

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 26, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB21-0452. a.k.a. PB File No 1903. 1826 Collins Avenue – Robotic Parking Garage/EME – Progress Report and Revocation/Modification Hearing.**

RECOMMENDATION

Suspend the Conditional Use Permit (CUP) for 180 days and continue the item to the October 25, 2022 Planning Board meeting.

BACKGROUND

January 27, 2009

The applicant, obtained a conditional use permit (CUP) from the Planning Board for a robotic parking system in a commercial main use parking garage with an accessory use 240-seat restaurant; and to operate the garage after midnight.

October 26, 2021

The applicant requested a modification to the previously issued conditional use permit (CUP) to include indoor entertainment at the restaurant. At the request of the applicant, the Planning Board continued the item to the November 30, 2021 meeting. On November 30, 2021, at the request of the applicant, the Planning Board continued the item to the December 21, 2021 meeting.

December 21, 2021

Due to the Planning Board hearing lack of quorum, this Item was continued to January 25, 2022.

January 25, 2022

The Planning Board continued the item to the February 22, 2022 meeting at the request of the applicant.

February 22, 2022

The Planning Board discussed the item and denied the applicant's request for a modification to the CUP to include indoor entertainment. The Planning Board also directed staff to schedule a progress report and issue a cure letter to the applicant and pre-notice a revocation/modification hearing for the April 26, 2022 meeting.

March 8, 2022

A cure letter was sent to the applicant. The cure letter requested that the applicant appear before the Planning Board on March 22, 2022 for a progress report.

March 22, 2022

The Planning Board set a revocation modification hearing for April 26, 2022.

PROGRESS REPORT

At the March 22, 2022 meeting, the Planning Board considered a progress report and scheduled a revocation/modification hearing for the April 26, 2022 meeting due to the intermittent noncompliance with the conditions of approval. Written warnings and violations have been issued by the Code Compliance Department regarding the operation of the garage and restaurant, including two additional violations since the last progress report. These include, but are not limited to, the following violations that are still pending as of the date of this report:

- 5/25/2020 – **US2020-03447**: Unsafe Structures

Notes indicate:

NOTICE OF VIOLATION ISSUED.

Evidence of water intrusion observed at the electrical room.

Need to disconnect the power in the affected areas, need to submit a report signed and sealed by an engineer to identify the cause of the water intrusion as well as to evaluate the extend of the damages together with methods of repairs.

Power cannot be re-connected until report from engineer certify safety conditions to re-connect.

- 10/30/2021 – **NC2021-21597**: Noise Complaint – Notice of Violation
2nd Offense
BWC
Guerra 716

Notes indicate:

Violation of: Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

Ref: Playing bass that could be heard in complaints unit.

2nd Offense \$ 1000.00

CCO R Santana (705)

BWC Used.

Arrival 2:15 AM

Departure 3:20 AM

- 3/23/2022 – **CUP2022-0051**: CUP Condition Violation
Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.
Ref- Not operating kitchen / restaurant
BWC USED

R Rosquete 737
Notice of Violation issued

Notes Indicate:

Upon arrival to the area of 1826 Collins Ave myself and CCO Russell made contact with the General Manager Michelle. I advised that I was at the location to hand deliver 2 violations. One for not abiding with the specifications of their Business Tax Receipt & a violation of their Conditional use Permit. Both violations involved the business not operating their kitchen or restaurant. During the inspection I was shown 2 refrigerators, one with sushi inside and the other with frozen meats. I was also shown a menu that is offered to the patrons of the establishment. However during my inspection I did not witness any Chef's cooking or any foods being made during my inspection. I explained to Michelle that I would have to hand deliver the violations or post them on the property. Michelle signed for the two violations.

