

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 20, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0545 - 1057 Washington Avenue – Twist.**

An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment with entertainment. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

ZONING/SITE DATA

Legal Description:

Lot fifteen (15), block thirty (30) of Ocean Beach, Florida, addition #2, according to the plat thereof, as recorded in plat book 2, page 56, of the public records of Miami Dade County, Florida.

Zoning District:

CD-2, Commercial medium intensity

Future Land Use Designation:

CD-2, Commercial medium intensity

Surrounding Uses:

North:	Commercial
West:	Hotel
South:	Commercial
East:	Residential

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

THE PROJECT

The applicant has submitted plans entitled “1057 Washington Avenue”, as prepared by Beilinson Gomez Architects, dated July 25, 2022. The applicant is requesting approval for the Conditional Use Permit for a Neighborhood Impact establishment with entertainment. The establishment has been in operation for approximately 30 years and is currently legally nonconforming. The applicant seeks to make the establishment conforming to the land development regulations.

The existing venue “Twist” is located on a two story 3,900 SF building. The existing operations

include entertainment with music played at above ambient levels, including a DJ and other live performances, on both floors. Each floor contains different bar areas, three enclosed dance floors and an open patio at the back of the property. Twist is an existing bar and night club which operates until 5:00 AM with entertainment and alcohol service.

The existing Occupancy load is 557 persons with 80 seats. The applicant is proposing to increase the seat count to 86 seats, while keeping the occupancy load the same.

On the ground floor of this building there is a medical office located at the center, facing Washington Avenue, and extends to the patio located at the rear of the property. This is an independent business, and it is not part of this application.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

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

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

Consistent – The request is consistent with the Comprehensive Plan.

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

Consistent – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

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

Consistent – Neighborhood Impact Establishments, Outdoor and open-air Entertainment are permitted as conditional uses in the (CD-2) Zoning District. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Planning Department prior to the issuance of a Business Tax Receipt (BTR).

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

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

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

Consistent – The establishment has been in operations for many decades without providing parking. There are numerous nearby parking lots and garages, and metered

self-parking on surrounding streets. The Applicant further anticipates that many patrons will arrive by foot, ride-share services, or taxi.

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.

Partially Consistent – There are a few Neighborhood Impact Establishment (NIE) with entertainment in the area the closest one on Washington Avenue will be 915-955 Washington Avenue “Moxy hotel” approved by the Board on November 15th, 2016. Staff does not anticipate a negative impact on the surrounding area but is recommending conditions to mitigate any adverse impacts.

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 LOI and the operations plan submitted with the application details the operations of the venue. Also, see analysis in this report.

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

The establishment has been in operation for many decades without providing parking. There are numerous nearby parking lots and garages, and metered self-parking on surrounding streets. The Applicant further anticipates that many patrons will arrive by foot, ride-share services, or taxi.

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 LOI and operational plan states that all patrons arriving to the venue will enter through the main entrance located on the west side of the building fronting Washington Avenue. At this entrance staff will request and review patron identification. TWIST also maintains a roped check in line to prevent blockage of sidewalk entrance. See the operational plan for more details.

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

The Operational plan states that there will be security personnel. See the operational plan for more details.

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

A full traffic study was not required for this application, the applicant submitted a traffic letter where explains that the applicant and the Transportation Department agreed to this. This is an existing non-conforming business and is not seeking and expansion of the occupancy load.

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

Sanitation operations will not change. Trash pickups are conducted at the rear of the property adjacent to the alley. See the operational plan for more details.

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

A sound study was not required since the venue has been operating for many decades and is not looking to expand operations. See the analysis and operational plan.

8. Proximity of proposed establishment to residential uses.

The proposed venue is primarily surrounded by commercial uses. There is a residential building across from the alley to the east of the property. Due to the proximity of the establishment to residential uses, staff is recommending conditions to mitigate any potential negative impacts from the operations of this venue on surrounding properties.

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

There are a few Neighborhood Impact Establishment (NIE) with entertainment in the area the closest one on Washington Avenue is 915-955 Washington Avenue "Moxy hotel" approved by the Board on November 15th, 2016. Staff does not anticipate a negative impact on the surrounding area but is recommending conditions to mitigate any adverse impacts.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

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

1. A recycling or salvage plan for partial or total demolition shall be provided.

Not Applicable. No demolition or construction is proposed.

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

Not Applicable. Existing structure.

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

Not Applicable. No demolition or construction is proposed.

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

Not Applicable. No demolition or construction is proposed.

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. No demolition or construction is proposed.

6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

Not Applicable.

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

Satisfied.

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

Not Applicable. No demolition or construction is proposed.

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. No demolition or construction is proposed.

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

Not Applicable. No demolition or construction is proposed.

11. Cool pavement materials or porous pavement materials shall be utilized.

Not Applicable. No demolition or construction is proposed.

