.*, 747 So.2d 374, 376-77 (Fla. 1999). "The purpose of a declaratory statement is to answer the petitioner's questions about how the statutes or rules apply to his own circumstances so that he may select a proper course of action." *Carr v. Old Port Cove Property Owners Association, Inc.*, No. 4D08-144 (Fla. 4<sup>th</sup> DCA 2009) (citing Fla. Admin. Practice § 2.41, at 2-48 (2004)). In this case, EYZ WIDE SHUT has submitted its amended application, but the Final Judgment did not provide for how a bottle club and 4-COP would operate as adjacent units. These circumstances have presented a valid situation that is appropriate for a declaratory statement.

**Statutory provision, rule, or order that is applicable to the circumstances of the declaratory statement**

As explained above, the Final Judgment has created a unique situation involving the co-existence of a bottle club and 4-COP. §561.01(15) Fla. Stat., provides a definition of "bottle club" but it fails to provide any information on how it operates with an adjacent business. Further, §561.14(6) Fla. Stat., provides that "bottle clubs are susceptible to a distinct and separate classification under the Beverage Law for purposes of regulating establishments permitting the consumption of alcoholic beverages." EYZ WIDE SHUT is unsure if this situation requires a "distinct and separate classification" because this plan does not involve the consumption of alcoholic beverages. Instead, it involves a zoning issue between two adjacent businesses.

§562.121 Fla. Stat., states that it is unlawful to operate a bottle club without a license. EYZ WIDE SHUT and BYOB want to ensure that their proposed plan would not be considered a violation of this statute.

61A-3.049 F.A.C., states, in part, "bottle club licensees are subject to all general, special,

and local laws regulating vendors of alcoholic beverages including laws or ordinances permitting the operation of bottle clubs after the hours of sale for alcoholic beverages have elapsed." This rule basically subjects bottle clubs to the same rules as other alcoholic beverage vendors, but it is still unclear whether this applies to merely using a non-operational bottle club as an entrance point to the 4-COP.

Finally, §561.01(11) Fla. Stat., defines "licensed premises" as "not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control." In this case, the empty bottle club does not involve any alcoholic beverages so there is no issue of "free passage from drink parlor to other rooms." The bottle club would be treated as a lobby to the 4-COP, and there will be security guards at the entrance to the 4-COP. After reviewing §561 and 562 Fla. Stats., there is still ambiguity concerning the question that EYZ WIDE SHUT has set forth.

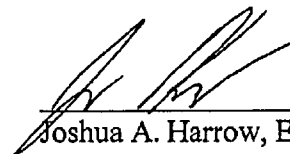
**EYZ WIDE SHUT has described how it was affected by the particular circumstances of the declaratory statement**

Although EYZ WIDE SHUT is currently operating as 4-COP establishment, the Final Judgment allows a bottle club to operate in "Suite F" of JLA's property. EYZ WIDE SHUT is affected by the particular circumstances of its proposed declaratory statement because it is uncertain how to operate with an adjacent bottle club and comply with any applicable laws and other regulations at the same time. EYZ WIDE SHUT wants to inquire whether it can exist with BYOB as proposed above. Specifically, the Final Judgment caused ambiguity regarding the operation and co-existence of a bottle club and 4-COP as described above.

### CONCLUSION

EYZ WIDE SHUT has specifically stated its particular set of circumstances which should entitle it to a declaratory statement. These circumstances arose from the Final Judgment referenced above, and the other statutes and rules that are cited. Additionally, EYZ WIDE SHUT has demonstrated how it has been affected by these circumstances. EYZ WIDE SHUT is interested in the declaratory statement so that it can select a proper course of action. ~~The Final Judgment has created an ambiguity of law, which has resulted in EYZ WIDE SHUT and BYOB having an issue in planning its future affairs, involving zoning and joint access,~~

Respectfully submitted this 16<sup>th</sup> day of January 2013.

