

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 24, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0149, fka PB File No. 1724, 1437-1441 Washington Avenue**

The applicant, Gideon/Espanola Partners, LLC., is requesting modifications to a previously issued Conditional Use Permit for a Neighborhood Impact Establishment. Specifically, the applicant is proposing to subdivide the 1st and 2nd floors into separate establishments, in order to operate the second floor as a stand-alone entertainment establishment with an occupant content in excess of 200 persons, not operating as a restaurant, and not serving full meals, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions

HISTORY

August 23, 2005

Mantra Entertainment Group LLC received a conditional use permit (CUP) to operate a Neighborhood Impact Establishment on the site of the former Liquid nightclub which was a large venue that occupied two floors in the old McCrory Building, located on the southeast corner of Washington Avenue and Espanola Way.

January 27, 2009

South Beach Restaurant Authority, LLC was granted a Modification to the existing Conditional Use Permit (MCUP) as the new operator of the Neighborhood Impact Establishment.

February 23, 2010:

2020 Ventures, LLC was granted a Modification of the MCUP for an NIE and to change the name from South Beach Restaurant Authority, LLC to 2020 Ventures, LLC. Various conditions of the MCUP and the plans were modified.

August 23, 2011:

The Mogul Partners Miami, LLC was granted a Modification of an MUCP for an NIE to change the name of the operator from 2020 Ventures, LLC, to The Mogul Partners Miami, LLC.

February 26, 2013

Kemp Capital Corp. was approved to modify the existing Modified Conditional Use Permit (MCUP) for a Neighborhood Impact Establishment (NIE) in order to change the name of the owner and operator from The Mogul Partners Miami, Inc. to Kemp Capital Corp.

November 19, 2013

The Planning Board approved the attached revised MCUP as part of a Progress Report and modification hearing due to violations issued.

ZONING / SITE DATA

Legal Description: The West 12.5 feet of Lot 3, and Lots 4 & 5 of Block 2B, Espanola Villas Subdivision, plat book 7, page 145 of the Public Records of Miami-Dade County, Florida.

Zoning: CD-2, Commercial Medium Intensity Zoning District

Future Land Use Designation: CD-2, Commercial Medium Intensity Zoning District

Surrounding Uses:

North	Retail and night club uses
East:	Restaurant and bar uses
South:	Retail grocery store
West:	Hotel, restaurant uses and a school

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

THE PROJECT

The subject property has a current business tax receipt (BTR) for a 120 seat restaurant and bar. The occupancy content issued by the Fire Chief is for 855 occupants for the first, mezzanine, and second floors. The applicant submitted plans entitled "Modified Conditional Use Application File No. 1724", as prepared by Telesco Associates Inc, dated August 3, 2017.

As proposed by the applicant, the first floor restaurant and mezzanine would decrease in occupants, and the second floor nightclub would remain same.

The Letter of Intent (LOI) states that when a tenant is identified for the ground floor space, the new tenant will apply for a separate CUP if required.

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. The CD-2 Commercial Medium Intensity category provides for other uses such as entertainment and neighborhood impact establishments subject to Conditional Use approval.

- 2. 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**

Partially Consistent – The applicant is seeking to maintain substantially the same occupant content on the second floor that was already approved by the Planning Board under the existing MCUP. As such, the impact of projected traffic resulting from the operation of the venue should remain consistent with the operation already approved by the Planning Board.

- 3. Structures and uses associated with the request are consistent with this Ordinance.**

Partially Consistent – The venue is within 300 feet of a school, and as such, is seeking variances from the City's Land Development Regulations at the Board of Adjustments to serve alcohol.

4. Public health, safety, morals and general welfare will not be adversely affected.

Partially Consistent – The proposed project may adversely affect the general welfare of nearby residents if excessive crowd noise or trash in the streets becomes an issue. However, with proper safeguards and conditions, the project may be able to meet this objective. The facility would have to comply with all applicable laws and regulations for licensure.

5. Adequate off-street parking facilities will be provided.

Partially Consistent – The site lies within the Flamingo Park Local Historic District, and as such, does not have parking requirements. The applicant is proposing to offer valet parking service to its patrons and will contract with a valet service to offer the service.

