

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 20, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0549 - 1111 Lincoln Road, 4th Floor.**

An application has been filed requesting a conditional use permit for open air entertainment and outdoor entertainment to the proposed bar/restaurant located on the 4th floor at this site. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

ZONING/SITE DATA

Legal Description:

See exhibit A at the end of the report.

Zoning District:

CD-3, Commercial high intensity

Future Land Use Designation:

CD-3, Commercial high intensity

Surrounding Uses:

North:	Commercial and parking lot uses (Lincoln Lane North)
West:	Commercial uses
South:	Retail and restaurant uses (Lincoln Road)
East:	Commercial uses

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

THE PROJECT

The applicant, Apollo Garden, LLC, has submitted plans entitled "Apollo Garden LLC", as prepared by Charles Benson & Associates Architects, dated Final submittal: 10-24, 2022. The applicant is requesting approval for outdoor entertainment and open-air entertainment.

Per the submitted plans, the applicant is proposing a 146-seat restaurant with an occupant content of 197 persons. This site is comprised of two existing buildings, both connected, that face the north side of Lincoln Road, between Alton Road and Lenox Avenue. One building is a mixed-use parking structure located on the west side of the block and the other one is a mixed-use office building located on the east side of the block, where this establishment is proposed. The venue would be located on the fourth floor facing Lenox Avenue, with access to the establishment from an entrance lobby facing Lenox Avenue.

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 – Outdoor and open-air entertainment are permitted as conditional uses in the CD-3 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 project does not have any off-street parking requirements, but additionally, the applicant provides parking onsite.

- 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 other Establishments with entertainment in the area; 723 North Lincoln Lane (The Lincoln Eatery), 800 Lincoln Road (MILA), and 818 Lincoln Road (Oro and Elixir). However, unlike those establishments, this establishment is not a Neighborhood Impact Establishment (NIE). Staff does not anticipate a negative impact on the surrounding area if steps are taken 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. Only interior renovations are proposed.

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

A new NanaWall is proposed, and this shall comply with the applicable building code.

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

The applicant is proposing a NanaWall that will allow for passive cooling in the cooler months.

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

Not Applicable.

5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Not Applicable. This is an existing structure.

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

Not Applicable.

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

Not Applicable. This is an existing structure.

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

Not Applicable. This is an existing structure.

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. This is an existing structure.

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

Not Applicable. This is an existing structure.

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

Not Applicable. This is an existing structure.

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

Not Applicable. This is an existing structure.

ANALYSIS

Project Description and Operations

The applicant is requesting approval for outdoor entertainment and open-air entertainment for a proposed establishment that does not have an official name yet. The proposed venue is located on the fourth floor of the existing mixed-use building located at the northwest corner of Lincoln Road and Lenox Avenue.

The proposal is for a 146-seat restaurant, including a bar/lounge, with an occupant content of 197 persons. Access to the establishment would be from an entrance lobby fronting Lenox Avenue, where elevators and stairs provides access to the fourth level. The venue is proposed to consist of the following:

- An outdoor covered terrace with 42 seats with an occupancy of 49 persons; and
- An interior dining area/bar with 104 seats with an occupancy of 148 persons

The total occupancy content is 197 persons and an operable NanaWall system separates the indoor and outdoor spaces. Given that the establishment does not have an occupancy of 200 persons or more, it does not meet the definition of a neighborhood impact establishment (NIE).

Sound

The applicant submitted a sound study prepared by Edward Dugger + Associates, which indicates that interior and exterior speakers are divided into separate zones that are controlled independently of each other. This will allow the restaurant to close the doors and maintain ambient music at lower sound levels outside while still creating a “livelier” atmosphere inside with music generated at greater sound levels. Per the letter of intent and plans the proposed entertainment will consist of a DJ playing music that is louder than ambient background sound levels within the interior and exterior of the premises.

The sound study was peer reviewed by the City’s consultant, Arpeggio Acoustic Consulting, LLC. The peer review had the following conclusion and suggestions:

“In conclusion, while it is unlikely that the proposed venue would produce sound levels that would be audible at the nearest residential community approximately 600’ to the north

across 17th Street, it is critical that the system DSP be properly set with a certain dBC limit to mitigate the potential audibility of bass at this residential location. If strict adherence to Section 46-152, subsection (b) of the City of Miami Beach Code of Ordinances is desired, then these limits would have to be set much lower to ensure inaudibility at a distance of 100' before 11 pm. It may also be advisable to require that the NanaWall be closed at 11 pm to mitigate transmission of sound from the interior of the venue."

Staff agrees with the peer reviewer's findings that if the sound is not properly controlled that it could be audible in the nearby area. To this end, staff would note that the establishment must comply with the requirements of section 142-336, which apply to properties fronting Lincoln Road. Specifically, this section requires that restaurants may only place or install exterior speakers provided that the *"Music or any other sound shall be played at or below ambient volume levels at all times."* To comply with this requirement, staff has recommended a condition requiring that sound in the outdoor areas not exceed ambient levels. Additionally, staff recommends that if the sound in the interior space is to exceed ambient levels that the NanaWall be fully closed to prevent the sound from impacting nearby areas.

Furthermore, in order to ensure that sound levels are properly controlled and not audible from nearby residential areas, staff recommends that sound testing take place prior to the issuance of a certificate of use for entertainment.

