

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 28, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB06-0075 – 601-685 Washington Avenue. Goodtime Hotel – Progress Report and Revocation/Modification Hearing.**

BACKGROUND

May 10, 2016: The Historic Preservation Board approved the project (HPB File No. 7632).

July 26, 2016: The Planning Board approved a Conditional Use Permit (CUP) for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage and a Neighborhood Impact Establishment with outdoor entertainment.

January 24, 2017: The Planning Board approved a Modified CUP to include mechanical parking in the garage.

May 25, 2021: A cure letter was sent to “Washington Squared Owner, LLC,” pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on June 22, 2021 for a progress report.

June 22, 2021: The Planning Board discussed a Progress Report and continued it to the September 28, 2021 meeting.

June 30, 2021: A cure letter was sent to “Washington Squared Owner, LLC,” pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on July 27, 2021 for a progress report.

July 27, 2021: The Planning Board discussed the Progress Report and scheduled a revocation modification hearing for the September 28, 2021 meeting.

PROGRESS REPORT

On June 30, 2021, the attached cure letter was sent to “Washington Square Owner, LLC,” the applicant for the CUP approved by the Planning Board on January 22, 2019, pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on July 27, 2021 for a progress report.

At the July 27, 2021 progress report, the Planning Board scheduled revocation/modification hearing for the September 28, 2021 meeting due to the intermittent noncompliance with the

conditions of approval. No additional violations have been issued since July 21, 2021 and several of the previously issued violations have been appealed to the Special Master.

STAFF ANALYSIS

As mentioned in previous progress reports, the Good Time Hotel has received several violations regarding unreasonably loud and excessive sound that was clearly audible from nearby residential buildings. There have not been any new violations issued since the July 27, 2021 progress report. However, given the previous repeated pattern of sound violations, as well as some inconsistencies in the drafting of the conditions of the CUP, staff recommends that the Planning Board make several modifications to the approved order for the establishment, as permitted by section 118-194 of the Land Development Regulations (LDRs) and as noted in the attached modified CUP.

First, for clarity and consistency, the standard of measurement for audible sound has been corrected to reflect the west side of Washington Avenue. As acknowledged by the applicant, the previous benchmark of the balconies on the west side of the Acadia House condominium was incorrect.

Further, in order to further minimize the impacts of the outdoor entertainment venue, staff recommends modifying the hours of entertainment levels of music within outdoor areas from the current 11:00 AM to 8:00 PM, 7-days per week to 1:00 PM to 8:00 PM on Friday and Saturday only. Only ambient levels of music would be allowed during all other hours that the outdoor venue is open and entertainment is permitted.

Additionally, staff recommends adding the following conditions to the order in order to better regulate the use and ensure compliance with the regulations:

- 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.
- The Outdoor Speaker System shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system shall physically distribute sound uniformly within the listening area and prevent sound from being audible from nearby residential buildings.
- All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards nearby residential buildings. A revised speaker plan shall be provided to staff and the City's sound study peer reviewer for review and approval within 15 days.
- Only the Applicant's approved outdoor speakers, as approved by this Conditional Use

Permit, shall be used. All performers, including 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 as to the requirements of this conditional use permit related to outdoor sound.

- The sound from the Applicant's sound system shall not be audible from any area to the west of Washington Avenue at any time.
- When sound exceeds ambient levels, the Applicant shall have staff continuously monitor the sound levels from the west side of Washington Avenue. Should the sound from the outdoor entertainment be audible anywhere west of Washington Avenue, the monitoring staff shall immediately notify the manager on duty who shall immediately take corrective action and lower the audio levels so that they are no longer heard from any area to the west of Washington Avenue. The monitoring shall continue until such time that the Planning Board is confident that the Applicant is consistently complying with the requirements for Outdoor Entertainment in this conditional use permit and authorizes the Applicant to cease continuous monitoring as part of a Progress Report. Should there be subsequent violations, the Planning Board can reinstate the monitoring requirement as part of a Progress Report.
- Within 30 days of the revocation/modification hearing, the outdoor sound system shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department and the City's sound study peer reviewer for review and approval. Such report shall demonstrate that sound from any outdoor areas is not audible anywhere west of Washington Avenue and that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application. The applicant shall be responsible to cover the fees of the City's peer reviewer.
- The Applicant shall train staff that services outdoor areas on the sound-related conditions of this CUP in order to assist with enforcing sound limits.
- A progress report regarding outdoor entertainment shall be scheduled 60 days from the revocation/modification hearing.
- The Applicant shall incorporate additional sound attenuation measures into the building for outdoor areas, where possible.
- 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 of the City Code. Allowances for outdoor entertainment in condition number 10 shall not supersede the regulations in Chapter 46, Article IV of the City Code.

