



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Monroe County Planning Commission
Through: Mayté Santamaria, Senior Director of Planning & Environmental Resources
From: Janene Sclafani, Senior Planner
Date: January 12, 2017
Subject: *A Public Hearing Concerning a Request for a Home Occupation Special Use Permit at 643 Sawyer Drive, Cudjoe Key, Real Estate No. 00173830-000000 (File No. 2016-133)*

Meeting: **January 25, 2017**

I REQUEST:

The property owner, Omar O. Fernandez, is requesting a Home Occupation Special Use Permit in order to operate a business from his residence.

Business Name: *ACTO Guns*

Type of Business: *Federal Firearms Licensed (FFL) sales and transfers*



Subject Property with Land Use District Overlaid (2015)

1 **II BACKGROUND INFORMATION:**
2

3 **Location/Address:** 643 Sawyer Drive, Cudjoe Key, approximate mile marker 21 (Ocean
4 side of US 1)

5 **Legal Description:** Lot 40, Block 3, Cudjoe Gardens Second Addition, Cudjoe Key, (PB4-
6 159)

7 **Real Estate Number:** 00173830-000000

8 **Property Owner/Applicant:** Omar O. & Teresita J. Fernandez

9 **Size of Site:** 10,000 SF (0.23 acres) per Monroe County Property Appraiser

10 **Land Use District:** Improved Subdivision (IS)

11 **Future Land Use Map (FLUM) Designation:** Residential Medium (RM)

12 **Tier Designation:** III Infill Area

13 **Flood Zone:** Partially VE-11, partially VE-12

14 **Existing Use:** Single-Family Residence

15 **Existing Vegetation / Habitat:** Scarified

16 **Community Character of Immediate Vicinity:** Single-family residential
17

18 **III RELEVANT PRIOR COUNTY ACTIONS:**
19

20 On April 11, 2016, the Planning Director granted a Home Occupation Special Use Permit
21 (File # 2016-005, Approval # HO 16-01) to Mr. Fernandez to operate ACTO Guns from his
22 previous residence at 20751 2nd Avenue West, Cudjoe Key, Real Estate No. 00174635-
23 003100. No objections were received for this application.
24

25 **IV SUMMARY:**
26

27 Home Occupation Special Use Permit application (File #2016-133) was reviewed by
28 Planning Staff and found to be in compliance with LDC Section 130-124, standards and
29 requirements for Home Occupation Special Use Permits. Staff recommended approval to the
30 Planning Director. See attached Memorandum dated October 21, 2016. During the required
31 30-calendar-day posting, two letters of objection (see attached) were addressed to and
32 received by Mayté Santamaria, Senior Director of Planning and Environmental Resources.
33 The first letter received, dated November 7, 2016 expressed the following concerns:
34

- 35 • Violation of Private deed restrictions
- 36 • Criminal/negative impact on community character
- 37 • Decrease in property values
38

39 The second letter received, dated November 9, 2016 expressed the following concerns:

- 40 • Violation of Private deed restrictions
- 41 • Item #2 of the application, *change of residential character*
- 42 • Item #10 of the application, *increase in average daily automobile trips*
43

44 Private deed restrictions cannot be enforced by the County (this would be a civil matter
45 between the parties) and decreased property values are not a criteria for review of a proposed
46 home occupation (note, the home occupation shall be incidental and secondary to the
47 principal residential use of the residential dwelling unit). The remaining concerns are
48 addressed in item #2 and item #10 of the application and in the revised Description of

1 Business Operation submitted by Mr. Fernandez on September 12, 2016 (please see attached
2 documents). Planning Staff found the applicant to be in compliance with all items in the
3 Code.
4

5 **V REVIEW:**

6 This item is before the Planning Commission (PC) for review and consideration of the
7 issuance of the subject for a home occupation special use permit. Criteria for PC review:
8

9 ***Sec. 130-124. - Home occupation special use permit.***

10 (a) *Applicability. Home occupation special use permits may be approved in any zoning district in which*
11 *residential use is allowed, including nonconforming residential uses where such use was otherwise*
12 *lawfully established. Home occupation means a business, profession, occupation or trade operated from*
13 *and/or conducted within a residential dwelling unit (or within an accessory structure thereto) for gain*
14 *or support by a resident of the dwelling unit. For the purposes of this section, home occupations include*
15 *mobile businesses that are based or operated from a residence or residential property.*

16 (b) *Applications. Applications for home occupation special use permits shall be submitted to the planning*
17 *director on forms provided by the director. The application shall include a properly executed affidavit*
18 *and agreement from the applicant attesting to and agreeing to compliance with the standards and*
19 *requirements for home occupations as outlined in this section.*

20 (c) *Authority. The planning director is authorized to approve and otherwise administer home occupation*
21 *special use permits as specifically set forth in this section.*

22 (d) *Review by the planning director. Within 15 working days of receiving a complete application, the*
23 *planning director shall determine whether the proposed home occupation is consistent with the*
24 *following standards and requirements:*

25 (1) *The home occupation is incidental and secondary to the principal residential use of the*
26 *residential dwelling unit;*

27 (2) *The home occupation does not change the essential residential character of the use;*

28 (3) *Not more than one person who is a nonresident of the residential dwelling unit is employed by the*
29 *home occupation;*

30 (4) *The home occupation use does not occupy more than 20 percent of the total floor area of the*
31 *residential dwelling unit and, if the home occupation use utilizes an accessory structure(s), it does*
32 *not occupy more than 20 percent of the total covered and enclosed residential floor area on the*
33 *property;*

34 (5) *The home occupation does not involve any retail sales or service that necessitates or requires*
35 *customers to visit the residential dwelling unit or the property, nor does the physical address of the*
36 *residence appear on any advertising materials including stationary and business cards;*

37 (6) *Activities associated with the home occupation are not visible from any other residential dwelling*
38 *unit. If the home occupation utilizes an accessory structure, the structure is covered and enclosed;*

39 (7) *No sign advertising the home occupation is displayed on the premises;*

40 (8) *The home occupation does not involve outdoor storage, including but not limited to any*
41 *equipment or materials;*

42 (9) *The home occupation does not involve the use of mechanical, electrical or other equipment that*
43 *produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisance outside*
44 *the residential dwelling unit or accessory structure in which the home occupation occurs;*

45 (10) *The home occupation does not increase the average daily automobile trips generated by the*
46 *residence in which the home occupation is located;*

47 (11) *Upon issuance of a permit, the applicant must apply for and maintain any required license*
48 *and/or business tax for the home occupation where otherwise required;*

1 (12)The home occupation does not dispose of any solid waste at the occupation address which was
2 not generated at the occupation address; and

3 (13)The home occupation has obtained a commercial collection service agreement if the business
4 creates or generates any solid waste at a location other than the home occupation address.

5 (e)Public notification of pending approval. The planning director, after determining that an application
6 for a home occupation special use permit is in compliance with the requirements of this section, shall
7 give notice of the pending approval as follows:

8 (1)The planning director shall provide written notice by regular mail to owners of real property
9 located within 300 feet of the property that is the subject of the proposed home occupation;

10 (2)The applicant shall post the property of the proposed home occupation with a waterproof sign(s)
11 provided by the planning department which is so located that the notice(s) shall be easily visible
12 from all public streets and public ways abutting the property. The property shall remain posted for
13 no less than 30 calendar days beginning within two weeks of the mailing date of the written notice
14 required by subsection (e)(1); and

15 (3)The notices in subsections (e)(1) and (e)(2) of this section shall provide a brief description of the
16 proposed home occupation and indicate where the public may examine the application. The cost of
17 providing this notice shall be borne by the applicant.