12. The design of each project shall minimize the potential for heat island effects on-site.

Not Applicable. No demolition or construction is proposed.

ANALYSIS

Project Description and Operations

The existing Occupancy load is 557 persons with 80 seats; the applicant is proposing to increase the seat count to 86 seats, while keeping the occupancy load the same.

The establishment currently operates 7 days a week, as follows:

Happy hour bar:	3:00 PM to 9:00 PM
Remaining bar hours:	9:00 PM to 5:00 AM

Sound

A sound study was not required as all music and entertainment is fully enclosed and within indoor areas only. Notwithstanding, the applicant is proposing the following noise mitigation strategies:

- Reserving control of sound levels in each room/bar area to upper management.
- Utilizing structures such as retractable canopies and planters to capture sound.
- Using high quality materials for windows and doors to ensure sound capture.
- Using sound proof glass at the rear of the building, including exits.
- Strategically position speakers to minimize noise.

While staff is supportive with the above strategies to improve noise mitigation, some of them may require the review and approval of the Historic Preservation Board (e.g., utilizing structures such as retractable canopies and planters to capture sound). Staff is also concerned about the proximity of the establishment to the residential building located across the alley on the east side of the property where the outdoor patio is located. To ensure that sound will not disrupt the quality of life for this residential building, staff is proposing limiting music in this area to recorded music played at a volume that does not interfere with normal conversation.

Code Compliance

There have been active Code Compliance Cases related to noise at the establishment since January 1, 2021. Most of these complaints, as noted below, resulted in a warning notice due to violations of the noise ordinance.

- 7/28/2021 - SMN2021-00130: Special magistrate Noise appeal NC2021-20958
Status: Closed
- 7/18/2021 - NC2021-20958: Noise Complaint
Status: Fine owned

Notes indicate:

Ref: Unreasonably loud and excessive bass coming from 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. 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. Arrival Time: 12:14 AM Departure Time: 12:50 AM 1st Offense; \$250.00 Fine. BWC used. J. Goehring (745)

- 7/16/2021 – NC2021-20933: Noise Complaint
Status: Written warning notice

Notes indicate:

Arrival: 12:55 AM Departure Time: 2:00 AM 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 any unreasonably loud, excessive, unnecessary or unusual noise. Ref; Base plainly sundials from over 100FT Written Warning CCO R Santana (705) BWC Used.

- 7/5/2021 - NC2021-20843: Noise Complaint
Status: Closed.

Notes indicate:
Loud Music.

Staff will continue to monitor the establishment and take appropriate measures to ensure compliance should any additional written violations be issued. By approving the CUP, these violations could be subject to the enforcement mechanisms provided to the Planning Board.

Sanitation and Deliveries

Waste and recycling collection and deliveries would take place from the rear of the building facing the alley. Sanitation will be collected 5 days a week, on Monday, Wednesday, Friday, Saturday and Sunday between 8:00 AM and 12:00 PM. Deliveries occur on weekdays between 9:00 AM and 4:00 PM

Security and Crowd Control

As stated on the operational plans, there is security staff in the venue. Patrons have access from Washington Avenue, where the main entrance is located, and where venue staff request and review patron identification documents. There is also a roped check in line to prevent blockage of the sidewalk at the entrance.