Hours of Operation

The applicant is requesting to operate as follows:

- Indoor Sunday-Wednesday 11 am - 2 am
 Thursday-Saturday 11 am - 5 am
- Outdoor Sunday-Wednesday 11 am - 12 am
 Thursday-Saturday 11 am - 2 am

Given the establishment is not an NIE and that the access to the site is not immediately adjacent to residential buildings, negative impacts are not expected from patrons congregating after leaving the establishment late in the evening to wait for transportation. As a result, staff is not opposed to the proposed hours of operation for the indoor portions. For the outdoor portions, staff recommends that the outdoor area close by midnight on Sunday through Thursday, as opposed to Wednesday, in order to minimize the impacts to nearby residents during the work week.

Sanitation and Deliveries

Waste and recycling collection and deliveries would take place from the private alley area located along the north side of the garage. All refuse will be wheeled from the air-conditioned, enclosed garbage room through the existing pathway to the alley area. Deliveries will take place on the designated loading area located on this alley.

Deliveries are proposed to occur on weekdays between 8:00 AM and 5:00 PM. Waste and recycling collections would occur daily between 8:00 AM and 5:00 PM. These limitations have been included in the attached draft order.

Security and Crowd Control

Guests will gain access to the establishment via an entry vestibule facing Lenox Avenue, adjacent to Lincoln Road. There will be an onsite a security team to manage all safety and security issues.

Staff has concerns with the ability to control crowds at the ground floor entry vestibule. The vestibule is small and is shared with the “Juvia” Restaurant that is located on the roof top of the same building. To this end, staff is recommending that the applicant have a security guard at the ground level during operating hours to maintain orderly pedestrian access and maintain the exterior clear of queues.

SUMMARY

The Flamingo Park residential neighborhood is located to the south of the proposed establishment and the Palm View residential neighborhood is located just to the north of 17th Street. The closest residential buildings are located half block or approximately 340 feet to the south of the site. Approximately 500 feet to the north, is the predominately single-family Palm View neighborhood. Even though the immediate properties consist of commercial and office buildings, staff is concerned with the location of the proximity of the to these residential areas and potential non-compliance with the Noise Ordinance (Section 46 of the City Code).

To this end, staff has incorporated conditions into the attached draft order to ensure that only ambient music is allowed on the outdoor terrace and that above ambient sound only be allowed indoors when the NanaWall is closed to prevent the sound from escaping from the venue. With these safeguards, staff is supportive of the proposed application.