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

Consistent – This venue is completely enclosed, and does not contain outdoor components. In addition, a double-door/vestibule area at the entrance at the first floor will ensure sound from the second floor of the venue is located down a flight of stairs away from the actual patron entertainment area. Also, in order to ensure that sound does not escape of from the rear of the venue, the rear exits will only be utilized as emergency exits. All sound control systems will be accessible only to management to reduce the possibility of abuse.

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

Consistent – This venue is located along Washington Avenue in the CD-2 (Commercial, Medium Intensity) zoning district. There are multiple NIE's on both Washington and Collins Avenues within blocks of this property, including two entertainment establishments across Espanola Way to the north: Senor Frogs and The Cameo. There is a list of NIE's and entertainment venues approved by the Board in this area provided. Staff is recommending conditions to mitigate any adverse impacts from traffic, noise, and other issues on the surrounding neighbors.

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.**

Partially Consistent – The applicant is seeking to modify the existing Modified CUP in order to bifurcate the nightclub/lounge operation with dancing and entertainment on the second and create a separate restaurant on the first floor of the building.

While the operations of the second floor tenant have been fully vetted under the existing MCUP, the applicant has not identified a tenant for the first floor space. The first floor space may be required to submit a separate CUP application depending on its operational plan.

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

Partially Consistent – The location lies within the Flamingo Park Local Historic District, and as such, does not have parking requirements. In order to serve the parking needs of its patrons, the applicant will contract with the same valet operator that currently provides their valet service. In addition, as a location frequented by visitors of Miami Beach, it is anticipated many patrons will walk to the venue or use a hired car service.

- (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 will be controlled.**

Partially Consistent – The applicant will utilize stanchions and ropes at the front entrance in order to queue patrons along the side of the building, away from the main portion of the sidewalk and off of the street. Security personnel will be posted at the front entrance to monitor the circulation of patrons and the occupancy levels in the queuing area and within the venue.

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

Consistent – The applicant will employ the same level of security personnel as outlined in the previous application. The security personnel will strictly enforce any patron age restrictions associated with the sale of alcoholic beverages.

- (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.**

Partially Consistent – The applicant is seeking to maintain substantially the same occupant content approved by the Planning Board under the existing MCUP. As such, the impact of projected traffic resulting from the operation of the venue should remain consistent with the operation already approved by the Planning Board.

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

Partially Consistent – The applicant has the same waste management provider to ensure there is sufficient service to accommodate the sanitation needs of the venue. There is an air conditioned garbage room within the premises.

(7) **A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.**

Consistent – This venue is completely enclosed, and does not contain outdoor components. In addition, a double-door vestibule area at the entrance at the first floor will ensure sound from the second floor of the venue is located down a flight of stairs away from the actual patron entertainment area. Also, in order to ensure that sound does not escape of from the rear of the venue, the rear exits will only be utilized as emergency exits. All sound control systems will be accessible only to management to reduce the possibility of abuse.

(8) **Proximity of proposed establishment to residential uses.**

Partially Consistent – The nearest residential unit is two buildings to the northwest across Washington Avenue at 1452 Washington Avenue. However, given the controlled operation of this all interior venue as planned, there should not be negative impacts on said apartments.

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

Consistent – This venue is located along Washington Avenue in the CD-2 (Commercial, Medium Intensity) zoning district. There are a host of other commercial and nightlife/entertainment uses within the general vicinity. The table below shows the Conditional Use approvals in the Washington Avenue corridor. There is one other club, The Cameo Theater, located at 1443 Washington Avenue, which is an existing non-conforming use as to the provisions of the Code regarding Conditional Use approval.

Address	Name	Category	File No.
1455 Washington Ave	Haddon Hall Hotel	NIE w/o entertainment	PB 1724
1532 Washington Ave	Dream Nightclub	NIE w/entertainment	PB 1876
1450 Collins Avenue	Senor Frogs	NIE w/entertainment	PB 2192
1501 Collins Avenue	Quality Meats	NIE w/o entertainment	PB 2219

STAFF ANALYSIS

This location has been the site of various nightclubs throughout the years since the early 1990's, including The Loft, Liquid, Mantra, Apple Restaurant and Lounge, Trade/Score, Club Axis to name a few. Throughout its long history, the venue has operated both as one single establishment on both floors and as separate venues with separate ingress and egress.