BWC USED
R Rosquete 737
Notice of Violation Issued

- 3/23/2022 – **CC2022-12742**: City Code Violation
Section 102-367: Failing to comply with the Business Tax Receipt issued by the City of Miami. Beach.
Ref- Not operating a restaurant / Kitchen
BWC USED
R Rosquete 737
Notice of Violation issued

Notes Indicate:

Upon arrival to the area of 1826 Collins Ave myself and CCO Russell made contact with the General Manager Michelle. I advised that I was at the location to hand deliver 2 violations. One for not abiding with the specifications of their Business Tax Receipt & a violation of their Conditional use Permit. Both violations involved the business not operating their kitchen or restaurant. During the inspection I was shown 2 refrigerators, one with sushi inside and the other with frozen meats. I was also shown a menu that is offered to the patrons of the establishment. However during my inspection I did not witness any Chef's cooking or any foods being made during my inspection. I explained to Michelle that I would have to hand deliver the violations or post them on the property. Michelle signed for the two violations.

BWC USED
R Rosquete 737
Notice of Violation Issued

In addition to the aforementioned violations, there have been 85 noise complaints made against the restaurant operator, EME, since February of 2020. This includes one additional complaint since last month's progress report. Several of those complaints were routed to the Police Department; there were also other calls for police service made at the site.

Separate and apart from the aforementioned violations, and operation of the accessory restaurant, the robotic parking within the garage, which is the main use approved for the property, has not been operational for some time. This has serious implications regarding the CUP, as the

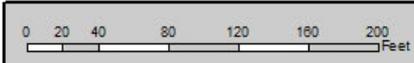
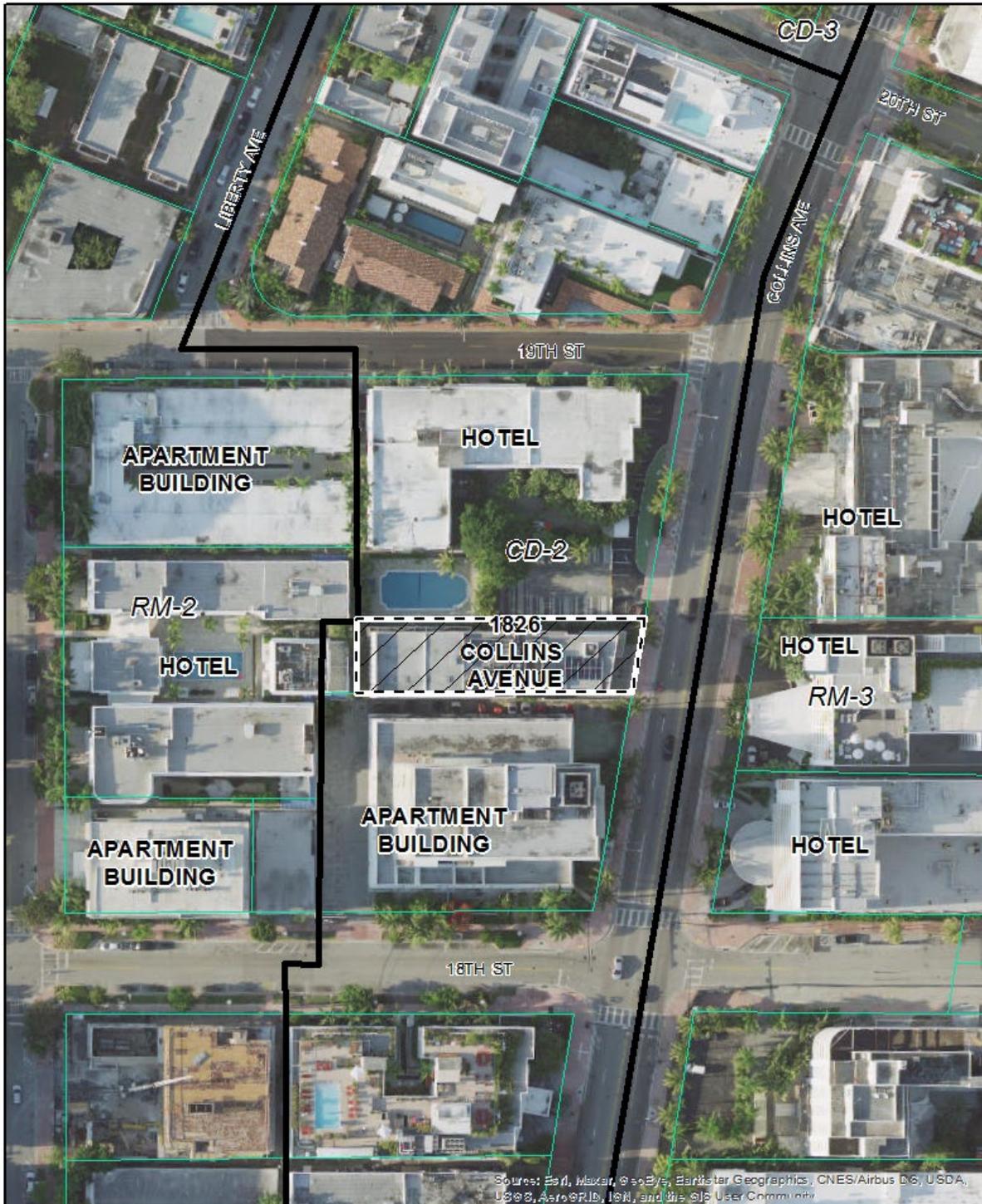
accessory restaurant use is subordinate to the robotic parking structure, and the required parking for the accessory use was satisfied by the applicable number of spaces in the parking structure. Since the parking portion of the structure is no longer operational, the minimum required parking for the restaurant must be satisfied.