The proposed changes will serve to ensure that there are clear and consistent standards that can be enforced by the Code Compliance Department, that the applicant monitors themselves to ensure compliance, and that changes are made to the sound system to better ensure that the sound generated on the site does not impact surrounding residents.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report and modify the conditions of approval for the CUP pursuant to the attached draft order.

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

PROPERTY: 601-685 Washington Avenue

FILE NO. PB 06-0075, a.k.a. PB 0616-0031, f.k.a., PB File No. 2320

IN RE: The application for a modification to a previously issued Conditional Use Permit for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage and a Neighborhood Impact Establishment with outdoor entertainment. Specifically, the modification includes mechanical parking in the garage, pursuant to Section 118, Article IV and Section 130, Article II of the City Code. On September 28, 2021, the Planning Board held a public hearing to consider a revocation, modification, or imposition of additional conditions to the existing Condition Use Permit due to code violations and complaints.

LEGAL

DESCRIPTION: Lots 11-21 of Block 34, of "Ocean Beach Fla Addition No. 1", according to the Plat thereof, as recorded in Plat Book 3, page 11 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 24, 2017 and September 28, 2021

MODIFIED CONDITIONAL USE PERMIT

The applicant, Washington Squared Owner, LLC, requested a Conditional Use approval for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage, with mechanical parking in the garage and a Neighborhood Impact Establishment with outdoor entertainment, pursuant to Section 118, Article IV, Section 142, Article II, and Section 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:

The property in question is located in the CD-2 – Commercial, Medium Intensity Zoning District.

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

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;

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

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

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 to which the applicant has agreed. Underlining denotes new language and ~~striketrough~~ denotes stricken language from the previous order:

1. This Conditional Use Permit is issued to Washington Squared Owner, LLC, to construct a seven (7) story mixed use hotel project, with retail space on the first floor, traditional parking and mechanical parking on the 2nd floor, food and beverage areas located on the roof and interior of the second floor (3rd level), and a pool and pool deck on the upper roof deck. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.
2. 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) for any of the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property applicants, operators, and all successors in interest and assigns. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest or equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
5. 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

7. All existing overhead utilities abutting the subject site shall be placed underground at the sole expense of the applicant.
8. The following shall apply to the operation of the proposed parking garage:
 - a. There shall be security personnel of at least one person, on-site, monitoring the garage during all hours of operation.
 - b. Signs prohibiting tire-screaching and unnecessary horn-honking shall be posted at the garage entrance.
 - c. Signs to minimize vehicle conflict in the driveways in and out of the property shall be posted in appropriate locations.
 - d. The minimum parking required by the land development regulations shall be provided, or parking in lieu fee shall be paid for any spaces that cannot be provided in the parking level.
9. The following shall apply to the construction and operation of the proposed mechanical parking system:
 - a. The noise or vibration from the operation of the mechanical parking lifts shall not be plainly audible to or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. In addition, noise and vibration barriers shall be utilized to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage.
 - b. The parking lift platforms must be fully load bearing, and must be sealed and of a sufficient width and length to prevent dripping liquids or debris onto the vehicle below.
 - c. All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage.
 - d. All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked below the lift.
 - e. All mechanical parking lifts must be inspected and certified as safe and in good working order by a licensed mechanical engineer at least once per year and the findings of the inspection shall be summarized in a report signed by the same licensed mechanical engineer or firm. Such report shall be furnished to the Planning Director and the Building Official.
 - f. All parking lifts shall be maintained and kept in good working order.
 - g. Parking operation shall be by valet attendants only. A contract with a valet operator shall be submitted to staff for review and approval prior to a final Certificate of Occupancy or Business Tax Receipt, whichever occurs first
10. 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 creation and operation of the proposed lounge, café, restaurant, café cart, and two (2) outdoor courtyard areas located on the roof of the second floor (3rd level) with the criteria listed below:

