

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 30, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0457. 1671 Collins Avenue. Sagamore Hotel Entertainment.**

An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment with entertainment, including open air entertainment and outdoor entertainment, and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the interior and exterior of the hotel. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Continue to the December 21, 2021 meeting.

ZONING/SITE DATA

Legal Description: All of Lot 6 and Lot 15 and the North 25.00 feet of Lot 5 and Lot 16, Block 29, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the plat thereof, as recorded in Plat Book 2 at Page 77 of the Public Records of Miami-Dade County, Florida.

Future Lands Use: High Density Multi Family Residential (RM-3)

Zoning: RM-3 Residential Multifamily, High Intensity

Historic District: Ocean Drive/Collins Historic District
Miami Beach Architectural District

Lot Area: Approximately 43,125 Square Feet (75 feet wide x +/- 575 feet deep)

Surrounding: South: Residential/Hotel (The Ritz Carlton)
East: Atlantic Ocean
West: Commercial Buildings
North: Hotel (National Hotel)

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

THE PROJECT

The applicant, EBJ Sagamore LLC, is requesting a Conditional Use Permit for a Neighborhood Impact Establishment and Open Air and Outdoor Entertainment Establishment. The hotel has an existing interior bar and restaurant, as well as a pool area. The Hotel also hosts several special events. The proposed CUP would allow for entertainment in these existing venues and for the hotel to host regularly scheduled events unrelated to the hotel operations.

Per Section 142-1361 of the Land Development Regulations (LDRs), an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons constitutes a Neighborhood Impact Establishment (NIE). For reference, alcoholic beverage establishments without entertainment can have an occupant content of 300 or more persons before constituting an NIE.

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 permissible uses in the High Density Multi Family Residential (RM-3) future land use category, as designated on the Future Land Use Map within the 2040 Comprehensive Plan.

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

Not Consistent – The proposal is not expected to result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan. However, several localized traffic issues are expected based on the initial proposed traffic operations plan; these issues, to date, have not been adequately addressed.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

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

Partially Consistent – The proposed entertainment use may adversely affect the general welfare of nearby residents if noise, traffic, and other issues are not controlled. The establishment would have to comply with all applicable laws and regulations for licensure.

- 5. Adequate off-street parking facilities would be provided.**

Not Consistent – The building is a contributing structure and as such has no parking requirement. However, the applicant is proposing to provide parking in an off-site parking garage. The Transportation Department has concerns with the traffic impacts of the proposed off-site parking that have not been addressed to date.

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

Consistent – Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

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

Consistent – There are other entertainment establishments within hotels within the vicinity, however entertainment uses are appropriate for this area, which consists primarily of several large hotels. Therefore, no negative impact through the concentration of uses is expected.

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 hours for deliveries and trash pickup, hours of operation, hours of entertainment, number of employees, crowd control and security procedures, and other procedures.

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.**

As this is a contributing building in a local historic district, there is no parking requirement; however, the applicant has submitted a parking plan which indicates that “patrons will be serviced by the Hotel's existing valet parking company, which utilizes the off-site parking garage (located in 100 Lincoln Road) as a storage facility. The hotel's valet pick up / drop off is located in front of the hotel on Collins Avenue under the existing porte-cochere. Once dropped off, the vehicles are then driven north on Collins Avenue, west on 17th Street, south on Washington Avenue, and east on Lincoln Road to enter the 100 Lincoln Road off-site parking garage. The Hotel operation has the same valet pick up / drop off located at the Hotel's entrance.” The Transportation Department has concerns with the valet operations and the potential traffic impacts that need to be addressed.

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.**

The applicant's operations plan provides procedures for indoor/outdoor crowd control. Staff has included conditions into the draft order to further ensure that crowds are managed appropriately.

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

The applicant has indicated that there will be a minimum of (3) trained security staff during hours of operation and that security staff will enforce patron age restrictions. Staff has incorporated conditions into the draft order in order to further ensure the security of the establishment.

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.

The applicant submitted a Traffic Analysis. The Transportation Department has expressed concerns pertaining to the traffic impacts related to the Valet Parking that must be addressed.

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

The applicant's operations plan indicates that the establishment will continue to use the existing sanitation facilities. Staff has incorporated conditions into the draft order in order to further sanitation for the establishment.