The applicant is seeking to modify the existing MCUP in order to separate the venues in a manner consistent with the program approved by the Planning Board under previous CUP's – a nightclub/lounge operation with dancing and entertainment on the second floor with an entrance on the first floor and as fully licensed restaurant on the first floor of the premises. Although the applicant intends to retain the tenant on the second floor, they have not identified a tenant to operate the first floor of the venue.

While the operations of the second floor tenant are outlined in the existing MCUP, the future tenant of the first floor and mezzanine space may be required to submit a separate CUP application depending on their operational plan.

With regard to noise, there is a vestibule at the front door of the first floor entrance to the second floor which is a separate entrance on Washington Avenue which contains an elevator and access stairway. Because the entertainment is located on the second floor, staff believes that noise emanating from the establishment would be minimal, if any.

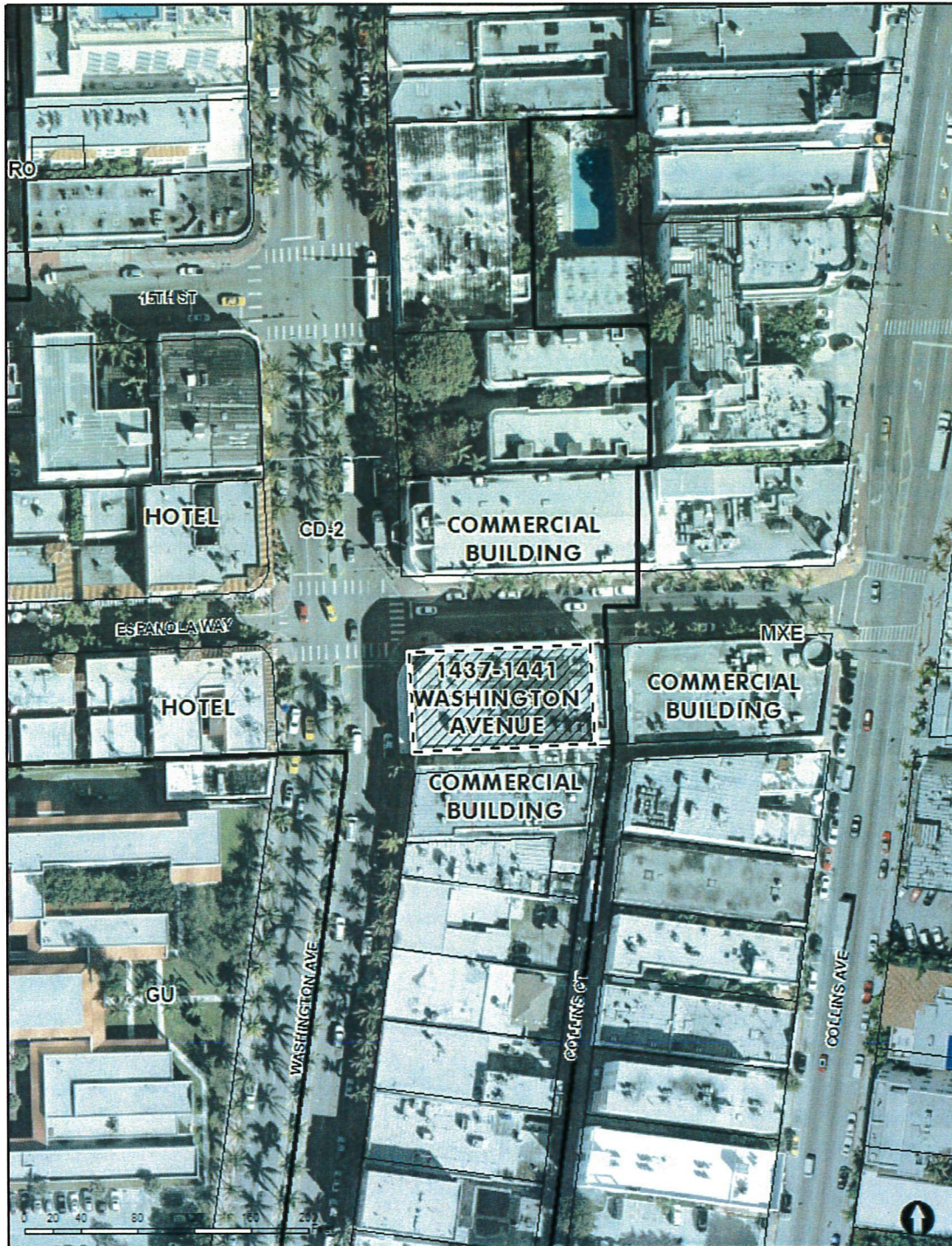
The valet operation, waste removal, deliveries, and queuing plan remain the same.