In summary, given that the robotic parking garage is not functioning, staff recommends that the Planning Board suspend the CUP for 180 days. Should the applicant demonstrate that the parking garage is once again operational, the Planning Board could consider reinstating the CUP with modifications for the accessory use. Neither the existing restaurant tenant, nor any future tenant of the accessory space, cannot be issued a CU or BTR unless and until it can be demonstrated that the parking component is operational.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board suspend the CUP for 180 days and continue the item to the October 25, 2022 meeting.

ZONING/SITE MAP



MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT

Tel: 305-673-7550 Fax: 305-673-7559

March 8, 2022

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

IC, LLC
1826 Collins Avenue
Miami Beach, FL 33139

Re: Cure Letter regarding Planning Board File No. PB21-0452, a.k.a. PB File No. 1903.

Dear Sir/Madam:

A Conditional Use Permit (CUP) was issued to IC, LLC, on January 27, 2009, to operate a robotic parking system in a commercial main use parking garage. Included in this CUP approval was an accessory use, 240-seat restaurant, as well as the ability to operate the garage after midnight (see attached CUP).

It has come to the Planning Department's attention that the robotic parking within the garage has not been operational for some time. This has serious implications regarding the CUP, as the accessory restaurant use is subordinate to the robotic parking structure, and the required parking for the accessory use was satisfied by the applicable number of spaces in the parking structure. If the parking portion of the structure is no longer going to be operational, you must still satisfy the minimum required parking for the restaurant use.

Additionally, written warnings and violations have been issued by the Code Compliance Department regarding the operation of the garage and restaurant. These include, but are not limited to, the following violations that are still pending as of the date of this letter:

- 5/25/2020 – **US2020-03447**: Unsafe Structures

NOTICE OF VIOLATION ISSUED.

Evidence of water intrusion observed at the electrical room.

Need to disconnect the power in the affected areas, need to submit a report signed and sealed by an engineer to identify the cause of the water intrusion as well as to evaluate the extend of the damages together with methods of repairs.

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YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

Ref: Playing bass that could be heard in complainants unit.
2nd Offense \$ 1000.00
CCO R Santana (705)
BWC Used.
Arrival 2:15 AM
Departure 3:20 AM

In addition to the aforementioned violations, there have been 84 noise complaints since February of 2020. Several of those complaints were routed to the Police Department.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations, warnings, and complaints:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. 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 IC, LLC as owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
5. 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.
6. The Final Order for File No. 6265 issued by the Historic Preservation Board on January 13, 2009 is hereby adopted and incorporated into this order by reference.
7. Storage of vehicles by valet operators for off-site facilities shall be permitted.