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

The applicant provided a sound attenuation plan prepared by Edward Dugger + Associates (ED+A) indicating how the sound system would function and be operated. The analysis was peer reviewed by the City's sound consultant, Arpeggio. See attached sound study and peer review. Staff has incorporated conditions into the draft order to ensure that sound does not impact surrounding properties.

8. Proximity of proposed establishment to residential uses.

The site is buffered by other hotel buildings and the nearest residential building is located to the south of Lincoln Road. With appropriate measures, the entertainment should not impact the residential buildings in the vicinity. Staff has incorporated conditions to ensure that the nearby residential uses are not impacted by the proposed entertainment use.

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

A number of restaurants and entertainment establishments exist along the Collins Avenue corridor. As such, there will be no cumulative effect on adjacent pre-existing uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations 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, as this is an existing building and establishment.

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not Applicable, as this is an existing building and establishment.

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not Applicable, as this is an existing building and establishment.

- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**

Not Applicable, as this is an existing building and establishment.

- (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, as this is an existing building and establishment.

- (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, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

- (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, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

ANALYSIS

The proposal affects the existing Sagamore Hotel located at 1671 Collins Avenue. The request is for a conditional use permit for a Neighborhood Impact Establishment and Open Air Entertainment Establishment. The request would allow the hotel to use its existing venues as commercial establishments that are open to the public and not related to hotel events and operations. It would also authorize entertainment in both the indoor, open air, and outdoor venues.

The applicant is currently seeking Historic Preservation Board (HPB) approval for the construction

of a proposed Ritz/Sagamore residential tower. The applicant has indicated that they plan to abandon this proposed CUP once construction permits on the proposed tower are obtained.

Sound

The applicant provided a sound study prepared by Edward Dugger + Associates (ED+A) indicating how the sound system would function and be operated. The analysis was peer reviewed by the City's sound consultant, Arpeggio. The City's sound consultant had concerns with the results of the applicant's sound study and the lack of quantitative measurements. See attached sound study and peer review. Given the concerns raised by the sound consultant, staff recommends that precise standards need to be put in place to limit impacts to nearby properties. Staff has incorporated the following conditions into the draft order to ensure that sound does not impact surrounding properties:

- a. Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's and performers as to the requirements of this conditional use permit related entertainment.
- b. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City's peer review.
- c. At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
- d. Sound from the entertainment establishment shall not be plainly audible from the eastern property lines of the subject property and from the northern right of way line of Lincoln Road.
- e. Before the issuance of a certificate of use, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
- f. A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.

TRAFFIC AND PARKING

The Transportation Department has raised concerns regarding the traffic impact of the valet parking operations that must be addressed. Specifically, there are potential intersection failures at Lincoln Road that need further study. In light of the significance of this traffic circulation issue, staff is recommending that the application be continued to a future date so that all traffic circulation components can be properly addressed and any applicable conditions be made part of the draft Order for the CUP.

SUMMARY

The existing hotel is located along the east side of Collins Avenue, which contains a number of hotels, restaurants, and entertainment establishments. However, given the concerns raised by

the City's sound consultant and the site's proximity to residential uses south of Lincoln Road, the potential exists to negatively impact those residents if the use is not properly controlled. Staff has incorporated several conditions into the attached draft Order to ensure that the sound is contained within the unified Ritz/Sagamore development site. Staff does not object to the applicant's request for entertainment, provided the safeguards incorporated in the attached draft order are approved.

As noted above, the Transportation Department has concerns with the proposed valet operations described in the applicant's traffic study, in particular the potential to create an intersection failure at Lincoln Road. As such, staff is recommending that the application be continued so that these issues can be resolved. However, should the Planning Board wish to approve the application, staff has included a draft order that can be considered.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be continued to the December 21, 2021 meeting.

ZONING/SITE MAP





**Peer Review of Sound Study for
Eme Exclusive Club,
1826 Collins Avenue, Miami Beach, Florida
PB 21-0452**

Prepared for:

**Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139**

Prepared by:

A handwritten signature in black ink, appearing to read "Jesse J. Ehnert", written over a horizontal line.