At the time of this writing, staff research does not show any open violations or complaints.

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



TRM/MAB/TUI

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

PROPERTY: 1437–1441 Washington Avenue

FILE NO: PB 17-0149 fka1724

IN RE: The applicant, Gideon/Espanola Partners, LLC, requested modifications to a previously issued Conditional Use Permit for a Neighborhood Impact Establishment. Specifically, the applicant proposes to subdivide the 1st and 2nd floors into separate establishments, in order to operate the second floor as a stand-alone entertainment establishment with an occupant content in excess of 200 persons, not operating as a restaurant, and not serving full meals, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: The West 12.5 feet of Lot 3, and Lots 4 & 5 of Block 2B, Espanola Villas Subdivision, plat book 7, page 145 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: February 26, 2013, November 19, 2013, October 24, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, Gideon/Espanola Partners, LLC., filed an application with the Planning Director for a modification to a previously approved Conditional Use Permit for a Neighborhood Impact Establishment (NIE) in order to change the name of the owner and operator from The Mogul Partners Miami, Inc. to Kemp Capital Corp., and to appear before the Board to affirm its understanding of the conditions listed in the MCUP.

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 record for this matter:

That the subject property is located CD-2, Commercial Medium Intensity Zoning District;

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 Ordinance;

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 if the following conditions are met.

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 are adopted herein, including the staff recommendation, that the modification to the previously approved Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the modified conditions listed below indicated by underlining (new language) and ~~striketrough~~ (deleted language):

1. The Planning Board shall maintain jurisdiction on this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify this Modified Conditional Use approval at the time of the progress report in a non-substantive manner, to impose additional conditions to address problems, and to determine the timing and need for future progress reports. This Modified Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Gideon/Espanola Partners, LLC, as owner, and Kemp Capital Corp., as operator for this Neighborhood Impact Establishment. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent of the ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, in advance, to affirm their understanding of the conditions listed herein.
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. ~~The applicant shall cure any and all violations that are outstanding, as stated in the cure letter sent by the Planning Director on February 8, 2013.~~
5. The applicant shall comply with the following nightclub operational conditions:
 - a. The occupant content of the second floor shall not exceed 540 persons or a lesser number as determined by the Fire Marshall.
 - b. A double door vestibule shall be ~~constructed~~ maintained at the front entrance to the first floor and another double door vestibule shall be ~~constructed~~ maintained at the top of the staircase and elevator landing on the second floor, ~~in a manner to be reviewed by staff.~~ As a point of clarification, the second floor is not the mezzanine. Both of these double door vestibules shall be maintained as long as the use continues.
 - c. The applicant shall provide staff documents verifying the service of a valet parking operator which also specifies the locations where vehicles will be stored. Valet storage of vehicles shall not be permitted in public facilities. These documents shall be submitted to staff for review and approval prior to the approval of a Building Permit, Certificate of Use, or Business Tax Receipt, whichever occurs first ~~(formerly condition 5).~~
 - d. The hours of operation shall be as requested by the applicant:

