

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 30, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 18-0252. 928 Ocean Drive – Voodoo Rooftop & Lounge.**

An application has been filed requesting a Conditional Use approval for a Neighborhood Impact Establishment (NIE) with entertainment and an occupant content in excess of 200 persons and an open air entertainment establishment, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval of the NIE with entertainment indoors only
Denial of open air entertainment establishment

BACKGROUND

On February 13, 2018, the applicant, Deco Walk Hotel & Golf Club, LLC, requested a Certificate of Appropriateness (COA) from the Historic Preservation Board (HPB17-0171) for the partial demolition of the Ocean Drive façade and the design of a new glass storefront system and the installation of a retractable canopy system at the rooftop including a variance to exceed the allowable hours of operation for an accessory outdoor bar counter on the roof of the building. The variance for the outdoor bar counter hours was denied.

On September 17, 2018, the applicant requested modifications to the previously issued COA for the design and location of the outdoor bar. The HPB heard the request (HPB18-0210) and continued the application due to concerns about the rooftop operation. The applicant subsequently withdrew the modification request.

ZONING / SITE DATA

Legal Description:

Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

Zoning District:

MXE, Mixed-Use Entertainment

Future Land Use Designation:

MXE, Mixed-Use Entertainment

Surrounding Uses:

North	Hotel and restaurants
East:	Lummus Park
South:	Restaurant and residential multifamily

West: Mixed use and residential multifamily

(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant, Deco Walk Hotel & Golf Club, LLC, submitted plans entitled “Voodoo Restaurant & Lounge”, as prepared by Dyman and Feinberg Architecture. The plans illustrate the existing and proposed layout of a restaurant bar on the ground floor and roof top bar area. The submitted layout for the existing area reflects a 36 seat restaurant on the ground floor and a 70 seat roof top area. The proposed layout would keep the same number of seats by redistributing them and increase the occupancy of the ground floor from 81 to 237 persons and the roof top from 200 to 211.

According to the Letter of Intent (LOI), the restaurant is proposing entertainment in the form of a “DJ” and a Polynesian dinner show with dancers inside the ground floor space only, but with the doors open to the outside which meets the definition of open air entertainment (see the definitions below.)

Sec. 142-1361. - Definitions.

Open air entertainment establishment means a commercial establishment which provides entertainment, as defined in this section, indoors or in an enclosed courtyard or area which by its design is open to the outside, thereby enabling the entertainment to be audible outdoors.

Outdoor entertainment establishment means a commercial establishment which provides outdoor entertainment as defined in this section.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the Comprehensive Plan.

- 2. The intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

Consistent – The proposed restaurant and entertainment use should not exceed the thresholds for the levels of service as set forth in the Comprehensive Plan

- 3. Structures and uses associated with the request are consistent with this Ordinance.**

Consistent – Entertainment, outdoor entertainment, open-air entertainment, roof top bars and Neighborhood Impact Establishments are permitted in the MXE zoning district through a Conditional Use Permit (CUP.)

- 4. Public health, safety, morals and general welfare will not be adversely affected.**

Partially Consistent – The submitted sound study concluded that the proposed use would not violate the noise ordinance, nor have any negative acoustical impact on the neighbors because the soundscape of this section of Ocean Drive is already loud. However, the cumulative effect of the proposed entertainment establishment on the same block may adversely affect the general welfare of nearby residents if the noise and other issues are not controlled. Staff is concerned about how outdoor entertainment would impede pedestrian flows and create a crowd control issue. Staff is recommending double door vestibules to contain the entertainment to the interior of the building so that any resulting adverse impacts are mitigated.

5. Adequate off-street parking facilities will be provided.

Consistent – Operational parking is available through a valet operation that services the entire block which is authorized through the Parking Department. Further, many patrons may walk, arrive by taxi, or hire car service.

6. Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

Partially Consistent – Staff is recommending a double door vestibule at the entrance and exits which should to mitigate many of the adverse impacts from noise, pedestrian congestion and crowds on the surrounding neighbors.