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

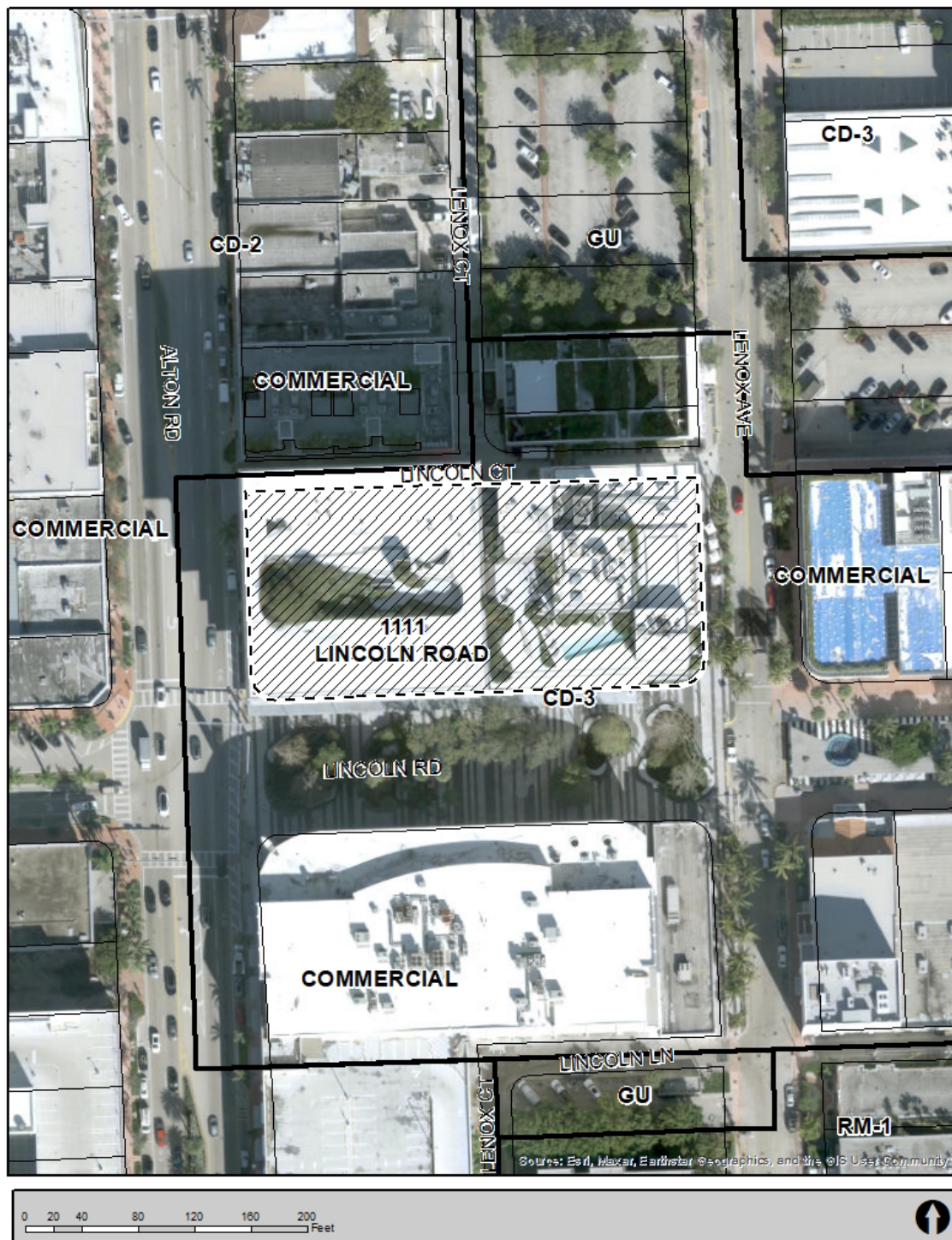


Exhibit A – Legal Description
(Per survey submitted by the applicant)

LAND DESCRIPTION AS SHOWN ON TITLE COMMITMENT PREPARED BY CHICAGO TITLE INSURANCE COMPANY.
SCHEDULE B-II: REVISED: JULY 24, 2017 - REVISION N. ORDER NO.: 6336043. CUSTOMER REFERENCE:
4711011835 / 4017004075J. EFFECTIVE DATE: JULY 11, 2017 AT 11:00 PM;

PARCEL 1:

LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 39, COMMERCIAL SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS
RECORDED IN PLAT BOOK 6, AT PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL OF LAND: (SEE DETAIL "A" FOR SKETCH)

A PORTION OF LOT 1, LOT 2 AND LOT 3, BLOCK 39, COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY
COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 5 OF THE PUBLIC
RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUN NORTH 89 DEGREES 08 MINUTES 55
SECONDS EAST, ALONG THE NORTH LINE OF SAID LOT 1, BLOCK 39, FOR 6.76 FEET; THENCE SOUTH 00 DEGREES
51 MINUTES 05 SECONDS EAST, AT RIGHT ANGLES TO THE LAST MENTIONED COURSE, FOR 10.34 FEET TO THE
POINT OF BEGINNING OF THE PERAMETRIC LIMIT OF A VOLUME CIRCUMSCRIBING THE EXTERIOR FACE OF THE
CONSTRUCTED PENTHOUSE DESCRIBED AS FOLLOWS: THENCE NORTH 89 DEGREES 07 MINUTES 27 SECONDS EAST
FOR 152.98 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST AND HAVING
A RADIUS OF 1.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 1.57 FEET
THROUGH A CENTRAL ANGLE OF 89 DEGREES 59 MINUTES 32 SECONDS TO A POINT OF TANGENCY; THENCE SOUTH
00 DEGREES 53 MINUTES 01 SECONDS EAST FOR 54.27 FEET (THE LAST MENTIONED THREE COURSES BEING ALONG
THE EXTERIOR FACE OF THE WOOD HANDRAIL); THENCE SOUTH 88 DEGREES 18 MINUTES 46 SECONDS WEST FOR
3.78 FEET; THENCE SOUTH 00 DEGREES 50 MINUTES 30 SECONDS EAST FOR 30.16 FEET; THENCE NORTH 89
DEGREES 51 MINUTES 57 SECONDS EAST FOR 2.79 FEET (LAST MENTIONED THREE COURSES BEING ALONG THE
EDGE OF THE CONCRETE STEPS); THENCE SOUTH 00 DEGREES 51 MINUTES 46 SECONDS EAST FOR 3.89 FEET;
THENCE SOUTH 89 DEGREES 08 MINUTES 14 SECONDS WEST FOR 142.96 FEET (THE LAST MENTIONED TWO
COURSES BEING ALONG THE EXTERIOR FACE OF THE WOOD HANDRAIL) TO A POINT OF CURVATURE WITH A
CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 8.00 FEET; THENCE ALONG SAID CURVE
TO THE RIGHT FOR AN ARC DISTANCE OF 12.56 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 57 MINUTES
44 SECONDS TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 54 MINUTES 02 SECONDS WEST FOR 22.07
FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS
OF 8.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 12.53 FEET THROUGH A
CENTRAL ANGLE OF 89 DEGREES 43 MINUTES 10 SECONDS TO A POINT OF TANGENCY (THE LAST MENTIONED
THREE COURSES BEING ALONG THE EDGE OF THE CONCRETE RAMP); THENCE NORTH 01 DEGREES 10 MINUTES 52
SECONDS WEST FOR 0.88 FEET; THENCE SOUTH 88 DEGREES 49 MINUTES 08 SECONDS WEST FOR 9.09 FEET TO A
POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 2.00
FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 3.16 FEET THROUGH A CENTRAL
ANGLE OF 90 DEGREES 28 MINUTES 57 SECONDS TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 41
MINUTES 55 SECONDS WEST FOR 47.48 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO
THE SOUTHEAST AND HAVING A RADIUS OF 1.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC
DISTANCE OF 1.57 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 49 MINUTES 22 SECONDS TO THE POINT OF
BEGINNING.