  
\_\_\_\_\_  
Joshua A. Harrow, Esq.  
Attorney for Petitioners  
412 East Madison Street  
Suite 800  
Tampa, Florida 33602  
Telephone (813) 223-7509  
Fax (813) 223-6910  
Florida Bar No. 76501  
*jaharrow@gmail.com*

**JOSHUA ADAM HARROW, ESQUIRE**

**Attorney at Law**

January 16, 2013

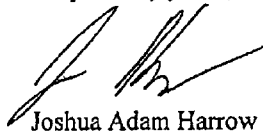
Clerk or Records Custodian  
Division of Alcoholic Beverages and Tobacco  
1940 North Monroe Street, Suite 42  
Tallahassee, FL 32399-2202

Re: Petition for Declaratory Statement

To the Clerk of the Division of Alcoholic Beverages and Tobacco

Enclosed please find a Petition for Declaratory Statement dated on January 16, 2013.  
Please contact my office if you have any questions or concerns.

Respectfully yours,



Joshua Adam Harrow

JAH:

**RECEIVED**

**JAN 22 2013**

**DBPR Agency Clerk**

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412 East Madison Street • Suite 800 • Tampa, Florida 33602  
telephone 813-223-7509 • fax 813-381-5347 • e-mail [jaharrow@gmail.com](mailto:jaharrow@gmail.com)

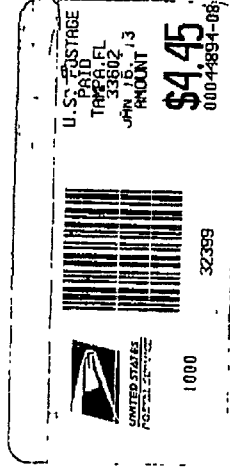
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Joshua A. Harrow, Esq.  
412 East Madison Street  
Suite 800  
Tampa, Florida 33602

OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL**



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Clerk or Records Custodian  
Division of Alcoholic Beverages and Tobacco  
1940 North Monroe Street, Suite 42  
Tallahassee, FL 32399-2202



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR HILLSBOROUGH COUNTY  
CIVIL DIVISION

JLA INVESTMENT CORPORATION,  
a Florida corporation,  
Plaintiff,

CASE NO. 08-025560

v

DIVISION: J

HILLSBOROUGH COUNTY, a political  
subdivision of the State of Florida,  
Defendant(s).

SECOND AMENDED COMPLAINT

Plaintiff JLA INVESTMENT CORPORATION, by and through its undersigned attorney,  
sues Defendant HILLSBOROUGH COUNTY and says:

*(All exhibits referenced in this Second Amended Complaint are attached to the  
Amended Complaint previously filed herein with the exception of A-1, G-1, and  
G-2. Copies of those three exhibits are attached to this Second Amended  
Complaint.)*

COUNT I

1. This is an action by JLA pursuant to Chapter 86 of the Florida Statutes for a declaratory judgment regarding the zoning of a portion of its property located at 8504 Adamo Drive, Tampa, Florida known as Suite F.
2. Prior to March 1999 JLA owned the real property located at 8504 Adamo Drive, Tampa, Florida, more particularly described in the Corporate Warranty Deed recorded at OR 6476, p 1592 of the Official Records of Hillsborough County, Florida. ("Property") A copy of that deed is attached as Exhibit A. A sketch of the portion of that Property, primarily those

portions labeled F and P, is attached as Exhibit A-1.

3 On or about that date JLA agreed to lease a portion of that property then identified as "Suite F," consisting of 3,575 square feet in the southeast corner of the building on that property, to Jack Galardi. Galardi intended to operate a bottle club in Suite F. That use required a proper license issued by the Florida Department of Business & Professional Regulation, Division of Alcoholic Beverages and Tobacco, ("ABT"), as well as an Alcohol Beverage Special Use Permit ("wet zone") classification from Hillsborough County for Suite F. On March 30, 1999, Galardi applied to Hillsborough County for the wet zoning of Suite F. Galardi's attorney and representative for that application was Scott Boardman, Esq. Mr. Boardman did not represent JLA. As owner of the premises, JLA's consent to that application was required, and it was provided to Galardi. That application was assigned number 99-0684. A copy of that application is attached as Exhibit B.