18 (f)Decision by the planning director. After 30 calendar days of posting the property and upon a finding
19 that the proposed home occupation complies with all of the requirements of this section, the planning
20 director shall issue a home occupation special use permit, with or without conditions. The permit and
21 the affidavit attesting to compliance with the above requirements shall be filed with the clerk of the
22 court and recorded in the official records of the county. The permit shall authorize only the current
23 resident of the dwelling unit for the particular home occupation proposed and shall not be transferable
24 to another location or to another person or entity.

25 (g)Public hearing on an application for a home occupation special use permit. If requested in writing to
26 the planning director by the applicant, or an adversely affected owner or resident of real property
27 located in the county, during the required 30 calendar days of the posting, a public hearing date shall
28 be scheduled on the application for a home occupation special use permit. All costs related to the public
29 hearing shall be the responsibility of the applicant. The public hearing shall be conducted by the
30 planning commission in accordance with the provisions of section 110-6.

31 (h)Revocation. The planning director shall have the authority to initiate actions to revoke home
32 occupation special use permits and all such actions shall require a public hearing to be conducted
33 before the planning commission in accordance with section 102-20. The planning commission shall
34 have the authority to revoke any home occupation special use permit where there is competent and
35 substantial evidence to establish any of the following:

36 (1)That an application for home occupation special use approval contains knowingly false or
37 misleading information;

38 (2)A violation by the holder of a home occupation special use permit of any provision of this section;

39 (3)A violation of any condition of the home occupation special use permit imposed pursuant to this
40 section; or

41 (4)That the home occupation constitutes a public or private nuisance under state law.

42
43 **Attachments:**

44 Staff Memorandum, dated October 21, 2016

45 Objection Letter from Lise Shirtz, dated November 7, 2016

46 Objection Letter from Catherine E. Gouze, dated November 9, 2016

47 Revised Description of Business Operation submitted by Mr. Fernandez on September 12,
48 2016



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Mayté Santamaria, Senior Director of Planning & Environmental Resources
From: Janene Sclafani, Planner
Date: October 21, 2016
Subject: *Request for a Home Occupation Special Use Permit at 643 Sawyer Drive, Cudjoe Key, Real Estate No. 00173830-000000 (File No. 2016-133)*

1 **I REQUEST:**
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3 The property owner, Omar O. Fernandez, is requesting a Home Occupation Special Use
4 Permit in order to operate a business from his residence.
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10 **Subject Property with Land Use District Overlaid (2015)**

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15 **Existing Vegetation / Habitat:** Scarified

16 **Community Character of Immediate Vicinity:** Single-family residential

17
18 **III RELEVANT PRIOR COUNTY ACTIONS:**

19
20 None

21
22 **IV REVIEW OF APPLICATION:**

23
24 Pursuant to Section 130-83(a)(4) of the Monroe County Land Development Code (LDC),
25 home occupations are permitted as-of-right in the IS District with a special use permit. Home
26 occupation means a business, profession, occupation or trade operated from and/or conducted
27 within a residential dwelling unit (or within an accessory structure thereto) for gain or
28 support by a resident of the dwelling unit.

29
30 LDC Section 130-124 provides the standards and requirements for Home Occupation Special
31 Use Permits. Staff has made the following findings of fact and conclusions regarding the
32 applicant's compliance with the standards and requirements:

33
34 (1) *The home occupation is incidental and secondary to the principal residential use of the*
35 *residential dwelling unit:*

36
37 As stated on the application form, dated August 6, 2016, the business will be secondary
38 to the residential use. The applicant, who resides at the single-family residence, states no
39 more than 20 percent of the total floor area will be used for the proposed Home
40 Occupation.

41
42 (2) *The home occupation does not change the essential residential character of the use:*

43
44 The applicant, who resides at the single-family residence, stated on the application form:
45 "no more than 20 percent of the total floor area for the purpose of business; all
46 transactions will be performed indoors and during weekday daylight hours; no customers

1 will visit the residence; and no non-resident will be employed. In addition, the residence
2 and property shall not be altered or modified in any way to accommodate the business.”
3

- 4 (3) *Not more than one person who is a nonresident of the residential dwelling unit is*
5 *employed by the home occupation:*
6

7 As stated on the application form, there will be no non-resident employees.
8

- 9 (4) *The home occupation use does not occupy more than 20 percent of the total floor area of*
10 *the residential dwelling unit and, if the home occupation use utilizes an accessory*
11 *structure(s), it does not occupy more than 20 percent of the total covered and enclosed*
12 *residential floor area on the property:*
13

14 As stated in the written description of the business submitted with the application, the
15 area dedicated to facilitating the home occupation is less than 20 percent of the total floor
16 area of the residential dwelling unit. According to the property record card the residence
17 is 1,344 square feet, and the area noted by the applicant to be used for the purpose of
18 business is 120 square feet, approximately 8.9% of the total floor area of the residential
19 dwelling unit.
20

- 21 (5) *The home occupation does not involve any retail sales or service that necessitates or*
22 *requires customers to visit the residential dwelling unit or the property, nor does the*
23 *physical address of the residence appear on any advertising materials including*
24 *stationary and business cards:*
25

26 As stated on the application form, the home occupation would not require customers to
27 visit the residence, nor will the physical address of the residence appear on any
28 advertising material or business cards. The “Description of Business Operation”
29 submitted by the applicant states the proposed home occupation would be “catering only
30 to internet based sales.”
31

- 32 (6) *Activities associated with the home occupation are not visible from any other residential*
33 *dwelling unit. If the home occupation utilizes an accessory structure, the structure is*
34 *covered and enclosed:*
35

36 As stated in the “Description of Business Operation” submitted by the applicant, “no
37 persons will visit the residence to conduct any transactions related to the home
38 occupation business.” No advertising will be placed on the premises.”
39

40 In any event, staff shall place a condition on the approval that no work related to the
41 business shall be conducted outdoors.
42

- 43 (7) *No sign advertising the home occupation is displayed on the premises:*
44

45 As stated on the application form and in the “Description of Business Operation”, no sign
46 advertising the home occupation will be displayed on or near the premises.

1 (8) *The home occupation does not involve outdoor storage, including but not limited to any*
2 *equipment or materials:*

3
4 As stated on the application form, there will not be any outdoor storage associated with
5 the business. As stated in the “Description of Business Operation,” any firearms located
6 in the residence will be equipped with trigger locks and kept in a locked safe.
7

8 (9) *The home occupation does not involve the use of mechanical, electrical or other*
9 *equipment that produces noise, electrical or magnetic interference, vibration, heat, glare,*
10 *or other nuisance outside the residential dwelling unit or accessory structure in which*
11 *the home occupation occurs:*

12
13 As stated on the application form, “No noise or other nuisance will be produced”.