- i. The food and beverage areas of the hotel covered in the CUP shall have a maximum occupant content of approximately 1,200 persons or any lesser such occupant content as determined by the Fire Marshal.
- ii. The indoor portions of the project may operate until 5:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), seven (7) days per week, from 11:00 AM to 5:00 AM.
- iii. The outdoor portions of the venue shall operate pursuant to the conditions listed below:

A. All outdoor areas of the venue(s) may operate until 1:00 AM, 7 days a week, and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, ~~which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation)~~ as follows ~~seven (7) days per week~~:

<u>Times and Days of the Week</u>	Type of Permitted Music	DJ Permitted
<u>9:00 AM to 4:00 AM Monday to Sunday</u>	Ambient Only	Yes, Ambient Only
<u>1:00 PM to 8:00 PM Monday to Thursday</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>4:00 AM to 8:00 PM Friday to Sunday</u>	Ambient or Entertainment <u>Levels</u>	Yes, Ambient or Entertainment
<u>8:00 PM to 1:00 AM Monday to Sunday</u>	Ambient Only	Yes, Ambient Only
<u>1:00 AM to 9:00 AM Monday to Sunday</u>	None	No

Ambient background music is defined as a sound level that does not interfere with normal conversation. As noted above, entertainment levels, including music played at a volume that is louder than ambient background music, shall only be permitted during the specified timeframes, and shall comply with all other applicable conditions

contained herein.

- 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. ~~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. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible at the western balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR.~~
- C. ~~Additionally, 60 days after the issuance of a BTR, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.~~
- D. 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.
- E. The Outdoor Speaker System shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design shall physically distribute sound uniformly within the listening area and prevent sound from being audible anywhere west of Washington Avenue.
- F. All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards nearby residential buildings. A revised speaker plan shall be provided to staff and the City's sound study peer reviewer for review and approval within 15 days.

- G. Only the Applicant's approved outdoor 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 as to the requirements of this conditional use permit related to outdoor sound.
 - H. The sound from the Applicant's sound system shall not be audible within any area to the west of Washington Avenue at any time.
 - I. When sound exceeds ambient levels, the Applicant shall have staff continuously monitor the sound levels from the west side of Washington Avenue. Should the sound from the outdoor entertainment be audible anywhere west of Washington Avenue, the monitoring staff shall immediately notify the manager on duty who shall immediately take corrective action and lower the audio levels so that they are no longer heard from any area to the west of Washington Avenue. The monitoring shall continue until such time that the Planning Board is confident that the Applicant is consistently complying with the requirements for Outdoor Entertainment in this conditional use permit and authorizes the Applicant to cease continuous monitoring as part of a Progress Report. Should there be subsequent violations, the Planning Board can reinstate the monitoring requirement as part of a Progress Report.
 - J. Within 30 days of the revocation/modification hearing, the outdoor sound system shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department and the City's sound study peer reviewer for review and approval. Such report shall demonstrate that sound from any outdoor areas is not audible anywhere west of Washington Avenue and that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application. The applicant shall be responsible to cover the fees of the City's peer reviewer.
 - K. The Applicant shall train staff that services outdoor areas on the sound-related conditions of this CUP in order to assist with enforcing sound limits.
 - L. A progress report regarding outdoor entertainment shall be scheduled 60 days from the revocation/modification hearing.
 - M. The Applicant shall incorporate additional sound attenuation measures into the building for outdoor areas, where possible.
- b. Delivery trucks shall only be permitted to make deliveries from the designated loading spaces contained within the property and from designated on-street loading zones for trucks not to exceed 20'-0" in length, as authorized by the Parking Department.

- c. Delivery trucks shall not be allowed to idle in the loading areas.
- d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- e. Deliveries and waste collections may occur daily, but shall occur only between 6:00 AM and 5:00 PM.
- f. There shall be a loading dock master, on-site, monitoring the interaction between loading and refuse pick up with the operation of the valet and garage during all hours of deliveries and refuse pick up.
- g. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- h. 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. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- i. 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.
- j. Garbage dumpster covers shall be closed at all times except when in active use.
- k. Restaurant personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
- l. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises, except adjacent to Collins Court, on private property.
- m. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
- n. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- o. Special Events shall not be issued for the outdoor areas. Special Events may occur on the interior of the building, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.