SAID PARCEL OF LAND LYING BETWEEN THE HORIZONTAL PLANE OF THE UPPER SURFACE OF THE SEVENTH LEVEL
MEZZANINE STRUCTURAL FLOOR SLAB AND THE LOWER SURFACE OF THE SEVENTH LEVEL MEZZANINE CEILING SLAB
BEING BETWEEN ELEVATION 119.57 FEET AND ELEVATION 130.91 FEET, RESPECTIVELY, NATIONAL VERTICAL DATUM
OF 1929.

LESS AND EXCEPT THEREFROM: (SEE DETAIL "B" FOR SKETCH)

THAT PORTION OF THE AIRSPACE LYING BELOW THE UPPER UNFINISHED SURFACE OF THE IRREGULAR INCLINED
RAMP SLAB, AS CONSTRUCTED, THRU THE SEVENTH LEVEL MEZZANINE SPACE (SEE SECTION "A-A", SHEET 3 OF 4
AND PLAN VIEW SHEET 2 OF 4 OF SURVEY PREPARED BY SCHWEBKE-SHISKIN & ASSOCIATES, INC., DATED
DECEMBER 13, 2010, UNDER ORDER NUMBER 198169).

PARCEL 2:

LOTS 7 AND 8, BLOCK 39, PALM VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT
BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI - DADE COUNTY, FLORIDA.

LESS AND EXCEPT: (SEE DETAIL "C" FOR SKETCH)

A PORTION OF LOT 7, BLOCK 39, PALM VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN
PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI - DADE COUNTY, FLORIDA, BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 7;

THENCE SOUTH 00°48'26" EAST ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT
ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 8.00 FEET, A CENTRAL ANGLE OF
90°02'39" AND AN ARC DISTANCE OF 12.57 FEET;

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THE FOLLOWING FOUR (4) PARCELS: (SEE DETAIL "D" FOR SKETCH)

PARCEL A: ELEVATOR (C.E.) OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

THE SPACE LYING WITHIN THE FIRST FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS (-)0.10' AND 36.10' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 89°08'55" WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 47.11 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 3.92 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 6.47 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 8.50 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 6.47 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 8.50 FEET TO THE POINT OF BEGINNING.

PARCEL B: VESTIBULE (C.E.) OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

THE SPACE LYING WITHIN THE FIRST FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 4.90' AND 20.27' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 89°08'55" WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 54.62 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 3.25 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 7.99 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.17 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 7.99 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 9.17 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

PARCEL C: RESIDENTIAL UNIT 1 OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

(SEE DETAIL "C" FOR SKETCH)
THE SPACE LYING WITHIN THE SECOND FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOTS 7 AND 8, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 22.69' AND 34.02' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH 00°48'26" WEST ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 4.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 2.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°08'55" WEST, A DISTANCE OF 44.04 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 7.80 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.83 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 4.20 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 43.92 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 11.00 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 6.83 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 5.08 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.96 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 39.96 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 74.92 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

PARCEL D: RESIDENTIAL UNIT 2 OF PROPOSED 1111 EAST RESIDENCE CONDOMINIUM DESCRIBED AS FOLLOWS:

(SEE DETAIL "D" FOR SKETCH)
THE SPACE LYING WITHIN THE SECOND FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOTS 7 AND 8, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 22.69' AND 34.02' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH 00°48'26" WEST ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 4.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 54.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°08'55" WEST, A DISTANCE OF 77.57 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.08 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 33.21 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 38.75 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 33.21 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.08 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 73.33 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 56.71 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 4.24 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 18.21 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

LAND DESCRIPTION CONTINUED...

LAND DESCRIPTION CONTINUED...

PARCEL 3:

TOGETHER WITH EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF, WITHOUT LIMITATION, THE ARCHITECTURAL OVERHANGS AND FEATURES AND BELOW GRADE PILE CAP ENCROACHMENTS AND A SUBSURFACE UTILITY EASEMENT FOR THE INSTALLATION, OPERATION, AND CONTINUING MAINTENANCE OF UNDERGROUND UTILITIES TO BE LOCATED IN THE LINCOLN ROAD, ALTON ROAD, LINCOLN LANE, ALTON COURT AND LENOX AVENUE FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2 AS SET FORTH IN THE CERTAIN EASEMENT AGREEMENT MADE APRIL 11, 2007, AMONG THE CITY OF MIAMI BEACH, FLORIDA, UJA MANAGEMENT, LLC, MBEACH1 LLP AND MBEACH3, LLC, RECORDED APRIL 16, 2007, IN OFFICIAL RECORDS BOOK 25537, PAGE 1980; AS AMENDED BY FIRST AMENDMENT TO EASEMENT AGREEMENT MADE MARCH 9, 2010, AMONG THE CITY OF MIAMI BEACH, FLORIDA, UJA MANAGEMENT, LLC, MBEACH1 LLP, MBEACH3, LLC AND SUNTRUST BANK, RECORDED MARCH 15, 2010, IN OFFICIAL RECORDS BOOK 27213, PAGE 4421, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 4:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND RESERVATIONS AND THE RIGHT TO USE SAME AS SET FORTH IN PARAGRAPHS 3(A), 3(B), 3(C), 3(D), 3(E), 3(F), 3(G), 3(H), 3(I), 3(J), 3(K), 3(L), 3(M), 3(N) AND 3(O) OF THAT CERTAIN DECLARATION OF EASEMENT AND OPERATING AGREEMENT MADE AUGUST 31, 2016, BY MBEACH1, LLP, RECORDED SEPTEMBER 1, 2016, IN OFFICIAL RECORDS BOOK 30215, PAGE 2013, FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 5:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND THE RIGHT TO USE SAME AS SET FORTH IN PARAGRAPHS 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 OF THAT CERTAIN DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR 1664 LENOX AVENUE MADE JUNE 28, 2017, BY 1664 LENOX, LLC, RECORDED JUNE 30, 2017 IN OFFICIAL RECORDS BOOK 30595, PAGE 1673, AS AFFECTED BY THE ASSIGNMENT OF DECLARANT'S RIGHTS MADE JUNE 28, 2017, BY AND BETWEEN 1664 LENOX, LLC, AS ASSIGNOR, AND 1111 LINCOLN, LLC, AS ASSIGNEE, RECORDED JUNE 30, 2017, IN OFFICIAL RECORDS BOOK 30595, PAGE 2011, FOR THE BENEFIT OF PARCEL 2, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 6:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND THE RIGHT TO USE SAME FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN PARAGRAPHS 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 AND 4.1.6 OF THAT CERTAIN AMENDED AND RESTATED DECLARATION OF COVENANTS AND EASEMENTS FOR 1111 LINCOLN ROAD, MADE JUNE 28, 2017, BETWEEN MBEACH1, LLP AND THE ROBERT S. WENNETT REVOCABLE TRUST U/A/D MAY 2, 2008 AND THE MARIO CADER-FRECH REVOCABLE TRUST U/A/D MAY 2, 2008, RECORDED JUNE 30, 2017 IN OFFICIAL RECORDS BOOK 30595, PAGE 1633, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.



**Peer Review of Sound Study for
1111 Lincoln Road, Miami Beach, Florida
PB 22-0549**

Prepared for:

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

Prepared by:

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

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1 Introduction

This report documents a peer review of an acoustic study conducted for the City of Miami Beach related to an application for a Conditional Use Permit (CUP) for an Outdoor Entertainment Establishment at 1111 Lincoln Road. The reviewed report, prepared by Edward Dugger + Associates (ED+A) and dated September 6, 2022, describes the project, sound system design, and results of a noise survey conducted at the site.

2 Project Description

The proposed 2,468 square foot venue is located on the fourth floor of a building on the northwest corner of Lincoln Road and Lenox Avenue that is mainly used as a parking garage. The venue would have an outdoor terrace overlooking Lenox Avenue. An occupancy of 197 persons is estimated with 148 inside and 49 on the terrace.

The area is zoned Commercial High Intensity (CD-3), indicating that nearby buildings are commercial in nature. According to the Letter of Intent, the nearest residential use is on the north side of 17th Street which, according to GoogleEarth, appears to be approximately 600' from the proposed site.

Proposed hours of operation are as follows:

- Indoor Sunday-Wednesday 11 am-2 am
 Thursday-Saturday 11 am-5 am
- Outdoor Sunday-Wednesday 11 am-12 am
 Thursday-Saturday 11 am-2 am

3 Comments and Conclusions

The report describes a sound survey that was conducted on the terrace from Wednesday, August 24, 2022 through Tuesday, August 30, 2022. Accounting for the effect of the nearby reflecting surface (which the report correctly identified as adding up to 3 decibels to measurement results), it appears that the residual ambient level (L_{90}) in this particular area in the hours around midnight is in the high 50s and low 60s (dBA). This is not unexpected given the commercial nature of the area.

While the ambient sound level in the immediate vicinity of the proposed venue may be in the high 50s and low 60s (dBA) around midnight, that does not necessarily mean that this will be the ambient level in the residential area on the north side of 17th Street. However, given the distance between the proposed venue and this residential area, one could expect sound from the proposed venue to be approximately 40 to 45 decibels lower in the residential area. Thus if one were to measure a sound level of 85 dBA on the operating terrace, the level of this sound would likely be 40 to 45 dBA at the nearest residential property, and likely inaudible assuming bass is controlled at the venue.

Perhaps more critical will be nearby properties. To that end, the City of Miami Beach Code of Ordinances Section 46-152 subsection (b) states the following:

“The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the

peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 100 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.”

This would likely apply at ground level, perhaps at the northeast corner of Lincoln Road and Lenox Avenue (assuming this is 100’ from the terrace). Depending on source levels, it is not unreasonable to expect sound from the terrace to be audible at such a location. While there are no residences within 100’ of the proposed venue, such audibility after 11 pm would technically violate the ordinance.

This is especially relevant if the NanaWall, which would separate the interior areas from the terrace were open after 11 pm. It is possible that, even with the NanaWall closed, music from within the venue after the terrace is closed could be audible at a distance of 100’. We have been provided no such predictions of sound levels or of the acoustic performance of the NanaWall to assess the potential.