14
15 (10) *The home occupation does not increase the average daily automobile trips generated by*
16 *the residence in which the home occupation is located:*

17
18 As stated on the application form, there will be no non-resident employees, and no
19 customers will visit the residence. As per the application “No increase in the average
20 daily traffic will be produced.”
21

22 (11) *Upon issuance of a permit, the applicant must apply for and maintain any required*
23 *license and/or business tax for the home occupation where otherwise required:*

24
25 As stated on the application form, the applicant will maintain a home occupational
26 license. The applicant has indicated on the application form they will be a Federal
27 Firearms Licensee (FFL). FFL licenses are regulated by the Bureau of Alcohol, Tobacco,
28 Firearms and Explosives.
29

30 (12) *The home occupation does not dispose of any solid waste at the occupation address*
31 *which was not generated at the occupation address:*

32
33 As stated on the application form, the home occupation will not produce any solid waste.
34

35 (13) *The home occupation has obtained a commercial collection service agreement if the*
36 *business creates or generates any solid waste at a location other than the home*
37 *occupation address:*

38
39 As stated on the application form, the home occupation does not generate any additional
40 solid waste. Therefore, additional solid waste would not be introduced to the subject
41 property.
42

43 **V RECOMMENDATION:**

44
45 Staff recommends **APPROVAL** to the Senior Director of Planning & Environmental
46 Resources of the home occupation special use permit application if the following conditions

1 are met and pending any objections from surrounding property owners. Valid objections
2 from surrounding property owners may lead the Planning and Environmental Resources
3 Department to reevaluate the recommendation:
4

- 5 1. Prior to the issuance of the Home Occupation Special Use Permit, the applicant shall
6 provide the Planning & Environmental Resources Department with documentation from
7 the Monroe County Office of the Fire Marshal stating that the office is aware of the home
8 occupation and that such an activity is permissible by local laws, ordinances and
9 regulations enforced by the Fire Marshal.
10
- 11 2. All of the conditions outlined in the Applicant's signed Home Occupation Special Use
12 Permit Affidavit are understood and shall be met, under penalty of Monroe County Code
13 Compliance Department action.
14
- 15 3. If required by the Monroe County Tax Collector, the property owner shall apply for and
16 maintain a business tax receipt for the home occupation.
17
- 18 4. If required by the Bureau of Alcohol, Tobacco, Firearms and Explosives, the property
19 owner shall apply for and maintain a Federal Firearms License.
20
- 21 5. The permit and affidavit shall be recorded with the Monroe County Clerk of the Court in
22 the public records prior to effectiveness of the Home Occupation Special Use Permit.
23
- 24 6. Pursuant to Section 130-124(d)(5) of the Monroe County Land Development Code
25 (LDC), no customers will visit the residence.
26
- 27 7. No work related to the Home Occupational Special Use Permit shall be conducted
28 outdoors.

November 7, 2016

Senior Director of Planning and Environmental Resources
Monroe County
c/o Ms. Mayte Santamaria
2798 Overseas Highway
Marathon, FL 33050

Dear Ms. Santamaria,

I am writing this letter do to my concern regarding the possible licensing of a business which would handle sales of firearms in our residential community. My parents' home is located at 715 Sawyer Drive, Cudjoe Key.

I am speaking of the home located at:
643 Sawyer Drive, Cudjoe Key
File # 2016-133
Alternate Key # 1223204
Owner: Mr. Omar Fernandez (recently purchased)

The Cudjoe Gardens Association has deed restrictions to having a business run out of a residential home in certain areas. Mr. Fernandez home is located in this restricted area. Despite that, even without the restrictions, I am opposed to the licensing for the following reasons and concerns:

Despite the application to your department stating there will be no sign, no customers coming to/from residence, no outside storage of weapons, etc. I am concerned of attracting the criminal element to our area. We are off the main road and have a dead end. Research indicates that despite the safeguards, the criminal element does not care, and often there are attempted break-ins in and around those areas once criminals find the location and are willing to take a chance on finding guns/cash. We do not want the possibility of persons coming down our street with ill intentions.

I personally have known other licensed, in home businesses for weapons and these persons do not abide by the restrictions on the application. Allowing persons to go to/from with weapons in the home. If Mr. Hernandez is granted this business license, it will be much harder to get it rescinded/revoked if he does not comply, then it is to not allow him this license. I am not saying he would defy the limitations, but I do not want to take that chance.

Also, if Mr. Fernandez is allowed this license, property value of all homes with go down do to any future sales of residence homes needing full disclosure of Mr. Hernandez's business. If I was especially an elderly person or person with children, I would not want to purchase a home in the location of a known arms dealer.

I feel Mr. Fernandez has no respect for our deed restrictions, is willing to impact our neighborhood negatively for the ease of conducting his business and saving money by not having to have a store front, and is not concerned over any negative impact this decision could make on Cudjoe Gardens.

I am in no way opposed to gun ownership or proper use of, however, I feel there are appropriate places to run such a business, and in a residential area such as ours, is not the place. I am a retired Michigan State Trooper, and my father was a retired Detroit Detective Lieutenant.

I am beseeching you to deny this permit for a home business dealing with firearms to Mr. Fernandez. Thank you for your time in reading my letter and giving it thought in your decision.

Respectfully,

A handwritten signature in black ink, appearing to be 'Lise A. Shirtz', written over a horizontal line.

Lise A. Shirtz
Mary Lou Shirtz
Clinton C. Shirtz (deceased)

(586) 360-4901

Please send any correspondence to: 70235 Canterbury Drive, Richmond MI 48062.

My mother, Mary Lou Shirtz, has beginning stages of dementia and I handle all her legal affairs. When I spoke to mom about this situation, she was very adamantly against it, as I know my father would have been as well.

GOUZE LAW GROUP, PA
345 Bayshore Boulevard #1208
Tampa, Florida 33606

Phone: (813) 507-1386

Fax: (813) 442-7476

e-mail: catherine@gouzelawgroup.com

Catherine E. Gouze, Esq.

November 9, 2016

Mayte Santamaria
Senior Director of Planning & Environmental Resources
Monroe County Planning & Environmental Commission
2798 Overseas Highway
Suite 410
Marathon, FL 33050

VIA OVERNIGHT MAIL

RE: File#: 2016-133
Applicant: Fernandez, Omar
Type of Application: Home Occ
Key: Cudjoe Key
Re: 00173830.000000

Dear Ms. Santamaria:

Kindly be advised that I am representing Yellow Dog Properties, LLC, Stephen P. Gouze, Chief Manager ("Gouze") in connection with the above referenced application. A copy of the Statement of Authorization for Yellow Dog Properties, LLC is marked Exhibit A, attached hereto, and incorporated herein by reference. This letter constitutes his formal objection to the issuance of the home occupation special use permit requested by Mr. Omar Fernandez ("Fernandez"). Gouze's property is adjacent to the Fernandez property in Cudjoe Gardens, Second Addition ("Cudjoe Gardens"). Fernandez owns Lot 40, Block 3, and Gouze owns Lot 39, Block 3. A copy of Gouze's deed is marked Exhibit B, attached hereto and incorporated herein by reference.

DEED RESTRICTIONS:

Cudjoe Gardens is a deed restricted community. A copy of the deed restrictions is marked Exhibit C, attached hereto and incorporated herein by reference. I call your attention to paragraph 2 which provides, *inter alia*, "No lot or part thereof shall be used for any purpose other than a single family residence."

It then specifies the exceptions for certain blocks, which do NOT include Block 3:

- a. Blocks 1, 15, 23 with frontage on US 1, may be used for low intensity commercial use;
- b. Lots in Block 5 may be used for semi-professional purposes, i.e., an office combination with a residence. Examples include doctors, lawyers, and dentists;
- c. Lots 7 through 10 in Block 14 are zoned commercially. Those lots are further restricted to only such businesses which serve the recreational needs of Cudjoe Gardens.

All business which falls under the above exceptions shall be subject to approval by the Association (collectively the “Deed Restrictions”).

Since Block 3 is *not* under any of the exceptions listed, Fernandez is limited to a single family residence (“SFR”) per the Deed Restrictions.

Timeline:

- September 25, 2013 Gouze purchased Lot 39, Block 3
- January 7, 2016, fictitious name registration for ACTO GUNS filed by Fernandez of 20751 2nd Avenue W., Cudjoe Key, FL
- June 8, 2016, Fernandez purchased Lot 40, Block 3
- October 10, 2016, Fernandez files application for Home Occ (violation of Deed Restriction)

The approval of the application of Fernandez would constitute a clear violation of the Deed Restrictions. The Commission should not be in a position to knowingly approve an application which would clearly violate the Deed Restrictions.