7. The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Not Consistent – There are several NIE's and entertainment uses in the area. The following are some of the Neighborhood Impact Establishments, outdoor entertainment and entertainment establishments approved nearby.

Address	Business	CUP	PB File No.
900 Ocean Drive	Mango's	NIE	1387
960 Ocean Drive	Oceans Ten	NIE	1467
1020 Ocean Drive	Cleveland	NIE	1456
1052 Ocean Drive	The Palace	OEE	PB17-0171
1060 Ocean Drive	ILOV305	NIE	PB17-0158
1236 Ocean Drive	Il Giardino	OEE	1361

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental

review guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

1. **An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.**

The Operational Plan was submitted with the application and details of the proposed entertainment portion of the operation are contained in the Letter of Intent (LOI.)

2. **A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

The site is located in a historic district, and as such, has no additional parking requirements. All off-street parking for the site will occur exclusively through valet parking available through a valet operation that services the entire block which is authorized through the Parking Department. Further, many patrons may walk, arrive by taxi, or hire car service.

3. **An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.**

There are three existing and fourth proposed glass doors at the front of the building. There is large entry and waiting area inside the front doors of the building where guests wait to be seated by restaurant staff. Additionally there is a walkway on the north side that leads to an exterior elevator that takes you to the upper floor and the roof. The applicant does not provide a crowd control plan, but states the front terrace will be enough space for queuing.

4. **A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

There is not a parking facility. The LOI states that staff and security personnel are continually trained in security measures and how enforce the patron age restrictions.

5. **A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

A traffic circulation analysis was not required as the capacity of the facility is not is not changing.

6. **A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.**

All waste is stored in an air-conditioned, enclosed garbage room off of the alley (Ocean Court) at the back of the property. All waste from restaurant/bar is disposed of on a daily basis. The applicant's LOI states that waste is collected to between 7:00 AM and 10:00 AM daily.

7. A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.

With this application, a Sound Study was prepared by Edward Dugger + Associates (ED+A) and a peer review was conducted by Arpeggio Acoustic Consulting, LLC. The peer reviewer had some concerns, which were satisfactorily addressed by the applicant's sound engineer and the peer review provided a letter with his subsequent conclusions (see Sound section of the report.)

8. Proximity of proposed establishment to residential uses.

The project abuts residential properties on its south and the west. In order to minimize the impact to the residential uses, staff is recommending a double door vestibule at the front doors.

9. Cumulative effect of proposed establishment and adjacent pre-existing uses.

There are several NIE's and entertainment uses in the area. The following are some of the Neighborhood Impact Establishments, outdoor entertainment and entertainment establishments approved nearby (see chart on page 4.)

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

.Not Applicable

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Not Applicable

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not Applicable

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

- (10) Where feasible and appropriate, water retention systems shall be provided.

Not Applicable

STAFF ANALYSIS

This property contains a two level building with a rooftop lounge. Currently, there is a restaurant/bar and retail operation on the first level, a youth hostel on the second floor, and a roof level lounge internally connected to the ground floor restaurant/bar. The existing restaurant/bar operation is allowed to serve alcoholic beverages until 5:00 AM for people seated at the tables inside the building and on the roof. The rooftop bar counter, when it is constructed and finalized through the building permit process, will be required to close at 8:00 PM due to the property abutting a residential use.

Due to previous construction work performed at the roof without the required permits, a violation was issued by the Building Department and the applicant had to appear before the HPB in order to legalize that work. As part of the HPB application to legalize the work, the applicant requested a COA for an outdoor bar counter with 19 seats and a variance to extend the allowable hours for alcohol sales at the roof top bar from 8:00 PM to 2:00 AM. The application for the extended bar counter hours was denied by the HPB; as such, the roof top counter has to close by 8:00 PM. Alcoholic beverages may still be served from the first floor bar and brought to the rooftop. The logistics of this operation requires a server going up two levels of stairs or exiting the building and entering an exterior elevator.