The report does describe the proposed audio system which would comprise distributed speakers both inside the venue and on the terrace with different zones programmed and independently controlled for the two areas. These speakers would be routed and controlled through a Coda Audio LINUS12C 4-Channel Digital Signal Processor (DSP) Amplifier with loudspeaker management. This system includes software that allows for continuous monitoring using microphones and the creation of a continuous record of sound levels which would allow for adjustments. This system would be programmed with limits set during installation by the system designer/installer. This process would be critical in the successful operation of the proposed venue.

In conclusion, while it is unlikely that the proposed venue would produce sound levels that would be audible at the nearest residential community approximately 600’ to the north across 17th Street, it is critical that the system DSP be properly set with a certain dBC limit to mitigate the potential audibility of bass at this residential location. If strict adherence to Section 46-152, subsection (b) of the City of Miami Beach Code of Ordinances is desired, then these limits would have to be set much lower to ensure inaudibility at a distance of 100’ before 11 pm. It may also be advisable to require that the NanaWall be closed at 11 pm to mitigate transmission of sound from the interior of the venue.

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

PROPERTY: 1111 Lincoln Road, 4th Floor.

FILE NO. PB22-0549

IN RE: An application has been filed requesting a conditional use permit for open air entertainment and outdoor entertainment to the proposed bar/restaurant located on the 4th floor at this site. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL

DESCRIPTION: See exhibit A at the end of this document.

MEETING DATE: December 20, 2022

CONDITIONAL USE PERMIT

The applicant, Golden Apollo Garden, LLC, filed an application with the Planning Director requesting a Conditional Use approval for open air entertainment and outdoor entertainment 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-3, Commercial high 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 Apollo Garden, LLC, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar with an accessory outdoor bar on the second and third floors. 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 creation and operation of the proposed 146 seat Establishment, subject to the criteria listed below:
 - i. The restaurant and bar subject to this CUP shall have a maximum occupant content of 197 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the establishment may operate from 11:00 AM until 5:00 AM subject to the following:
 - a. Entertainment shall be limited to recorded music and/or one DJ.
 - b. The NanaWall shall be fully closed at all times while there is above ambient level entertainment.

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- c. Doorways to the outdoor terrace shall remain fully closed while there is above ambient level entertainment.
 - d. If the Nana walls are open, the music volume shall be lowered to ambient volume levels. (i.e. a volume that does not interfere with normal conversation).
 - e. At no time shall music from the indoor area of the venue be audible anywhere beyond the exterior perimeter of the property, regardless of whether the Nanawall system is open or closed.
 - iii. The outdoor door portions of the establishment may operate from 11:00 AM until 2:00 AM on Friday and Saturday, and from 11:00 AM until 12:00 AM Sunday through Thursday, subject to the following:
 - a. Music shall not exceed ambient levels, (i.e. a volume that does not interfere with normal conversation) at anytime.
 - b. Entertainment shall only consist of a DJ.
 - c. No outdoor bar counter shall be located on the outdoor terrace.
 - d. After hours of operation, only staff of the establishment may be on the outdoor terrace.
 - iv. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
 - v. All entertainment permitted by this CUP shall be subject to the following:
 - a. Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. DJ's shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's and performers as to the requirements of this conditional use permit related entertainment.
 - b. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City's peer review and City's staff.
 - c. At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager

on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.

- d. Sound generated from the venue, including, but not limited to, recorded music, patron conversations or entertainment, shall not be plainly audible from or beyond any public rights of way adjacent to the subject property. Public rights of way shall include, Lincoln Road, Alton Road, Lincoln Lane North, and Lenox Avenue.
 - e. Before the issuance of a certificate of use is issued for entertainment a field visit with the applicant's sound engineer, the City's sound consultant and Planning staff shall be required to verify the sound system operations. The applicant shall be responsible to cover the fees of the City's peer reviewer.
 - f. A progress report regarding the outdoor entertainment shall be scheduled 90 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
 - g. Audio from the subject property, including any vibrations of a low-frequency or greater, shall not be plainly audible or felt within the interior of any residential unit or home, at any time.
- vi. Televisions shall not be located anywhere in the exterior areas of the property.
- B. Delivery trucks shall only be permitted to make deliveries from the private alley as proposed by the applicant.
 - 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 5:00 PM, or as specified by the City approved loading zones in the vicinity.
 - 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.
 - G. 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 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.
 - L. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
 - M. The applicant shall provide a security guard at the ground level during operating hours to maintain orderly pedestrian access and queuing and maintaining the exterior clear from queues.
 - N. 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
 - O. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - P. 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.
 - Q. There shall be security outdoors, adjacent to the establishment during all hours of operation. The security shall ensure that patrons do not congregate on the exterior of the property.
7. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:
- a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - b. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
14. 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.
15. 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.
16. 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
 Development and Resiliency Officer
 for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

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

[NOTARIAL SEAL]

Notary:
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 _____ ()

Exhibit A – Legal Description (Per survey submitted by the applicant)

LAND DESCRIPTION AS SHOWN ON TITLE COMMITMENT PREPARED BY CHICAGO TITLE INSURANCE COMPANY.
SCHEDULE B-II: REVISED: JULY 24, 2017 – REVISION N. ORDER NO.: 6336043. CUSTOMER REFERENCE:
4711011835 / 4017004075J. EFFECTIVE DATE: JULY 11, 2017 AT 11:00 PM;

PARCEL 1:

LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 39, COMMERCIAL SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL OF LAND: (SEE DETAIL "A" FOR SKETCH)