A deed restricted community is quite common in Florida, and it includes covenants that help to protect property values and the quality of life for residents within the community. Deed restrictions are usually aimed at ensuring that there is an aesthetic uniformity between the homeowner’s property and neighboring properties and that certain other activities are limited. Reasons for including these restrictions may be to maintain the value of a property or to promote good relations within the residential community, as well as to maintain the residential character of the community.

The homeowners in deed restricted communities have chosen where they will live based on whether the deed restrictions are acceptable to them. Deed restrictions are the contractual agreements among the homeowners in the community. As a homeowner in a deed restricted community, one *agrees* to encumber his personal freedom as to the use of his property. The homeowners are private parties who, in the exercise of their constitutional right of freedom of contract, can impose whatever lawful restrictions upon the use of their lands that they deem advantageous or desirable.

Gouze relied on the Cudjoe Gardens Deed Restrictions when purchasing his property. He and his family chose the property on the ocean for its alluring views, the peaceful and relaxed residential environment, and the Deed Restrictions, most particularly the single

family residential deed restrictions. Fernandez also made a personal choice to live in such a community with the Deed Restrictions. He agreed to the Deed Restrictions, thus he agreed to encumber his personal use of the property. Many communities do not have deed restrictions, so Fernandez certainly had multiple other choices and opportunities to live elsewhere to operate his home business. He knowingly made the choice to live in the deed restricted community.

Fernandez is attempting to circumvent the Deed Restrictions by his application for a home occupation special use permit. The Section 130-124 requirements are imposed by a government (i.e. county) for the public welfare; deed restrictions are imposed by a private group (i.e. homeowner's association) for private benefit, wherein all property owners contractually agree to comply with the restrictions.

The government (county) rule does not terminate, supersede, or in any way affect a valid private restriction on real property. The fact that a use may be permitted by a county ordinance does not relieve a homeowner of an obligation to comply with a more restrictive private covenant. When a government conflict and a private covenant are in conflict, the more restrictive of the two prevails. See Rocek vs. Markowitz, 492 So. 2d 460 (Fla. Dist. Ct. App. 5th Dist. 1986). The Deed Restrictions are the more restrictive in this instance, as home occupations are not permitted in Block 3, and therefore the Deed Restrictions should prevail.

Gouze contends that the application of Fernandez should be denied on the basis of a clear violation of the Deed Restrictions, i.e., the contractual agreement among Fernandez, Gouze, and all property owners in Cudjoe Gardens.

APPLICATION PER SECTION 130-124 OF THE MONROE COUNTY CODE

When one considers the merits of the Fernandez application, Gouze contends that the application should be denied on its merits. Notwithstanding that Fernandez affirmatively states that he will comply with all of the standards and requirements set forth in Section 130-124 of the Monroe County Code, a closer look at his home business application suggests otherwise.

His business name is: ACTO GUNS
The type of business is FFL Sales and Transfer

Per Fernandez's application:

"ACTO GUNS will be a Federal Firearms Licensed ("FFL") sole proprietor business catering primarily to internet based sales. The services offered will be firearm and related accessories sales and transfers. ACTO GUNS will also serve as a local receiving FFL dealer for clients purchasing items from other sources and not having a license to receive them personally. (emphasis added). All business transactions will be conducted indoors and only during daylight hours on weekdays. No advertising will be placed on the premises. All buyers and transferees will be subjected to background checks as

required by the ATF using the FBI's National Criminal Instant Background Check System (NCIS). All firearms located in the residence will be equipped with trigger locks and kept in a locked safe."

After the application was filed, a screenshot of his website www.actoguns.com revealed:

- Available Inventory
- About ACTO GUNS
- Contact Us Today

Unfortunately, screenshots of the "Inventory" and the other tabs were not taken at the time, and the website has since been removed. A copy of the screen shot of the website is marked Exhibit D, attached hereto and incorporated herein by reference.

Item#10 of the Application cannot be met:

Without a doubt, there will be firearms moving in and out of the neighborhood, which makes it impossible for the standards and requirements of Item #10 to be met: "The home occupation does not increase the average daily automobile trips generated by the residence in which the home occupation is located." Fernandez claims that traffic will not be increased. His claim is false.

The application states that ACTO GUNS will also serve as a local receiving FFL dealer for clients purchasing items from other sources and not having a license to receive them personally. At a minimum, firearms will be shipped to ACTO GUNS (to Lot 39, Block 3), and then will have to go out to the client (from Lot 39, Block3). A "Flowchart" of the process was drafted by Gouze to assist in explaining the process for FFL licensees. The Flowchart is marked Exhibit E, attached hereto and incorporated herein by reference.

There will be a minimum of two (2) trips for the transfer of firearms generated by each sale. If five firearms are sold, then there will be ten (10) trips. If twenty (20) firearms are sold, then there will be forty (40) trips. There are no limits to the amount of firearms that will be sold and transferred, thus no limits to the number of trips generated by the residence. The amount of increase in traffic is unlimited.

Unquestionably, the home occupation business will increase the average daily automobile trips generated by the residence in which the home occupation is located, thus the standards and requirements of Item #10 cannot be met, and on that basis alone, the application should be denied.

Item#2 of the Application cannot be met:

Item 2 provides that "The home occupation does not change the essential residential character of the use." Fernandez states that it will not. Gouze respectfully disagrees.

At the outset, please be advised that Gouze does not have an issue with gun ownership or gun sales. He was an avid hunter in his youth and respects the Second Amendment rights of all citizens. His objection relates to the unintended consequences of the business which changes the essential residential character of the area.

Specifically, the nature of this home business does change the essential character of the use as documented by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") which advises that each year the ATF receives thousands of reports of theft/loss from FFL dealers. These reports document more than 25,000 firearms that are stolen or whose disposition is unknown to these businesses. The ATF states that "It is clear that criminals target businesses that sell firearms. Experience has shown that in many instances, the thieves spend a considerable amount of time evaluating these businesses to determine and capitalize on their vulnerabilities." (emphasis added). See US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Enforcement Programs and Services, "*ATF Safety and Security Information for Federal Firearms Licensees*", ATF Publication 3317.2, pages 8-10, a copy of which is marked Exhibit F, attached hereto and incorporated herein by reference.

The ATF suggests steps to minimize the risk of theft by criminals. The ATF suggests that the FFL licensee should evaluate his business location for structural security. The ATF also suggests that the FFL Licensee should evaluate his business for location. "Have property crimes been recurring or increasing in your area? Is your business in a rural area in which crime is unlikely to be witnessed and in which police response time may be slow?"

Firearms are clearly a high profile target for criminal activity and ultimate burglary regardless of whether they are brick and mortar or an internet residence store. In fact, the real store may be safer, as a residence in a remote location is more vulnerable. The residential property owners of Cudjoe Gardens, and especially Gouze as the adjacent property owner, will face the exacerbated risks of criminal activity on an ongoing basis.

The essential residential character of the property will be changed by the foreseeable attraction of criminals to the residential property, thus the standards and requirements of Item #2 cannot be met, and on that basis alone, the application should be denied.

CONCLUSION

There are at least three valid reasons, each of which is sufficient, such that the Fernandez application should be denied:

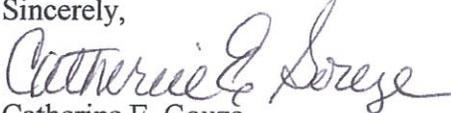
- Item #10: The home occupation does increase the average daily automobile trips generated by the residence in which the home occupation is located, as clearly demonstrated by the Fernandez application.
- Item#2: The essential residential character of the property will be changed by the foreseeable attraction of criminals to the residential property.

- Deed Restrictions: The Fernandez application is a clear violation of the Deed Restrictions, the contractual agreement among Fernandez, Gouze, and all property owners in Cudjoe Gardens.

Gouze respectfully requests that the application of Fernandez be denied as the Section 130-124 standards and requirements of Item# 10 and Item#2 cannot be met by Fernandez. In addition, there is a clear violation of the Deed Restrictions.