- p. No outdoor bar counter shall be permitted on the roof deck located above the highest level of hotel units.
 - q. The rooftop deck located above the highest level of hotel units shall be for the exclusive use of hotel guests and their invitees.
11. The applicant shall address the following Concurrency and Traffic requirements, as applicable:
- a. 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.
 - b. 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 as determined by the Concurrency Management Division.
 - c. 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.
 - d. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.
 - e. Valet or loading activities shall not block the garage ramp at any time.
 - f. Valet pick-up may only occur in front of the two (2) northernmost loading spaces (the middle of the three (3) valet spaces) between 5:00 PM and 7:00 AM.
 - g. The required number of valet runners will be provided in order to prevent queued vehicles from blocking traffic on Collins Court.
 - h. A representative shall be identified who will be in charge of implementing the Transportation Demand Management (TDM) strategies identified and approved in the original traffic impact study memorandum dated May 24, 2016. Once a TDM plan is implemented, the City will contact the TDM representative to determine how well the plan is working and if any adjustment are needed with time.
12. 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 Building permit.
13. The applicant shall obtain a full building permit within 18 months from the date of the original approval, on July 26, 2016, of this Conditional Use Permit, 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.
14. 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.

15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. 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.
17. 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.
18. 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 of the City Code. Allowances for outdoor entertainment in condition number 10 shall not supersede the regulations in Chapter 46, Article IV of the City Code.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Planning and Sustainability
for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio A. Madan, Chief of Community Planning and Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

Notary:

[NOTARIAL SEAL]

Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department _____ ()

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



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

June 30, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Washington Squared Owner, LLC,
601- 685 Washington Avenue
Miami Beach, FL 33139

Re: PB 06-0075, a.k.a. PB 0616-0031, f.k.a., PB File No. 2320.

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate was issued to Washington Squared Owner, LLC, on January 24, 2017 (see attached). It has come to the Planning Department's attention that additional written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue. These additional violations, which are separate and apart from the violations identified in the previous Cure Letter of May 25, 2021, include the following noise violations that are still pending as of the date of this letter:

- 06/26/2021 – **NC2021-20769** Ref: Unreasonably loud and excessive music coming from the pool deck of the establishment. 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.

Notes indicate: Notice of violation. 4th Offense; \$3,000 fine. Responded to complaint of loud music coming from the location. Upon arrival, I parked on the north side of 635 Euclid Avenue. As I left the vehicle I could hear unreasonably loud and excessive music coming from the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property. I noticed an employee of the Goodtime Hotel in the alleyway use his walkie talkie to radio someone as we arrived. I then walked east on 7th street toward Pennsylvania Avenue and continued to hear the unreasonably loud and excessive music. As I arrived to the front northeast corner of the 640/650 Pennsylvania Avenue (Arcadia House) property, I identified the unreasonably loud and excessive music to be coming from the pool deck of the Goodtime Hotel. I then stood under the balcony located on the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property and continued to hear music coming from the pool deck of the Goodtime Hotel located at 601 Washington Avenue. As I stood on the east balcony of the 640/650 Pennsylvania Avenue (Arcadia House) property, I noticed several staff members of the Goodtime Hotel surrounding the Arcadia House property. As I returned to my City vehicle, I continued to hear the unreasonably loud and excessive music in front of Pennsylvania Court, as well as in front of 635 Euclid Avenue, both of which are located to the west of the 640/650 Pennsylvania Avenue (Arcadia House) property.

I was then approached by Nick Fielding of the Goodtime Hotel and I explained to him the violations. We walked to the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property and stood under the balcony. Music was still heard coming from the pool deck of the Goodtime Hotel while standing under the balcony. I explained to Mr. Fielding that they are in violation of their CUP (Conditional Use Permit), and that music should not be heard while standing under the east side balcony. I also explained that they were in violation of the noise ordinance as there music was heard west of the 640/650 Pennsylvania Avenue (Arcadia House) property. Chris from operations and Chris Torres from security joined us and I explained the violations to them as well. They contacted the individuals on the pool deck and were able to have the music lowered to where it wasn't heard while standing underneath the balcony. Compliance achieved. I returned to my City vehicle to enter my notes and generate the violations.