The HPB included operational conditions in the COA issued on February 13, 2018 as follows (see full version in the Board packages):

2. The Applicant agrees to the following operational conditions for any and all permitted primary and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations.

a. **OUTDOOR CONDITIONS**

- i. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced. Owner agrees to

include the rules and regulations set forth in these conditions in any lease, contract or assignment.

- ii. Exterior speakers, except those required to address Building and Life Safety Codes, shall not be permitted at the ground level of the property.
- iii. Exterior speakers, except those required to address Building and Life Safety Codes and those associated with a distributed sound system for ambient, background music only, which does not interfere with normal conversation, shall not be permitted at the roof deck, unless a Conditional Use Permit is approved by the Planning Board for outdoor entertainment. An acoustic plan certified by an acoustic engineer for the proposed distributed sound system shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

b. NOISE CONDITIONS

- i. The Historic Preservation Board (HPB) and the Planning Director shall retain the right to call the owners and/or operators back before the HPB, at the expense of the owners and/or operators, to impose and/or modify any operating conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.
- ii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.

c. OPERATIONAL CONDITIONS

- i. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Doors shall remain closed and secured when not in active use.
- ii. All furnishings, equipment and supplies, with the exception of tables and chairs, associated with the rooftop café and bar shall be stored within the envelope of the existing building in areas which are not visible from streets, alleys or nearby buildings. Storage shall not be permitted at the roof level.

Operation

Staff has concerns about the current operation and track record of the establishment. In the past the operator has altered and used the property without permits, and has sought

authorization after violations are issued. Staff has visited the property, and each time the sound system has been exceeding the threshold of entertainment and has had to be turned down in order to have a conversation. From field visits and the photographs provided in the Board application, the roof top is still not in the configuration approved by the HPB. The area labeled “hooka storage area” on the plans appears to be an alcohol service area. Also, the current occupant content has not been approved by the Fire Department and it is clear from observations that the venue already has entertainment. The process of asking for a CUP before building or commencing the intended use is an essential element of the review process.

Attached to this report is a list of complaints, violations and special master cases related to the venue over the last 12 months. The noise ordinance contains an exemption for the 900 and 1000 blocks of Ocean Drive, which allows for noise to emanate east of the property.

Sound

The Sound Study prepared by Edward Dugger + Associates, PA concluded that “Sound levels resulting from entertainment on the first-floor of the venue were assessed and compared with the measured ambient sound levels to determine its impact on the sound environment. It is ED+A’s opinion that operating in this manner would not result in significant different conditions in the area outside of the Voodoo Lounge and surrounding properties than those that already exist.”

The peer reviewer, Arpeggio Acoustic Consulting, LLC, concluded “It is our opinion, therefore, that the proposed operational changes will not significantly alter the soundscape of the immediate area nor will they result in a violation of the Miami Beach noise code.

Pedestrian circulation

Staff has concerns with entertainment that is allowed to be heard and seen outside through a substantially open front façade, which is proposed to be comprised of open glass doors and a glass glazing system. When combined with the sidewalk café conditions, the pedestrian path between the building terrace and the sidewalk café seating area is very narrow. Additionally, the sidewalk umbrellas and the existing awning on the building create a “tunnel” effect on the sidewalk.

Having a dance theater show that can be observed and heard from the sidewalk will likely result in pedestrian backup on the sidewalk. The current width of the sidewalk is too narrow to allow sound and visual distractions to the pedestrian experience. Even if pedestrians or vehicles do not fully stop to observe, the collective slow down can still cause congestion. Tourists and residents could be adversely impacted by the already congested Ocean Drive west side walk. Without a natural way to escape the crowd, pedestrians would be forced to avoid the area by stepping into the street to avoid the crowd which is a dangerous condition.

Security

The applicant proposes to have a 6 person security force and 16 security cameras. Security would help with crowd control, queuing and enforce patron age restrictions.