Thank you for your attention in this matter.

Sincerely,



Catherine E. Gouze

Cc: Yellow Dog Properties, LLC
Stephen P. Gouze
Via email: sgouze@aol.com

Cudjoe Gardens Property Owners Association
Attn: Larry Francisco – President
Via email: fulltilt@verizon.net

STATEMENT OF AUTHORIZATION

YELLOW DOG PROPERTIES, LLC

I hereby certify that pursuant to Minnesota Statute section 322B.673, Stephen P. Gouze, as Chief Manager of Yellow Dog Properties, LLC, has the authority to sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the limited liability company. Stephen P. Gouze was appointed President, Chief Manager, Secretary and Treasurer on April 10, 2012 by unanimous written action of Yellow Dog Properties, LLC.

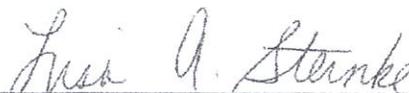
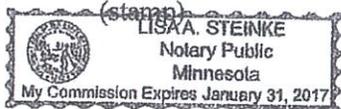


SARAH E. BERGER

STATE OF MINNESOTA

COUNTY OF WASHINGTON

This instrument was acknowledged before me this 19th day of September, 2013, by SARAH E. BERGER.



Signature of Notary Public or other Official

This instrument was drafted by:

Sarah E. Berger
Attorney at Law
Cummins Law Office, P.A.
200 Professional Building
363 Fifth Avenue North
Bayport, MN 55003

— Exhibit A —

Prepared by and return to:
Christopher B. Waldera
Attorney at Law
Christopher B. Waldera, P.A.
11300 Overseas Highway Suite 1
Marathon, FL 33050
305-289-2223

Doc# 1951507 09/25/2013 3:38PM
Filed & Recorded in Official Records of
MONROE COUNTY AMY HEAVILIN

09/25/2013 3:38PM
DEED DOC STAMP CL: Krys \$8,750.00

Parcel Identification No. 00173820-000000

1,250,000

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

Doc# 1951507
Bk# 2651 Pg# 1411

This Indenture made this 18th day of September, 2013 between 633 Sawyer LLC, a Florida limited liability company whose post office address is 320 Daly Road, Tequesta, FL 33469 of the County of Palm Beach, State of Florida, grantor*, and Yellow Dog Properties, LLC, a Minnesota limited liability company whose post office address is 12870 12th St. North, Lake Elmo, MN 55042 of the County of Washington, State of Minnesota, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Monroe County, Florida, to-wit:

Lot 39 of CUDJOE GARDENS, SECOND ADDITION, according to the Plat thereof as recorded in Plat Book 4, Page 159, of the Public Records of Monroe County, Florida.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

— Exhibit B —

Signed, sealed and delivered in our presence:

[Signature]
Witness Name: Edward Bonardi

[Signature]
Witness Name: Beth Keys

633 Sawyer LLC, a Florida limited liability company

By: [Signature]
Daria J. Bonardi, f/k/a Daria Joan Wagner, Managing Member

Doc# 1951507
Bk# 2651 Pg# 1412

State of FL
County of Palm Beach

The foregoing instrument was acknowledged before me this 12 day of September, 2013 by Daria J. Bonardi, f/k/a Daria Joan Wagner, Managing Member of 633 Sawyer LLC, a Florida limited liability company, on behalf of the corporation. He/she is personally known to me or has produced a driver's license as identification.

[Notary Seal]



[Signature]
Notary Public

Printed Name: Beth Keys

My Commission Expires: 4/23/16

Doc# 1951507
Bk# 2651 Pg# 1413

Signed, sealed and delivered in our presence:

[Signature]
Witness Name: William P. Bennett
[Signature]
Witness Name: Jessie M. Knight

633 Sawyer LLC, a Florida limited liability company

By: [Signature]
Wesley Goodale, Managing Member

State of FLORIDA
County of Palm Beach

The foregoing instrument was acknowledged before me this 13th day of September, 2013 by Wesley Goodale, Managing Member of 633 Sawyer LLC, a Florida limited liability company, on behalf of the corporation. He/she is personally known to me or has produced a driver's license as identification.

[Notary Seal]

[Signature]
Notary Public

Printed Name: CHERYL L. STEWART

My Commission Expires: _____



MONROE COUNTY
OFFICIAL RECORDS

**DECLARATION OF RESTRICTIONS FOR CUDJOE GARDENS,
A SUBDIVISION, RECORDED IN THE PUBLIC RECORDS OF MONROE
COUNTY, FLORIDA, File # 1071245, BK # 1523, Pages 510-514,
Dated June 25, 1998**

These restrictions supersede the following recordings of Monroe County, Florida:

Cudjoe Gardens:	Plat Book	Page	Official Record
Original subdivision	4	78	140 Pg 140-141
First addition	4	105	152 Pg 282-283
Second addition	4	159	217 Pg 335-336
Third addition	5	7	201 Pg 70-71
Fourth addition	6	38	452 Pg 911-912
Fifth and seventh additions	6	88	506 Pg 937-938
Sixth addition	6	66	471 Pg 637-638
Eighth addition	7	16	823 Pg 1135-1137

Definitions: Cudjoe Gardens is defined as above; and interpreted as including the original subdivision of Cudjoe Gardens, plus the eight subsequent additions thereto. The Cudjoe Gardens Property Owners Association refers to that named Not-For-Profit Corporation filed with the State of Florida in 1976, governed by its bylaws, and hereinafter referred to as the Association.

1. **General:** The following described restrictions and limitations shall be accepted as covenants running with the land, as described above, and shall be binding alike upon the heirs, personal representatives and assigns of all of the parties thereto. These restrictions shall apply unless superseded by governmental legislation.

2. **Occupancy:** No lot, or part thereof, shall be used for any purpose other than a single family residence, except as follows:

- a. Blocks 1, 15, and 23, with frontage along US 1, may be used for low intensity commercial use.
- b. Lots in Block 5 may be used for semi-professional purposes, i.e., an office in combination with a residence. Examples include doctors, lawyers, and dentists.

— Exhibit C —

- c. Lots 7 through 10 in Block 14 are zoned commercially. Those lots are further restricted to only such businesses which serve the recreational needs of Cudjoe Gardens.

All businesses which fall under the above exceptions shall be subject to approval by the Association.

No residence within Cudjoe Gardens shall be rented or subleased for occupancy to any individual or group of individuals for a period of less than 28 days.

3. **Setback Lines:** Setback Lines shall be measured as the horizontal distance between the lot line and the further-most projection of the permanent structure measured perpendicular to the property line and shall be a minimum of:

a. From Street	
15'	Original subdivision and 1 st through 3 rd additions
25'	4 th through 8 th additions

With the following two exceptions:

Street Setback Exceptions	Block
25' from US 1 right of way and 20' from the service road	1
10' from the street (semi-professional only)	5

b. From Canal/Waterway	
15'	Original subdivision and 1 st through 3 rd additions
20'	4 th through 8 th additions

Exception: Landward indentations created in the canal system are considered boat slips. County Building and Planning Departments may require a variance for construction closer to said boat slip. In such cases the Association shall not oppose such variances.

c. From Sides	
7'	Original subdivision and 1 st through 3 rd additions

4. Dwellings; Construction, Quality and Size:

- a. All buildings shall be of masonry construction; workmanship and materials shall be of first class and where applicable shall conform to the Monroe County Building Code; this does not exclude the use of wood in roofs, floors, trim or partitions.
- b. No garages or carports shall be allowed unless they are attached to and form a part of the residence and conform to all of the construction requirements thereof as to appearance, workmanship, materials and setback lines.
- c. Use of used building materials or moving of any previously constructed or prefabricated building on to the premises is strictly prohibited.
- d. The area shall be cleaned of all debris and surplus materials must be removed from the premises before occupancy is permitted.
- e. No single family residence shall have more stories than:

Maximum Number of Stories	Applies to
One and one-half	Original subdivision and 1 st addition
Not applicable	2 nd addition
One and one-half	3 rd addition
One, except buildings fronting on US 1	4 th addition
One	5 th through 8 th additions

- f. Buildings, either commercial or residential, on lots fronting on US 1 must have the structural appearance and landscaping of residences as viewed from the canal side of said buildings.
- g. No house shall be elevated on stilts except where the Federal Emergency Management Agency flood plain is eleven (11) feet or higher.