8. The off-street parking requirements for the accessory restaurant shall be satisfied only within the garage. Required parking for off-site venues shall not be satisfied at this garage.
9. The proposed accessory use restaurant on the site shall not be permitted to use the rooftop. The restaurant seating shall be contained inside the premises and restricted to no more than 208 seats and an occupant load that shall not exceed 240 persons or any lesser number as may be determined by the Chief Fire Marshal.
10. "Entertainment," as defined in the City Code shall be prohibited within the site, inclusive of the accessory use restaurant, rooftop and any outdoor area.
11. The robotic parking system and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer submitted to the Planning Department.
12. The parking garage shall consist of 139 spaces, of which 52 are required parking for the accessory restaurant. The garage operation will be 24 hours per day, seven days a week. Accessibility for public use, including the valet parking authorized in Condition No. 7 shall be available at all times. The facility shall be equipped with closed circuit recording monitors to assure the safety and security of the public. There shall be security personnel of at least one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the four-page letter dated January 16, 2009 from Automotion Parking Systems, LLC of West Hempstead, New York, as proffered by the applicant, except that the reference to the facility being unattended shall be deleted.
16. The facility must maintain adequate backup generators sufficient to power the car elevators. The generator shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure that any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum floodplain criteria.
26. 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 of the accessory restaurant should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise.
27. 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.

Therefore, in light of the inconsistencies with the aforementioned conditions of approval contained in the CUP, the repeated and intermittent noncompliance with the conditions of this CUP, and the pending code violations, **you are requested to appear at the March 22, 2022 Planning Board hearing** for a verbal progress report. Please be advised that at the time of the progress report, in accordance with the provisions of City Code Section 118-194(3), the Planning Board may

consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings.

Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the April 26, 2022 agenda meeting of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Mr. Rogelio Madan at (305) 673-7000 ext. 26131 or via email at rogeliomadan@miamibeachfl.gov.

Sincerely,



Thomas R. Mooney, AICP
Planning Director

TRM\RAM\AG



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OR Bk 26850 Pgs 0800 - 804; (5pgs)
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HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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

PROPERTY: 1826 Collins Avenue.

FILE NO. 1903

IN RE: The Application by IC, LLC requesting a Conditional Use approval for a robotic parking system in a commercial main use parking garage to operate the garage after midnight with an accessory use 240-seat restaurant.

LEGAL

DESCRIPTION: Lot 4, less the West 25 feet thereof, Block 2, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 27, 2009

CONDITIONAL USE PERMIT

The applicant, IC, LLC, is requesting a modification to an existing Conditional Use approval pursuant to Section 118-195 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit 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 CD-2, Commercial Medium Intensity 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 not consistent with the Land Development Regulations, but will be when Condition No. 3 is in compliance;

That the public health, safety, morals, and general welfare will not be adversely affected if the applicant complies with the conditions stated herein;

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 her in, including the staff recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. 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 IC, LLC as owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. The applicant shall redesign the driveway to a width of 22 feet in order to conform to the requirements of the City Code, or in the alternative shall apply to the Board of Adjustment to obtain a variance in accordance to Chapter 118, Article VIII, "Procedures for Variances."
4. 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 of the modified plans.
5. 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.
6. The Final Order for File No. 6265 issued by the Historic Preservation Board on January 13, 2009 is hereby adopted and incorporated into this order by reference.
7. Storage of vehicles by valet operators for off-site facilities shall be permitted.
8. The off-street parking requirements for the accessory restaurant shall be satisfied only within the garage. Required parking for off-site venues shall not be satisfied at this garage.
9. The proposed accessory use restaurant on the site shall not be permitted to use the rooftop. The restaurant seating shall be contained inside the premises and restricted to no more than 208 seats and an occupant load that shall not exceed 240 persons or any lesser number as may be determined by the Chief Fire Marshal.
10. "Entertainment," as defined in the City Code shall be prohibited within the site, inclusive of the accessory use restaurant, rooftop and any outdoor area.
11. The robotic parking system and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer submitted to the Planning Department.
12. The parking garage shall consist of 139 spaces, of which 52 are required parking for the accessory restaurant. The garage operation will be 24 hours per day, seven days a week. Accessibility for public use, including the valet parking authorized in Condition No. 7 shall be available at all times. The facility shall be equipped with closed circuit recording monitors to assure the safety and security of the public. There shall be security personnel of at least