- 1) ~~Restaurant:~~ Thursday to Saturday and Monday from 5:00 p.m. to 5:00 a.m. .
 - 2.) ~~Nightclub:~~ Thursday to Saturday and Monday from 10:00 p.m. to 5:00 AM
(formerly condition 6).
- e. All "wet T-shirt," "thong" or "bikini" events shall be prohibited (formerly condition 7).
 - f. The applicant shall take all reasonable measures to ensure that the surrounding establishments are not affected by the sound levels within the facility. If reasonably necessary, the applicant shall install all necessary sound absorption devices, including ceiling and wall panels in the interior of the facility to assist in containing sound levels. All performances shall be limited to the interior of the establishment; no speakers shall be permitted on any exterior wall of the building. A vestibule/double doorway shall be ~~constructed~~ maintained at the front entrance to the first floor and second floor entrances of the venue. The plans shall be submitted to Historic Preservation staff for review and approval before installation (formerly condition 8).
 - g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions (formerly condition 10).
 - h. Before beginning operations and before the issuance of a Business Tax Receipt, the applicant shall submit to staff for review and written approval a sanitation plan that complies in all respects with the requirements of Code Section 142-1362(6), including without limitation, a copy of the fully signed contract between the applicant and the waste removal company, which specifies removal of trash and garbage seven days a week and the approximate times of waste removal. All deliveries and trash removal shall be undertaken from the alley to the east, not from Washington Avenue. The overhead rolling door leading to the trash and garbage dumpsters shall be kept completely closed at all times except when waste removal operations are actually taking place (formerly condition 12).
 - i. Window treatments of any kind, including, but not limited to, curtains, blinds, film, tint, graphics or adhesive, shall be prohibited on the inside and outside of all storefront glass facing Washington Avenue. Very sheer drapes might be appropriate subject to staff review and approval. The applicant shall provide an activated space, at least 15 feet in depth from the front windows, which is clearly visible from the sidewalk, subject to staff review and approval (formerly condition 16).
6. Any person or entity operating pursuant to this conditional use permit shall post the operating conditions identified in the permit or the full conditional use permit in a conspicuous place in or about the premises where it may be seen upon inspection by any official of the city. For failure to do so, such person or entity may be issued a notice of violation and fined as if it were operating without the conditional use permit, as if it were not issued.
 7. Business identification signs shall be limited to sign copy indicating the name of the establishment only on the storefront windows, and submitted to Historic Preservation staff for review and approval prior to obtaining a building permit, Certificate of Use, or Business Tax Receipt, whichever occurs first (formerly condition 9).

8. Any substantial change to the plans shall be reviewed by the Planning Board prior to installation (~~formerly condition 11~~).
9. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt (~~formerly condition 14~~).
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 (~~formerly condition 16~~).
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 (~~formerly condition 17~~).
11. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down. Additionally, as proffered by the Applicant, the Applicant shall maintain in a clean condition the alley behind the entire length of the building in which the Applicant is a tenant, by picking up all trash, disposing of it appropriately, and at the end of the business day, sweeping and hosing down that portion of the alley (~~formerly condition 18~~).
12. In the event that there is any queuing of people on Washington Avenue, stanchions shall be placed to control crowds. Security personnel shall ensure that patrons do not restrict or block pedestrian flow on public sidewalks. The placement of the stanchions shall be shown on a site plan that shall be submitted to staff for review and approval prior to the approval of a Building Permit, Certificate of Use, or Business Tax Receipt, whichever occurs first (~~formerly condition 19~~).
13. 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 Business Tax Receipt to operate this entertainment establishment (~~formerly condition 20~~).
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 (~~formerly condition 24~~).
15. ~~Within a reasonable time after applicant's receipt of~~ This Modified Conditional Use Permit as signed and issued by the Planning Director, the applicant shall be recorded it in the Public Records of Miami-Dade County at applicant's expense, ~~and then return the~~

~~recorded instrument to the Planning Department.~~ A building permit or, certificate of completion (CC), CU, or BTR shall not be issued until this requirement has been satisfied.

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 ~~(formerly condition-23).~~
47. 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 ~~(formerly condition-24).~~

Dated this _____ day of _____, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush
Chief of Planning and Zoning
For The Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He 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 ()