5. Minimum Lot Size: No residence shall be built on a lot containing less than:

Minimum Square Feet	Applies to
6,000	Original subdivision and 1 st through 4 th additions
7,000	5 th through 7 th additions

8,000	8 th addition
-------	--------------------------

6. **Minimum Floor Area:** The ground floor shall have an area, exclusive of porches, breezeways, attached garages or car ports, of not less than:

Minimum Square Feet	Applies to
850	Original subdivision and 1 st through 4 th additions
900	5 th through 7 th additions
1,000	8 th addition

7. **Docks, Seawalls, & Slips:** No docks may be constructed in canals. A marginal wharf and, or, seawall may be constructed on the canal edge but may not extend into said canal. All docks and seawalls shall be structurally and architecturally in keeping with its surroundings and with any restrictions governing same. All boats shall be docked parallel to said docks.

8. **Nuisances:** Nothing shall be done on any lot which is, or may become, an annoyance or nuisance to the neighborhood. No horses, cattle, goats, swine, or fowl shall be kept on any lot. Only domestic house pets shall be allowed, and they shall not be raised for profit. Pets must be controlled at all times. In the 4th through 8th Additions clothes lines, garbage cans, and lobster traps (a maximum of two), must be hidden, and line fences and hedges must not exceed four feet in height.

9. **Signs:**

a. No sign shall be displayed on any residential lot except as follows:
For Sale or For Rent signs referring only to the premises on which it is displayed. In the 2nd and 5th through 8th Additions subject signs shall not exceed 12" x 12" in size. Warning signs may be displayed on residential lots in the 8th Addition. In the professional block of the original subdivision (1st Avenue East), a small sign listing name and profession only, and using letters not larger than three inches in height may be displayed.

b. No business or commercial sign shall be displayed except as follows:
Signs on lots fronting on Highway U.S. 1 may be displayed only to advertise a business on said premises or to advertise businesses or activities within Cudjoe Gardens. Said signs shall not be larger than 12 square feet and shall be in good taste. Additionally, any such sign placed on lot 1, block 23 must not block the Cudjoe Gardens sign. A sign designating CUDJOE GARDENS with a maximum

size of 4 feet long by 3 feet high is permitted. If Club 800 is operated as a private club, it may be included with a Cudjoe Gardens sign, but in a smaller type size. Any business legally allowed in Cudjoe Gardens may use a rider sign with said signs limited to a maximum of 42 inches by 7 inches in black and white. All signs are subject to approval by the Association.

10. Weeds, Underbrush & Refuse: No weeds, underbrush, or unsightly growth shall be permitted to grow or remain upon the premises, and no refuse pile or unsightly objects shall be allowed to be placed or be suffered to remain anywhere thereon; and in the event that the owner, after thirty days written notice by mail, shall fail or refuse to keep said premises free of weeds, underbrush or refuse piles or other unsightly growth or objects, then the Association may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

11. Canal Housekeeping: The dumping of any fill, refuse, tin cans, bottles, sewage or any contamination whatsoever in the canal or boat slips shall be deemed a violation of these restrictions and the violator shall be liable for any damages therefrom and for all costs of removal.

12. House Trailers, Temporary or Unfinished Buildings: No temporary buildings, house trailers, mobile homes, campers, or tents may be parked or placed upon said land, with the exception of campers which are allowed in the Original subdivision and the First through Third Additions. In no case may any of the above be used as living quarters.

13. Building Plan Approval: For purposes of compliance with these restrictions, all building plans shall be submitted to the Association for review prior to commencing construction. After review such plans shall be returned along with a letter of approval, or disapproval stating the reasons for such disapproval.

14. Violations: In the event of any violation of these restrictions, the Association and the owners of lots in the subdivision shall each have the right to proceed at law, or in equity, to compel compliance with these restrictions and to prevent the violation of any of them. The Association shall be entitled to recover all costs, attorney's fees and damages incurred in such action. The Association shall also have the right to enter the property where a violation exists and correct the violation at the expense of the owner. Such entry and corrective action shall not be

considered a trespass. The failure to enforce any right, however long continued, shall not give up the right to do so thereafter and shall not affect enforcement. The invalidation by any court of any of the restrictions covering this land shall in no way affect the other restrictions.

15. Modification of Restrictions: These restrictive covenants may be changed or modified at any time by filing in the Public Records of Monroe County, Florida, of a written document setting forth such changes or modifications, executed by a majority of the then record owners of the residential lots in Cudjoe Gardens. All shall have a vote in any modifications or changes in restrictions. Voting shall be one vote per lot. Fractional votes shall be allowed only in one-half lot increments. Ownership of more than fifty percent of a lot shall be allowed one vote for that lot, except that the aggregate total of all lots owned shall be rounded to the closest one-half lot in all cases.

CUDJOE GARDENS PROPERTY OWNERS ASSOCIATION, INC.
Post Office Box 420121
Cudjoe Gardens, Cudjoe Key, FL 33042-0121