Conclusion

After reviewing the request, staff does not object to the addition of entertainment within the interior of the building, provided the applicant installs an entrance and exit vestibule to mitigate sound spillage, and to address potential impacts on adjacent residential apartments and pedestrians. At this time, staff would not recommend adding open air entertainment to this

venue, due to the impacts on the safety of pedestrians, and the impact on the adjacent sidewalk.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends that the request to operate the venue as a restaurant and entertainment establishment, inside only, be APPROVED subject to the conditions enumerated in the attached Draft Order. Staff recommends that the request to operate the venue as an open air entertainment establishment be DENIED.

ZONING AND LOCATION MAP



Case Number	Main Address	Case Type	Case Status	Open Date	Closed Date
1 NC2019-10788	928 OCEAN DR	Noise Complaint	No Violation Issued	03/28/2019	03/28/2019
2 NC2019-10492	928 OCEAN DR	Noise Complaint	No Violation Issued	03/08/2019	03/08/2019
3 NC2018-09632	928 OCEAN DR	Noise Complaint	No Violation Issued	12/28/2018	12/28/2018
4 SMN2018-00055	928 OCEAN DR	Special Master Noise Appeals	Closed	08/20/2018	03/01/2019
5 NC2018-08194	928 OCEAN DR	Noise Complaint	Appeal	08/10/2018	
6 NC2018-07999	928 OCEAN DR	Noise Complaint	Closed	07/17/2018	07/19/2018
7 NC2018-07797	928 OCEAN DR	Noise Complaint	Closed	06/21/2018	06/23/2018
8 SMA2018-01305	928 OCEAN DR	Special Master Appeals	Closed	06/01/2018	09/17/2018
9 SMA2018-01306	928 OCEAN DR	Special Master Appeals	Closed	06/01/2018	10/11/2018
10 SMA2018-01276	928 OCEAN DR	Special Master Appeals	Closed	05/30/2018	10/25/2018
11 SMA2018-01277	928 OCEAN DR	Special Master Appeals	Closed	05/30/2018	10/24/2018
12 SMA2018-01278	928 OCEAN DR	Special Master Appeals	Closed	05/30/2018	10/25/2018
13 SMA2018-01280	928 OCEAN DR	Special Master Appeals	Closed	05/30/2018	10/24/2018
14 SMC2018-00807	928 OCEAN DR	Special Master Code	Special Master	05/30/2018	
15 CC2018-05676	928 OCEAN DR	City Code Violation	Closed	05/26/2018	07/18/2018
16 CC2018-05677	928 OCEAN DR	City Code Violation	Closed	05/26/2018	01/25/2019
17 SV2018-06175	928 OCEAN DR	Sanitation Violation	Closed	05/26/2018	07/05/2018
18 CC2018-05573	928 OCEAN DR	City Code Violation	Closed	05/20/2018	06/29/2018
19 CC2018-05507	928 OCEAN DR	City Code Violation	Closed	05/13/2018	10/30/2018
20 CC2018-05498	928 OCEAN DR ROW	City Code Violation	Closed	05/12/2018	07/27/2018
21 CC2018-05496	928 OCEAN DR	City Code Violation	Closed	05/11/2018	10/26/2018
22 NC2018-07390	928 OCEAN DR	Noise Complaint	Written Warning Noti	05/11/2018	
23 NC2018-07344	928 OCEAN DR	Noise Complaint	No Violation Issued	05/06/2018	05/07/2018
24 CC2018-05460	928 OCEAN DR	City Code Violation	Fine Paid	05/05/2018	11/30/2018
25 CC2018-05461	928 OCEAN DR	City Code Violation	Appeal	05/05/2018	
26 CC2018-05462	928 OCEAN DR	City Code Violation	Notice of Violation	05/05/2018	
27 CC2018-05464	928 OCEAN DR	City Code Violation	Closed	05/05/2018	10/17/2018
28 NC2018-07320	928 OCEAN DR	Noise Complaint	Written Warning Noti	05/05/2018	
29 NC2018-07141	928 OCEAN DR	Noise Complaint	Closed	04/19/2018	04/27/2018



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(404) 806-6104 (FAX)

March 29, 2019

Ms. Tui Munday
Senior Planner
Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Voodoo Lounge, Sound Study Peer Review

Dear Ms. Munday:

This letter serves as our reply to the response prepared by ED+A, dated March 28, 2019, to our sound study per review.