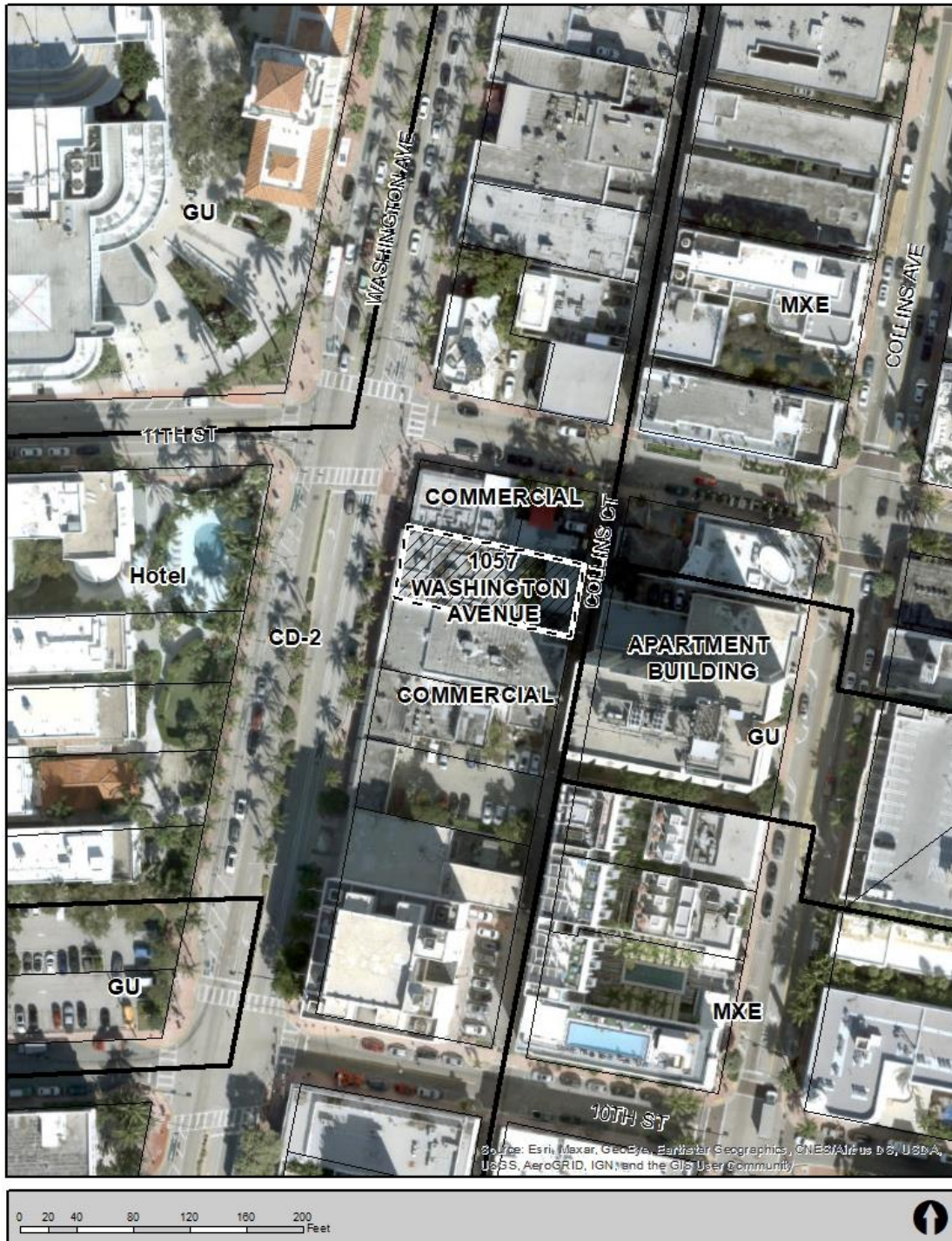
SUMMARY

Staff is supportive of the CUP application, as there do not appear to be any major problems with the business, other than the limited code compliance cases noted herein. Staff is proposing conditions to mitigate any potential issues related to the existing operations with entertainment.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



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

PROPERTY: 1057 Washington Avenue

FILE NO. PB22-0545

IN RE: A conditional use permit for a Neighborhood Impact Establishment with entertainment pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lot fifteen (15), block thirty (30) of Ocean Beach, Florida, addition #2, according to the plat thereof, as recorded in plat book 2, page 56, of the public records of Miami Dade County, Florida.

MEETING DATE: September 20, 2022

CONDITIONAL USE PERMIT

The applicant, Two By Two, Inc., dba Twist, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment 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 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 consistent with the Land Development Regulations;

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

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

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Two By Two, Inc, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar with an accessory outdoor bar on the roof deck. 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 Certificate of Use/Business Tax Receipt. A progress report shall be scheduled within 60 days following the applicant's submission and staff's approval of the affidavit.
3. 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.
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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. 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 the proposed 86 seat Neighborhood Impact Establishment, subject to the criteria listed below:
 - i. The venue subject to this CUP shall have a maximum occupant content of approximately 557 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor and outdoor portions of the establishment may operate from 3:00 PM until 5:00 AM. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
 - iii. On the outdoor patio, entertainment of any kind shall be prohibited at all times,

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- except for disc jockeys playing recorded music at a volume that does not interfere with normal conversation.
- iv. Entertainment that exceeds an ambient volume level (i.e. a volume that does not interfere with normal conversation) shall only be permitted indoors and between 3:00 PM and 5:00 AM.
 - v. Televisions shall not be located anywhere in the exterior areas of the property.
 - vi. Control of sound levels in each room/bar area shall be limited to upper management of the bar.
 - vii. Soundproof glass shall be required for all glass doors and window openings, including exits.
- B. Delivery trucks shall only be permitted to make deliveries from the alley, or a City authorized and designated commercial loading zones.
 - C. Delivery trucks shall not be allowed to idle in the loading zone.
 - 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 between 8:00 AM and 4:00 PM.
 - F. 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.
 - I. Garbage dumpster covers shall be closed at all times except when in active use.
 - J. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - K. No patrons shall be allowed to queue on public rights-of-way adjacent to the property without approval from the Public Works Department or other City authorized approval as determined by the City Manager.
 - L. 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
 - M. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - N. Special Events may occur on the premises, 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.

7. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
8. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. 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.
9. 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.
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 Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
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.

Dated: _____.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____

Rogelio A. Madan, AICP
Chief of Community Planning & Sustainability
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

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

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

{NOTARIAL SEAL}

Approved As To Form:
Legal Department ()

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