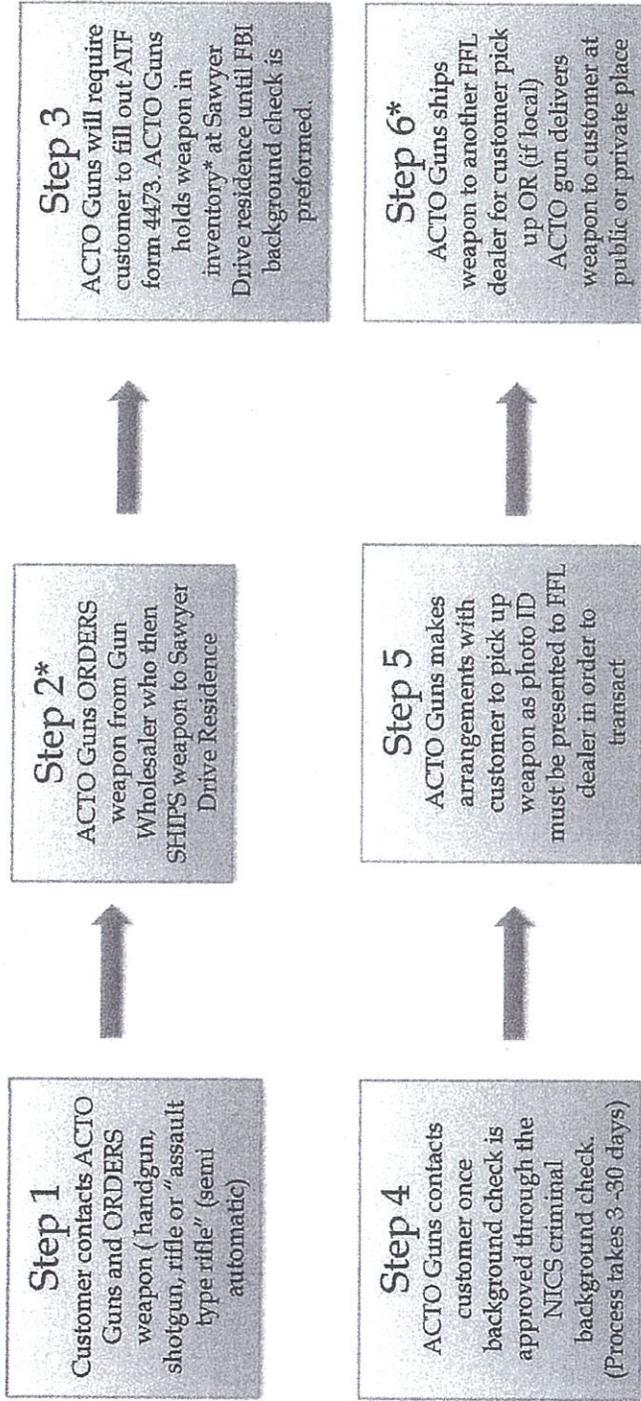
January 28, 1999

DEED RESTRICTION ENFORCEMENT PROCEDURE

1. In accordance with Section 14 of the Cudjoe Gardens Deed Restrictions, the Association and owners of lots in the subdivision shall each have the right to proceed at law, or in equity, to compel compliance with the deed restrictions and to prevent the violation of any of them.
2. Property owners who solicit the Associations assistance in compelling correction of any perceived deed restriction violations shall present their requests in writing to the CGPOA Board of Directors.
3. After receiving a complaint or request for assistance signed by an owner of property in Cudjoe Gardens, at least two (2) members of the Building Committee shall visit the site and evaluate the merit of the complaint.
4. If the violation is a violation of the county code, the Committee shall inform the violator in person, if practical and immediately thereafter, inform the Monroe County Code Enforcement of the said violation. If the violation is a transient rental,, the Committee will attempt to notify the owner of the property and will also inform the proper Code Enforcement officials.
5. If in other cases the Committee agrees that there is a violation of the deed restrictions alone, it shall send a letter, by Certified Mail to the owner and lessee, if applicable, of the property in question describing the alleged violation.
6. The owner shall then have thirty (30) days to respond to the Board. This response may be either a written request to meet with the Board or a written agreement to correct the violation in a timely manner.
7. Should the owner fail to respond in either way, or fail to honor the agreement to correct the violation in a timely manner, the Board by a majority vote may engage counsel to seek legal remedies. Such remedies may include temporary and or permanent injunctions, a clouding of the title to the property or seeking a court order to remedy the violation(s).
8. If the owner chooses to meet with the Board, he will have the opportunity to present his case. The Board in turn may drop the matter, negotiate an agreement with the owner, or seek legal remedies as stated above.
9. It should be noted that the Board might not seek legal remedies unless the complainant is a party to any legal action and a member of the Association.

John Ulrich, President of the CGPOA, Inc.

643 Sawyer Drive Residence ACTO Gun Store Process



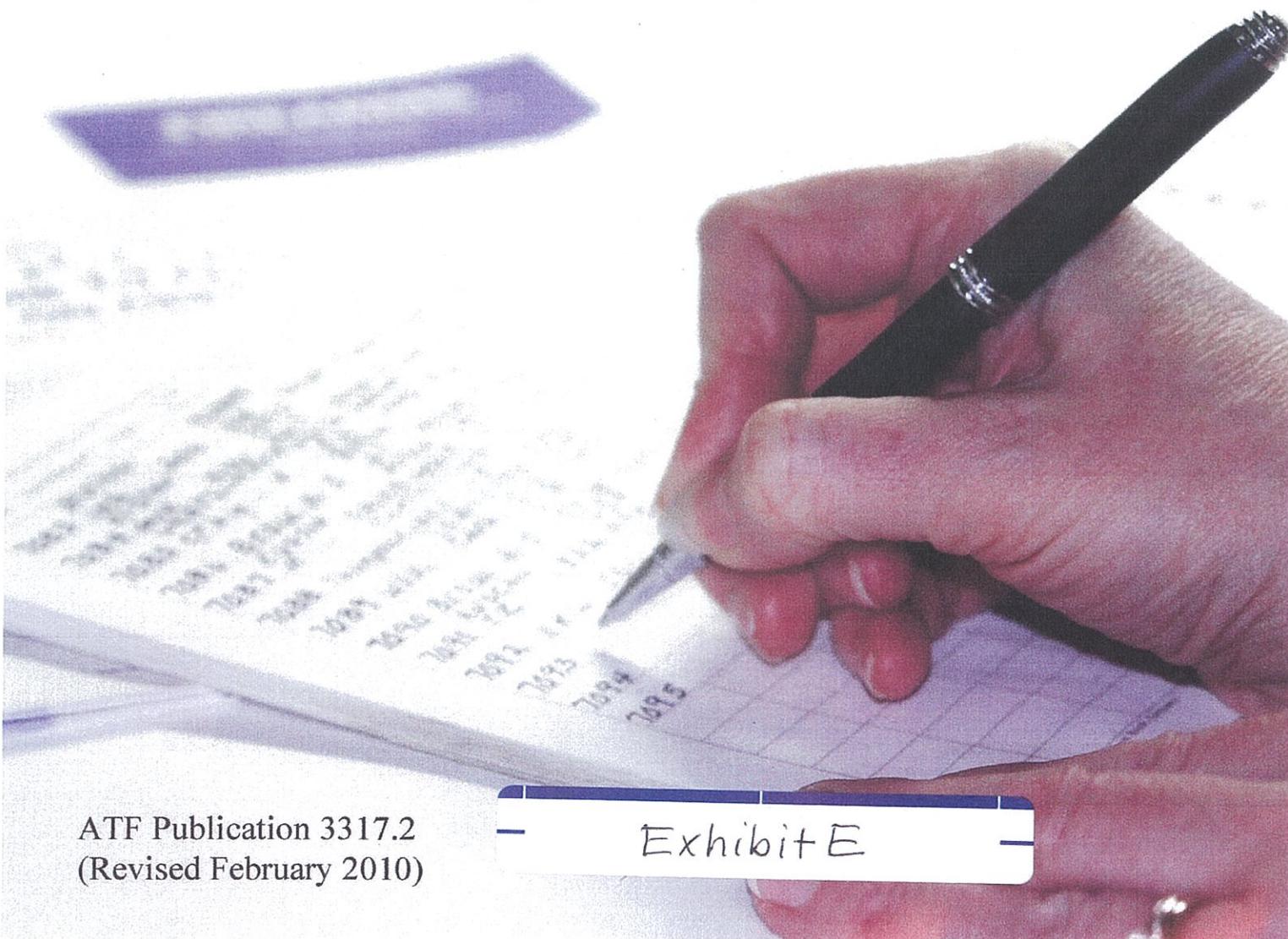
* Either option ACTO Gun Store Weapons are moving IN and OUT of Sawyer Drive Residence every day of the week through local customer delivery or through commercial delivery systems. Weapons must be inventoried on premises.



ATF

Safety and Security Information for Federal Firearms Licensees

For Theft/Loss Reporting Procedures,
See Back Cover



ATF Publication 3317.2
(Revised February 2010)

Exhibit E

ATF

**Working for a
Safer and More
Secure America
through
Innovation and
Partnerships
to Prevent
Firearms Thefts.**

SAFETY AND SECURITY

STEPS FOR REDUCING YOUR VULNERABILITY TO THEFT/LOSS AND PERSONAL INJURY

Each year ATF receives thousands of reports of theft/loss from federally licensed firearms dealers. These reports document more than 25,000 firearms that are stolen or whose disposition is unknown to these businesses. It is clear that criminals target businesses that sell firearms. Experience has shown that in many instances, the thieves spend a considerable amount of time evaluating these businesses to determine and capitalize on their vulnerabilities.