A PORTION OF LOT 1, LOT 2 AND LOT 3, BLOCK 39, COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 5 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUN NORTH 89 DEGREES 08 MINUTES 55 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOT 1, BLOCK 39, FOR 6.76 FEET; THENCE SOUTH 00 DEGREES 51 MINUTES 05 SECONDS EAST, AT RIGHT ANGLES TO THE LAST MENTIONED COURSE, FOR 10.34 FEET TO THE POINT OF BEGINNING OF THE PERAMETRIC LIMIT OF A VOLUME CIRCUMSCRIBING THE EXTERIOR FACE OF THE CONSTRUCTED PENTHOUSE DESCRIBED AS FOLLOWS: THENCE NORTH 89 DEGREES 07 MINUTES 27 SECONDS EAST FOR 152.98 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 1.57 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 59 MINUTES 32 SECONDS TO A POINT OF TANGENCY; THENCE SOUTH 00 DEGREES 53 MINUTES 01 SECONDS EAST FOR 54.27 FEET (THE LAST MENTIONED THREE COURSES BEING ALONG THE EXTERIOR FACE OF THE WOOD HANDRAIL); THENCE SOUTH 88 DEGREES 18 MINUTES 46 SECONDS WEST FOR 3.78 FEET; THENCE SOUTH 00 DEGREES 50 MINUTES 30 SECONDS EAST FOR 30.16 FEET; THENCE NORTH 89 DEGREES 51 MINUTES 57 SECONDS EAST FOR 2.79 FEET (LAST MENTIONED THREE COURSES BEING ALONG THE EDGE OF THE CONCRETE STEPS); THENCE SOUTH 00 DEGREES 51 MINUTES 46 SECONDS EAST FOR 3.89 FEET; THENCE SOUTH 89 DEGREES 08 MINUTES 14 SECONDS WEST FOR 142.96 FEET (THE LAST MENTIONED TWO COURSES BEING ALONG THE EXTERIOR FACE OF THE WOOD HANDRAIL) TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 8.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 12.56 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 57 MINUTES 44 SECONDS TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 54 MINUTES 02 SECONDS WEST FOR 22.07 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 8.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 12.53 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 43 MINUTES 10 SECONDS TO A POINT OF TANGENCY (THE LAST MENTIONED THREE COURSES BEING ALONG THE EDGE OF THE CONCRETE RAMP); THENCE NORTH 01 DEGREES 10 MINUTES 52 SECONDS WEST FOR 0.88 FEET; THENCE SOUTH 88 DEGREES 49 MINUTES 08 SECONDS WEST FOR 9.09 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 2.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 3.16 FEET THROUGH A CENTRAL ANGLE OF 90 DEGREES 28 MINUTES 57 SECONDS TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 41 MINUTES 55 SECONDS WEST FOR 47.48 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 1.57 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 49 MINUTES 22 SECONDS TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND LYING BETWEEN THE HORIZONTAL PLANE OF THE UPPER SURFACE OF THE SEVENTH LEVEL MEZZANINE STRUCTURAL FLOOR SLAB AND THE LOWER SURFACE OF THE SEVENTH LEVEL MEZZANINE CEILING SLAB BEING BETWEEN ELEVATION 119.57 FEET AND ELEVATION 130.91 FEET, RESPECTIVELY, NATIONAL VERTICAL DATUM OF 1929.

LESS AND EXCEPT THEREFROM: (SEE DETAIL "B" FOR SKETCH)

THAT PORTION OF THE AIRSPACE LYING BELOW THE UPPER UNFINISHED SURFACE OF THE IRREGULAR INCLINED RAMP SLAB, AS CONSTRUCTED, THRU THE SEVENTH LEVEL MEZZANINE SPACE (SEE SECTION "A-A", SHEET 3 OF 4 AND PLAN VIEW SHEET 2 OF 4 OF SURVEY PREPARED BY SCHWEBKE-SHISKIN & ASSOCIATES, INC., DATED DECEMBER 13, 2010, UNDER ORDER NUMBER 198169).

PARCEL 2:

LOTS 7 AND 8, BLOCK 39, PALM VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI – DADE COUNTY, FLORIDA.

LESS AND EXCEPT: (SEE DETAIL "C" FOR SKETCH)

A PORTION OF LOT 7, BLOCK 39, PALM VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI – DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 7;

THENCE SOUTH 00°48'26" EAST ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 8.00 FEET, A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 12.57 FEET;

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THE FOLLOWING FOUR (4) PARCELS: (SEE DETAIL "D" FOR SKETCH)

PARCEL A: ELEVATOR (C.E.) OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

THE SPACE LYING WITHIN THE FIRST FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS (-)0.10' AND 36.10' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 89°08'55" WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 47.11 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 3.92 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 6.47 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 8.50 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 6.47 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 8.50 FEET TO THE POINT OF BEGINNING.