In our peer review, we requested clarification on two points: concerning the degree to which measured sound levels on site were representative of future sound levels and concerning ambient sound levels at adjacent properties. In their response, ED+A satisfactorily addressed both points. They gave assurance that sound levels within the venue would not be raised with operational changes. More importantly, they provided valuable information which gave context to the character of the immediate area and the place that Voodoo Lounge holds in it. It is our opinion, therefore, that the proposed operational changes will not significantly alter the soundscape of the immediate area nor will they result in a violation of the Miami Beach noise code.

Please feel free to contact me 404-277-6528 or jehnert@arpeggiollc.com if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse J. Ehnert".

Jesse J. Ehnert, INCE Bd. Cert.
Arpeggio

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 928 Ocean Drive

FILE NO. PB18-0252

IN RE: An application has been filed requesting a Conditional Use approval for a Neighborhood Impact Establishment (NIE) with entertainment and an occupant content in excess of 200 persons and an open air entertainment establishment, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL

DESCRIPTION: Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

MEETING DATE: April 30, 2019

CONDITIONAL USE PERMIT

An applicant filed an application with the Planning Director pursuant Section 118, Article IV and Section 142, Article V. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the MXE- Mixed Use Entertainment Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and

the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the Business Tax Receipt (BTR). The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Park Adult Residential, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and entertainment establishment, with approximately 110 seats. The establishment shall always be licensed as a restaurant/bar, and shall not become a stand-alone bar or stand-alone entertainment establishment.
3. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. The hours of operation shall be within the hours of 11:00 AM to 5:00 AM. At all times the establishment is open, food service with a full menu and operating kitchen shall be required.
 - b. The patron occupant content shall be a maximum of 448 persons, or as determined by the Fire Marshall, whichever is lower.
 - c. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Business Tax Receipt approval for the entertainment portion.
 - d. The establishment's four access doors, located facing Ocean Drive, shall have a vestibule and a second set of doors, in order to prevent the escape of sound. The double door vestibules shall be installed with a Building Permit prior to a Business Tax Receipt approval for the entertainment portion.
 - e. All doors and windows shall remain fully closed during entertainment periods.

- f. Exterior speakers, except those required to address Building and Life Safety Codes shall be strictly prohibited on the exterior of the building on the ground floor.
- g. Exterior speakers, except those required to address Building and Life Safety Codes and those associated with a distributed sound system for ambient, background music only, which does not interfere with normal conversation, shall not be permitted at the roof deck. An acoustic plan certified by an acoustic engineer for the proposed distributed sound system shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Historic Preservation Board and Planning Board.
- h. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
- i. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- j. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
- k. Security staff shall monitor patron circulation and occupancy levels.
- l. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- m. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- n. Delivery trucks shall only be permitted to make deliveries from 7:00 AM to 10:00 AM.
- o. Delivery trucks shall only be permitted to make deliveries from the designated loading zones approved by the Parking Department.
- p. Delivery trucks shall not idle in the loading zone.
- q. Air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- r. Garbage dumpster covers shall be closed at all times except when in active use.
- s. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

6. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a BTR to operate this entertainment establishment.
7. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
8. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
9. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
10. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
11. The applicant agrees and shall be required to provide access to areas subject to this MCUP (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this MCUP.
12. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
13. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this _____ day of _____, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, Chief of Planning and Zoning
For Chairman

Filed with the Clerk of the Planning Board on _____ ()