one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the four-page letter dated January 16, 2009 from Automotion Parking Systems, LLC of West Hempstead, New York, as proffered by the applicant, except that the reference to the facility being unattended shall be deleted.

13. The facility shall ensure that noise or vibration from the operation of the robotic parking system and car elevators shall not be plainly audible or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. Noise and vibration barriers shall be incorporated into the final design to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage. The robotic parking system shall use sound deadening material between all connections from the robotic parking system to the building in order to eliminate all sound transference and vibration in the system and the building as well.
14. When construction has been completed, but before the commencement of the garage operations authorized by this Conditional Use Permit and before the issuance of a Business Tax Receipt, the garage operations shall be fully tested under the supervision of Mr. Donald J. Washburn, President of The Audio Bug, Inc. to ensure that all aspects of the garage operation fully comply with the Parking Garage Noise Impact Study by The Audio Bug, Inc., dated November 8, 2008 as amended by The Audio Bug, Inc. letter dated January 20, 2008, all as submitted by the applicant. The garage shall not begin operating until staff has received and approved in writing a final written report by Mr. Washburn stating that as tested, all aspects of the garage operation fully comply with the Parking Garage Noise Impact study as amended. Thereafter, all aspects of the garage operation shall fully and continuously comply with the aforementioned Noise Study as amended.
15. The parking platforms must be sealed and of a sufficient width and length (minimum of 7.5' by 16') to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.
16. The facility must maintain adequate backup generators sufficient to power the car elevators. The generator shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure that any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum floodplain criteria.
17. Deliveries and garbage pickup shall be conducted directly on site and not on the street. The trash/garbage container shall have rubber wheels and shall not be permitted to be wheeled to curbside for pick-up. Deliveries and pickups shall be handled and managed by a dock master supervisor who shall be responsible for controlling traffic when these activities are scheduled in order to minimize the disruption of traffic on Collins Avenue. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
18. Plans shall be modified to reflect on site service of trash removal and deliveries in order to maintain a free-flow of the right of way, including the public sidewalk.

19. The applicant shall submit an MOT (Method of Transportation) 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.
20. The applicant shall increase the driveway turning radii at Collins Avenue to at least 10 feet, and place double yellow lines and a stop bar/stop sign on the driveway in order to clearly delineate the inbound and outbound lanes, as per the recommendations of the Traf Tech traffic impact analysis report dated November 6, 2008.
21. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum of two feet in order to provide adequate sight distance at the project driveway.
22. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined by the Concurrency Management Division.
23. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit.
24. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
25. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.
26. 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 of the accessory restaurant should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise.
27. 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.
28. 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.
29. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Building Permit
30. 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.

Dated this 5 day of February, 2009.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

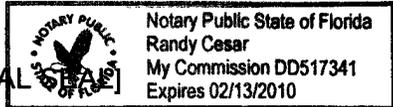
BY: *Jorge G. Gomez*
Jorge G. Gomez, Planning Director
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 5 day of February, 2009, by Jorge G. Gomez, Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

Randy Cesar

Notary:
Print Name: Randy Cesar
Notary Public, State of Florida
My Commission Expires: 2/13/2010
Commission Number:



[NOTARIAL SEAL]

Approved As To Form:
Legal Department (*Akld 2-5-09*)

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