*I delivered the notices of violation to Nick Fielding, who met me in the Goodtime Hotel lobby area. I explained the notices, he understood and signed for them. Service obtained. I returned to my City vehicle with head of security, Chris Torres, to confirm that no more music was heard underneath the balcony and west of the 640/650 Pennsylvania Avenue (Arcadia House) property. No music was heard.
BWC used.*

- 06/26/2021 **CUP2021-00036** Ref: Failing to comply with the conditional use permit. Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Notes indicate: Notice of violation. 5th Offense. Responded to complaint of loud music coming from the location. Upon arrival, I parked on the north side of 635 Euclid Avenue. As I left the vehicle I could hear unreasonably loud and excessive music coming from the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property. I noticed an employee of the Goodtime Hotel in the alleyway use his walkie talkie to radio someone as we arrived. I then walked east on 7th street toward Pennsylvania Avenue and continued to hear the unreasonably loud and excessive music. As I arrived to the front northeast corner of the 640/650 Pennsylvania Avenue (Arcadia House) property, I identified the unreasonably loud and excessive music to be coming from the pool deck of the Goodtime Hotel. I then stood under the balcony located on the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property and continued to hear music coming from the pool deck of the Goodtime Hotel located at 601 Washington Avenue. As I stood on the east balcony of the 640/650 Pennsylvania Avenue (Arcadia House) property, I noticed several staff members of the Goodtime Hotel surrounding the Arcadia House property. As I returned to my City vehicle, I continued to hear the unreasonably loud and excessive music in front of Pennsylvania Court, as well as in front of 635 Euclid Avenue, both of which are located to the west of the 640/650 Pennsylvania Avenue (Arcadia House) property.

I was then approached by Nick Fielding of the Goodtime Hotel and I explained to him the violations. We walked to the east side of the 640/650 Pennsylvania Avenue (Arcadia House) property and stood under the balcony. Music was still heard coming from the pool deck of the Goodtime Hotel while standing under the balcony. I explained to Mr. Fielding that they are in violation of their CUP (Conditional Use Permit), and that music should not be heard while standing under the east side balcony. I also explained that they were in violation of the noise ordinance as there music was heard west of the 640/650 Pennsylvania Avenue (Arcadia House) property. Chris from operations and Chris Torres

from security joined us and I explained the violations to them as well. They contacted the individuals on the pool deck and were able to have the music lowered to where it wasn't heard while standing underneath the balcony. Compliance achieved. I returned to my City vehicle to enter my notes and generate the violations.

I delivered the notices of violation to Nick Fielding, who met me in the Goodtime Hotel lobby area. I explained the notices, he understood and signed for them. Service obtained. I returned to my City vehicle with head of security, Chris Torres, to confirm that no more music was heard underneath the balcony and west of the 640/650 Pennsylvania Avenue (Arcadia House) property. No music was heard.

BWC used.

J. Goehring (745)

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

2. 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) for any of the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
10. 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 creation and operation of the proposed lounge, café, restaurant, café cart, and two (2) outdoor courtyard areas located on the roof of the second floor (3rd level) with the criteria listed below:

- i. The food and beverage areas of the hotel covered in the CUP shall have a maximum occupant content of approximately 1200 persons or any lesser such occupant content as determined by the Fire Marshal.
- ii. The indoor portions of the project may operate until 5:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), seven (7) days per week, from 11:00 AM to 5:00 AM.
- iii. All outdoor areas of the venue(s) may operate until 1:00 AM and shall be permitted to have a DJ or music whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), as follows seven (7) days per week:

<u>Times</u>	<u>Type of Permitted Music</u>	<u>DJ Permitted</u>
<u>9:00 AM to 11:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>11:00 AM to 8:00 PM</u>	<u>Ambient Or Entertainment</u>	<u>Yes, Ambient Or Entertainment</u>
<u>8:00 PM to 1:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>1:00 AM to 9:00 AM</u>	<u>None</u>	<u>No</u>

- iv. 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. 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. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible at the western balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR.
- v. Additionally, 60 days after the issuance of a BTR , the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.

16. 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.

It is important to note that the above noted violations occurred after a Progress Report was discussed at the June 22, 2021 meeting of the Planning Board. At this meeting the operator testified that there would be no further sound or noise issues and that the venue would comply with the sound limitations of the CUP. These violations and noise complaints continue to exhibit repeated and intermittent noncompliance with the conditions of this CUP and underscore a serious concern about further repeated and intermittent noncompliance with the conditions of the CUP.

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 July 27, 2021 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 September 28, 2021 agenda 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

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