**Jesse J. Ehnert, INCE Bd. Cert., Principal
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August 17, 2021

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1 Introduction

This report documents a peer review of an acoustic study conducted for the City of Miami Beach related to an application for a Modification to a prior Conditional Use Permit (CUP) for a Neighborhood Impact Establishment, EME Exclusive Club at 1826 Collins Avenue. The reviewed report, prepared by Edward Dugger + Associates (ED+A) and dated August 6, 2021, describes the project and regulatory criteria and offers recommendations related to sound system design to limit impact on adjacent areas.

2 Project Description

The four-story venue, EME Exclusive Club, is located, and currently operates, on the west side of Collins Avenue in a CD-2 zoning district. It is bordered on the north by the Dorchester Miami Beach Hotel & Suites, to the east by Collins Avenue, to the south by a residential tower, to the west by Pestana South Beach Hotel, and to the northwest by a multifamily residential development.

The current application seeks to allow indoor entertainment, consisting of a DJ producing sound above ambient level and occasional live entertainment by a performer, between 5 pm and 4 am.

3 Comments

The sound study report discusses in detail architectural features of the building envelope and also comments on the installed sound system and recommended operational parameters. Justifiably, there is great concern expressed by the exterior façade along the north, east, and south sides of the building as they comprise mostly glass which generally has poor sound isolation characteristics as compared to other, heavier building materials. However, no sound tests were performed to quantify the sound isolating performance of the building envelope.

Our review of architectural drawings and photographs reveals a few specific points of concern, which are also identified in the ED+A report. The first point of concern is the front door on the first floor. The ED+A report states that this reception area should act as a vestibule between the second level and the front door, however, it is important to note that the two levels are connected by an open staircase and, thus, this area cannot be considered to be an enclosed staircase. Sound from the second floor, while attenuated, would still be audible in the reception area and prone to propagating to the street as the door is open while people are entering and exiting. We, thus, recommend that an enclosed vestibule be considered here.

Likewise, there are operable double doors leading out to a veranda on the second floor. The sound study report states that these doors will be closed during all hours of operation. This is essential to limit sound transmission to the exterior. However, even closed doors typically present weak links for sound transmission. Given that, we recommend that extra care be taken to ensure that these doors are completely sealed airtight.

Finally, the skylight presents a potential weak point for sound transmission. As previously stated, no acoustical measurements were made on site to establish the sound isolating performance of this building element. However, we are concerned about it due to the fact that residential units to the south overlook it.

The unknown acoustical performance of the building envelope, including the aforementioned skylight and exterior doors, speaks to the importance of judicious testing of the sound system to establish maximum allowable interior sound levels. The ED+A report correctly states that the maximum allowable interior sound level will be limited by the acoustical performance of the glazing. The report also correctly states that the “low frequency output of the system will need to be regulated more than sound generated at other frequencies.” Given this, we recommend that, when such testing does occur as proffered in Section 7 of the report’s Sound System Design Specifications, the interior limits be set with respect to C-weighted sound levels (dBC) as opposed to A-weighted sound levels (dBA). We also recommend that these sound levels be set to minimize impact on the multifamily residential building to the south, including elevated balconies overlooking the skylight, as this location is likely to be the most affected by activities at the venue. Once these levels have been established, we recommend the venue consider installing a sound level monitoring system such as ACO Pacific’s SLARM (<https://www.acopacific.com/slarm.html>) system to continuously monitor sound levels.

4 Conclusions

The lack of quantitative acoustical performance data for the building envelope precludes a conclusive assessment of potential impact on nearby noise-sensitive properties. However, given the prevalence of glass, as well as two exterior doors and a skylight which can be expected to provide poor sound isolation particularly at low frequencies, it is clear that minimizing impact on adjacent noise-sensitive properties will depend on sound system control. We thus recommend that DJs and live performers be required to use only the house system which is, in turn, tested prior to issuance of a business tax receipt to establish maximum allowable interior sound levels in terms of dBC to result in minimal or no impact on the residential tower immediately to the south, including its balconies. Once that level has been established, we recommend the venue consider installing a sound level monitoring system such as ACO Pacific’s SLARM (<https://www.acopacific.com/slarm.html>) system to continuously monitor sound levels to ensure compliance. Finally, consideration should be given to installing an enclosed vestibule on the first floor to limit sound transmission while the front door is open and also ensuring that the second-floor veranda doors are full sealed airtight to mitigate sound leaks at this location.

PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1671 Collins Avenue

FILE NO. PB21-0457

IN RE: An application for a Conditional Use Permit for a Neighborhood Impact Establishment with entertainment, including open air entertainment and outdoor entertainment, and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the interior and exterior of the hotel. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: All of Lot 6 and Lot 15 and the North 25.00 feet of Lot 5 and Lot 16, Block 29, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the plat thereof, as recorded in Plat Book 2 at Page 77 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: November 30, 2021

CONDITIONAL USE PERMIT

The applicant, EBJ Sagamore LLC, requested a Conditional Use Permit for a Neighborhood Impact Establishment with entertainment, including open air entertainment and outdoor entertainment, and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the interior and exterior of the hotel. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code. 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 RM-3 Residential Multifamily, High Intensity District zoning district; and

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

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; and

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

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

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, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions:

1. This Conditional Use Permit is issued to EBJ Sagamore LLC, as owner/operator of the Sagamore Hotel for a Neighborhood Impact Establishment with entertainment, including open air entertainment and outdoor entertainment, and an occupant content exceeding 200 persons. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
2. The Applicant agrees to the following operational conditions for all permitted 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. 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. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the operation of a Neighborhood Impact Establishment with Indoor, Outdoor, and Open Air Entertainment with the criteria listed below:
 - i. Entertainment shall cease by 2 AM daily. Entertainment shall commence no earlier than 10 AM.
 - ii. Up to 12 seats may be located in the indoor lounge, as proposed. The occupancy load for the indoor lounge shall not exceed 56 persons, as identified by the applicant, or such lesser number as determined by the Fire Marshal.
 - iii. Up to 100 seats may be located in the indoor restaurant, as proposed. The occupancy load for the indoor restaurant shall not exceed 108 persons, as identified by the applicant, or such lesser number as determined by the Fire Marshal.
 - iv. Up to 30 seats may be located in the outdoor restaurant, as proposed. The occupancy load of the outdoor restaurant shall not exceed 37 persons, as proposed by the applicant or such lesser number as determined by the Fire

Marshal.

- v. Up to 292 seats may be located in the “new exterior venue,” as proposed. The occupancy load of the outdoor restaurant shall not exceed 582 persons, as proposed by the applicant or such lesser number as determined by the Fire Marshal.
- vi. Entertainment shall be permitted on the outdoor areas subject to the following regulations:
 - a) Only the Applicant’s approved speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ’s, shall be required to connect to the Applicant’s house sound system. The Applicant shall be required to inform all guest DJ’s and performers as to the requirements of this conditional use permit related entertainment.
 - b) The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City’s peer review.
 - c) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) (“Manager on Duty”), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System’s controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
 - d) Sound from the entertainment establishment shall not be plainly audible from the eastern property lines of the subject property and from the northern right of way line of Lincoln Road.
 - e) Before the issuance of a certificate of use, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
 - f) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
- vii. Full meals shall be available during all hours that entertainment is present.
- viii. Speakers may not be installed within twenty (20) feet of the main entrance, within the interior.
- ix. The house sound system shall be installed and set in such a manner as to

limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicants sound engineer and Planning staff shall verify that the volume limits on the sound system are set at a level that is not audible at the edges of the property that abut residential properties.

- b. Deliveries may only occur between 7:00 AM and 4:00 PM, daily.
 - c. Delivery trucks shall not be allowed to idle in the loading zones.
 - d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - e. Trash collections may occur daily between 7:00 AM and 4:00 PM.
 - f. Garbage dumpster covers shall be closed at all times except when in active use.
 - g. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
 - h. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - i. As proposed by the applicant, three (3) security guards shall be onsite during hours in which entertainment is taking place. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads.
 - j. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.
 - k. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
3. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.
4. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:

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- a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - b. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - c. The developer shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
 - d. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - e. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
 - f. An updated Traffic Plan shall be submitted to the Planning Department and Transportation Department for review and approval prior to the issuance of a certificate of use (CU).
 - g. A progress report regarding valet operations shall be scheduled 60 days from the commencement of operations.
5. 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.
 6. 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 BTR for the expanded use of the rooftop. 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).
 7. 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.
 8. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.

9. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
10. 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.
11. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
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.
14. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