Although it may be impossible to balance an impenetrable security system with the requirements of a business that receives and transfers property openly to the public, there are many steps that can be taken to diminish risk. The following text sets forth six areas available to the licensed firearm dealer for guidance and assistance in avoiding theft/loss and preventing personal injury. Some of these ideas can be implemented at no cost while others may involve considerable investment. If circumstances warrant it, obtaining sufficient security may cause you to consider moving to a more secure building or location. Read through the following text, think about how each point may apply to your business, and determine which steps are right for you.

STRUCTURAL SECURITY

- Structural security is a combination of the physical characteristics of your business facility and its location. A thorough evaluation of your structural security should be done on a regular basis. Look at the physical structure of your building and consider the position your business occupies within the context of adjoining businesses. Can the roof of your establishment withstand an attempted break in? Does poor or absent structural security make your establishment an attractive target, and consequently, the most likely victim of criminals or criminal opportunity?
- **Evaluate your business location.** Have property crimes been recurring or increasing in your area? Is your business in a rural area in which a crime is unlikely to be witnessed and in which police response time may be slow? Have you already been a victim of theft/loss? If so, your business location may require you to increase your security measures by following some of the ideas below:
- **Evaluate your door and window locks.** Can any door or window be opened from the outside without keys? Do any former or non-employees have access to keys? Are keys stored or kept near the container or door for which they are used? Have any of your business keys been lost or stolen? If so, it is time to replace, re-key, improve locks, and improve procedures for storing and tracking keys.
- **Evaluate your windows and doorjamb.** Can any of these be opened or broken through from the outside with minimal force? Is it time to reinforce or replace windows and/or doors? It may be important to invest in burglar bars or roll-down security gates on windows, doors, and vents. Barriers such as concrete filled posts or large cement planters may deter thieves who would consider using a vehicle to smash into the building to gain access. Consider replacing any exterior hollow core doors with solid metal or sheet metal faced solid wood doors. Also consider

steel doorframes, long throw dead bolts, and welding or preening any hinge pins to prevent their easy removal.

- **Evaluate other unsecured openings.** Does your premises have air conditioning units in open windows or a hole in an exterior wall? These units are easily removed, and many theft entries are made in this way. Are chimneys and other vents blocked or narrowed sufficiently to prevent entry?
- **Evaluate the walls and ceilings.** In many instances of theft, criminals have ignored doors and windows and cut through adjoining walls or the ceiling to gain access. In some cases, the wall next to the doorway was simply pushed through. Poorly protected adjoining businesses also provide an easy entry point for criminals who choose to go through unreinforced walls. This form of entry may have a second unintended negative effect in that it may avoid triggering the alarm system. A common precaution is the installation of floor to ceiling steel mesh in the gun vault and in exterior walls. If circumstances warrant it, consider moving to a more secure building.
- **Evaluate exterior lighting and surrounding structures, shrubs, and trees.** Is your business and the surrounding area well lit at night? Are there areas in which criminals can conceal themselves to monitor your business and by which they could enter/leave the building unseen or under the cover of darkness? Are there structures or objects such as trash cans or dumpsters next to the building that may provide cover or easy access to the roof or windows?
- **Evaluate the front windows and entrance.** Can employees see persons approaching the store or vehicles parked outside? Can passersby see into the store or are persons inside the store concealed from public view so that a robbery would be undetected while it was being committed?
- **Obtain an alarm system.** There is no logical justification for a firearms business to be unalarmed. Most alarm companies will evaluate your needs and make recommendations at no cost. A simple system is far less expensive than the cost of replacing inventory. Many States require an alarm system on specific types of businesses, particularly firearms dealers. Are you in compliance with State and local law on your alarm system and other security requirements?
- **Evaluate your existing alarm system.** Is it sufficient for the nature and size of your business? Are all points of entry protected? Do you have, or need, a panic button? Tamper alarm? Cellular backup (cellular backup is considered an industry standard to protect during power failures and/or if power/phone lines are cut)? Have you tested the system on a regular basis? Who is on the call list and are the phone numbers correct and current? Have you met with the local authorities to agree on protocols when the alarm is tripped? Have you had a series of apparent false alarms? If so, is the problem in the system, or is your response procedure being studied by a savvy criminal?
- **Protect your alarm codes.** Have you limited the number of people who know the codes? Are your codes unrelated to family names, numbers, and other easily recognizable names and number sequences? Do you change the codes on a regular basis and whenever there is employee turnover? Have you written the codes where they are easily accessible to thieves or unauthorized employees?

- **Evaluate the need for or condition of your video camera system.** Having video cameras can have a significant deterrent effect on crime. They can also be instrumental in solving thefts. Do your cameras face in a direction that will capture people's faces and features? Are you recording at all times? If your recorder is a VCR, do you have fresh videotapes, or have they been used hundreds of times? VCR tapes lose their integrity with repeated recording. It may be time to switch to a digital recorder whose picture quality is far superior and will not degrade over time. In some instances, insurance savings may offset updating obsolete or inferior equipment. Is your recording system in plain view or protected from view, tamper and/or theft?
- **Evaluate the installation of a remotely activated electronic security entrance.** Would there be value in screening customers to prevent access to suspicious persons? Businesses in or near high crime areas and those who have already been a victim of a crime may want to give this some serious consideration.
- **Evaluate the business-hours store layout.** Are unsecured firearms displayed within reach of customers? Does your business have blind spots in which customers can access inventory? Are display cases kept locked unless an employee is displaying a firearm or other item from that case? Are there times/situations wherein all employees have their backs to customers? Do any business activities require that employees enter the rear of the store/storage locations, leaving customers unattended?
- **Evaluate after-hours business layout.** Have firearms and ammunition been secured? If thieves break into the store, are firearms readily accessible or are secondary measures in place (i.e. firearms secured by locking cable, etc.)? The best business practice is to remove all firearms from display cases and racks and place them in a gun vault at night. As an alternative, some businesses utilize reinforced display cases with shatterproof glass.
- **Evaluate the level of security provided by an answering machine.** Avoid using the answering machine to announce weekends and other times when you will be out of town. When the message says you are closed so that you can attend a show, the underlying message is that your business is unprotected.

INVENTORY SECURITY

Inventory security is the way in which business merchandise and equipment is accounted for from the date it is received (acquired) by the business to the date of its disposition (sale, trade, etc.). At the core of inventory security is the practice of complete and consistent documentation. For firearms inventory, accurately completed ATF Form 4473 forms and an up-to-date and accurately completed Acquisition and Disposition Record are required by law. The following additional steps are recommended practices to help protect inventory:

- **Conduct periodic physical inventories and reconcile to book inventory.** Complete physical inventory counts and reconciliation to book inventory enable an FFL to know which firearms have been transferred legally and which firearms may have been lost/stolen. This includes ensuring that all firearms in inventory are recorded in the Acquisition and Disposition book and that for all open entries in the book, there is a firearm. The frequency of inventories may be dictated by the nature of the business, but at a minimum, an annual "floor to ceiling" inventory is recommended. Without reliable records, it is impossible to determine if firearms have been transferred or are still in inventory. If this cannot be established and a crime occurs, the licensee will not be able to provide ATF and/or the local law enforcement authorities with an accurate list

Description of Business Operation

Omar Fernandez dba ACTO Guns

ACTO GUNS will be a home based, sole proprietor FFL business catering only to internet based sales. The services offered will be firearm and firearm accessories sales and transfers.

All sold items will be shipped or otherwise delivered to the purchaser.

No persons will visit the residence to conduct any transactions related to the home occupation business.

No business advertising material will be placed on or near the premises.

All firearm buyers will be subjected to background checks as required by the ATF.

While on the premises awaiting shipping or delivery, all firearms will be equipped with trigger locks and kept in a locked safe.

Revised 02/10/2016


Omar Fernandez

Date: 9-12-2016