4. On April 14, 1999, Hillsborough County notified Galardi of the approval of application 99-0684 through a letter to his attorney, Scott Boardman, Esq. A copy of that letter is attached as Exhibit C. JLA was never furnished a copy of that letter, nor was it informed by Hillsborough County of its actions. On or about May 1999 Galardi began operating a bottle club called Club Illusions in Suite F.

5. The suite next to Suite F to the north was then known as "Suite P." On or about May 2001 JLA agreed to lease Suite P to Jack Galardi for a second bottle club. Suite P was a separate suite in the building on JLA's property, and it consisted of 6,000 square feet more or less. Galardi intended to operate a second bottle club in Suite P. Since wet zoning of Suite P was a requirement for that licensing of Suite P just as it had been for Suite F, on May 8, 2001,

Galardi applied to Hillsborough County for a wet zone classification for Suite P. Once again, Galardi's attorney and representative for that application was Scott Boardman, Esq., who represented Galardi, not JLA. Once again, as owner of the premises, JLA executed its consent to that application. That application was assigned number 01-1010.<sup>1</sup> A copy of that application is attached as Exhibit D.

6. On September 4, 2001, Hillsborough County notified Galardi of the approval of application 01-1010 through a letter to his attorney, Scott Boardman, Esq. A copy of that letter is attached as Exhibit E. In that letter, Hillsborough County notified Boardman that the portion of JLA's building subject to that application had been modified to include Suite F as well as Suite P, that the approval of application 01-1010 encompassed both Suite F and Suite P, and that since application 01-1010 now included both of those suites, Hillsborough County's prior approval of 99-0684 relating to Suite F only was nullified. JLA was never informed of Hillsborough County's modification of application 01-1010, it was never furnished a copy of Hillsborough County's approval relating the change in 01-1010 that had been made after that application had been filed, and it was never informed of the nullification of 99-0684. Therefore, when JLA was informed by Galardi that 01-1010 had been approved, JLA believed that to mean that it related only to Suite P and that 99-0684 continued to be active and applicable for Suite F. JLA was never furnished a copy of that letter, nor was it ever informed by Hillsborough County of its actions changing 01-1010. On or about October 2001 Galardi began operating a second bottle club in Suite P.

7. Sometime after October 2001 but prior to July 2003, Galardi vacated Suite P, but

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<sup>1</sup>I was changed by Hillsborough County to that number from 01-0040.

he continued to operate Club Illusions in Suite F which he transferred to Sam Bennie-Capitano sometime later. On or about July 2003, after Galardi had vacated Suite P, JLA agreed to lease that Suite P to Angela Hamilton. On July 16, 2003, Hamilton applied to Hillsborough County for a wet zone classification for Suite P. Hamilton intended to operate a billiard parlor in that suite and sell beer and wine. Hamilton had no attorney representing her; she submitted that application pro se. As owner of the premises, JLA executed its consent to that application. That application was assigned number 03-1276. A copy of that application is attached as Exhibit F.

8. On August 18, 2003, Hillsborough County notified Hamilton of its approval of application 03-1276 through a letter to her. A copy of that letter is attached as Exhibit G. In that letter, Hillsborough County makes no mention of either its previous joining of Suites F and P in application 01-1010. It does, however, relate that its approval of 03-1276 related to Suite P only. As with the two earlier applications, JLA was never furnished a copy of that letter, nor was it informed by Hillsborough County of its actions.

9. On a date unknown to JLA but, upon information and belief at sometime after October 2001 but prior to September 3, 2003, Galardi transferred his interest in the businesses he operated at the Property to Capitano. On or about September 3, 2003, Suite F was already zoned wet with a bottle club, Club Illusions, operating in that location. On or about that date, Capitano applied to Hillsborough County for a wet zone classification for Suite F to operate "a bar/lounge at the subject location." Capitano's attorney and representative for that application was David Scott Boardman, Esq. Mr. Boardman did not represent JLA. As owner of the premises, JLA's consent to that application was required, and it was provided to Capitano. That application was assigned number 03-1612. A copy of that application is attached as Exhibit G-1.