PARCEL B: VESTIBULE (C.E.) OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

THE SPACE LYING WITHIN THE FIRST FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 4.90' AND 20.27' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 89°08'55" WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 54.62 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 3.25 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 7.99 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.17 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 7.99 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 9.17 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

PARCEL C: RESIDENTIAL UNIT 1 OF PROPOSED 1111 EAST RESIDENCES CONDOMINIUM DESCRIBED AS FOLLOWS:

(SEE DETAIL "C" FOR SKETCH)
THE SPACE LYING WITHIN THE SECOND FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOTS 7 AND 8, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 22.69' AND 34.02' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH 00°48'26" WEST ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 4.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 2.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°08'55" WEST, A DISTANCE OF 44.04 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 7.80 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 9.83 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 4.20 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 43.92 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 11.00 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 6.83 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 5.08 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.96 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 39.96 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 74.92 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

PARCEL D: RESIDENTIAL UNIT 2 OF PROPOSED 1111 EAST RESIDENCE CONDOMINIUM DESCRIBED AS FOLLOWS:

(SEE DETAIL "D" FOR SKETCH)
THE SPACE LYING WITHIN THE SECOND FLOOR OF THE IMPROVEMENTS CONSTRUCTED ON A PORTION OF LOTS 7 AND 8, BLOCK 39, "PALM VIEW SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 29, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID SPACE LYING BETWEEN ELEVATIONS 22.69' AND 34.02' (NGVD29) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH 00°48'26" WEST ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 4.04 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 54.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°08'55" WEST, A DISTANCE OF 77.57 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.08 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 33.21 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 38.75 FEET; THENCE SOUTH 89°08'55" WEST, A DISTANCE OF 33.21 FEET; THENCE NORTH 00°51'05" WEST, A DISTANCE OF 18.08 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 73.33 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 56.71 FEET; THENCE NORTH 89°08'55" EAST, A DISTANCE OF 4.24 FEET; THENCE SOUTH 00°51'05" EAST, A DISTANCE OF 18.21 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

LAND DESCRIPTION CONTINUED...

LAND DESCRIPTION CONTINUED...

PARCEL 3:

TOGETHER WITH EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF, WITHOUT LIMITATION, THE ARCHITECTURAL OVERHANGS AND FEATURES AND BELOW GRADE PILE CAP ENCROACHMENTS AND A SUBSURFACE UTILITY EASEMENT FOR THE INSTALLATION, OPERATION, AND CONTINUING MAINTENANCE OF UNDERGROUND UTILITIES TO BE LOCATED IN THE LINCOLN ROAD, ALTON ROAD, LINCOLN LANE, ALTON COURT AND LENOX AVENUE FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2 AS SET FORTH IN THE CERTAIN EASEMENT AGREEMENT MADE APRIL 11, 2007, AMONG THE CITY OF MIAMI BEACH, FLORIDA, UJA MANAGEMENT, LLC, MBEACH1 LLLP AND MBEACH3, LLC, RECORDED APRIL 16, 2007, IN OFFICIAL RECORDS BOOK 25537, PAGE 1980; AS AMENDED BY FIRST AMENDMENT TO EASEMENT AGREEMENT MADE MARCH 9, 2010, AMONG THE CITY OF MIAMI BEACH, FLORIDA, UJA MANAGEMENT, LLC, MBEACH1 LLLP, MBEACH3, LLC AND SUNTRUST BANK, RECORDED MARCH 15, 2010, IN OFFICIAL RECORDS BOOK 27213, PAGE 4421, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 4:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND RESERVATIONS AND THE RIGHT TO USE SAME AS SET FORTH IN PARAGRAPHS 3(A), 3(B), 3(C), 3(D), 3(E), 3(F), 3(G), 3(H), 3(I), 3(J), 3(K), 3(L), 3(M), 3(N) AND 3(O) OF THAT CERTAIN DECLARATION OF EASEMENT AND OPERATING AGREEMENT MADE AUGUST 31, 2016, BY MBEACH1, LLLP, RECORDED SEPTEMBER 1, 2016, IN OFFICIAL RECORDS BOOK 30215, PAGE 2013, FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 5:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND THE RIGHT TO USE SAME AS SET FORTH IN PARAGRAPHS 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 OF THAT CERTAIN DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR 1664 LENOX AVENUE MADE JUNE 28, 2017, BY 1664 LENOX, LLC, RECORDED JUNE 30, 2017 IN OFFICIAL RECORDS BOOK 30595, PAGE 1673, AS AFFECTED BY THE ASSIGNMENT OF DECLARANT'S RIGHTS MADE JUNE 28, 2017, BY AND BETWEEN 1664 LENOX, LLC, AS ASSIGNOR, AND 1111 LINCOLN, LLC, AS ASSIGNEE, RECORDED JUNE 30, 2017, IN OFFICIAL RECORDS BOOK 30595, PAGE 2011, FOR THE BENEFIT OF PARCEL 2, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL 6:

TOGETHER WITH THOSE CERTAIN EASEMENTS AND THE RIGHT TO USE SAME FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN PARAGRAPHS 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 AND 4.1.6 OF THAT CERTAIN AMENDED AND RESTATED DECLARATION OF COVENANTS AND EASEMENTS FOR 1111 LINCOLN ROAD, MADE JUNE 28, 2017, BETWEEN MBEACH1, LLLP AND THE ROBERT S. WENNETT REVOCABLE TRUST U/A/D MAY 2, 2008 AND THE MARIO CADER-FRECH REVOCABLE TRUST U/A/D MAY 2, 2008, RECORDED JUNE 30, 2017 IN OFFICIAL RECORDS BOOK 30595, PAGE 1633, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.