

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 22, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0171 - 1052 Ocean Drive – The Palace Bar & Restaurant - Progress Report**

RECOMMENDATION:

Discuss the item.

BACKGROUND

February, 27, 2018: The applicant, Palace Bar LLC, obtained a Conditional Use approval for a Neighborhood Impact Establishment (NIE) and an Outdoor Entertainment Establishment, with an occupant content in excess of 200 persons, pursuant to Section 142, Article V of the City Code.

December 18, 2018: A Business Tax Receipt (BTR) was issued for the establishment (BTR003457-12-2017.)

PROGRESS REPORT

The applicant is before the Board pursuant to Condition No. 1 and Condition No. 6.A.vi. of the CUP as follows:

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).
- 6.a.vi. 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. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.

As of the writing of this report, staff did not find any open violations specific to the operation of the subject establishment.

Staff has received and reviewed the sound report (see attached), and a sound field test was performed with staff present on April 19, 2018 at 6:00 pm.

Staff evaluated the impact of the audio levels on the surrounding outdoor areas, and concluded that the sound emanating from the venue complied with the CUP, and specifically as it pertains to Condition No. 6.A.ix.:

6.A.ix. The volume on the exterior outdoor terrace sound system shall not exceed a level that would interfere with normal conversation, except during times of actual live performances (which shall not include a DJ.) as authorized in condition 6.A.v. above.

It should also be noted that staff went inside the building to the roof top level and proceeded down the stairs to the level 3 hallway located above the venue, and no sound was perceived in these areas.

STAFF RECOMMENDATION

Staff recommends that the Board discuss the progress report and provided that there are no open violations related to the CUP at the time of the meeting, suspend further progress reports.

TRM/MAB/AG

April 25, 2018

City of Miami Beach Planning Department
c/o Michael Belush, Chief of Planning and Zoning
1700 Convention Center Drive, Second Floor
Miami Beach, Florida 33139

**Re: Planning Board File No. PB17-0171 – Palace Bar LLC d/b/a Palace at 1052
Ocean Drive, Miami Beach, Florida 33139**

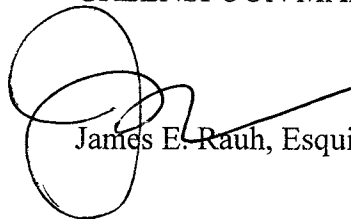
Dear Michael:

Enclosed please find a report dated April 24, 2018 from a qualified acoustical professional, Edward Duggar + Associates, P.A. (“ED+A”), confirming that the Applicant’s sound system is operating as designed and in compliance with the conditions contained in the Conditional Use Permit (“CUP”) approved on February 27, 2018. Pursuant to Condition No. 6(A)(vi) of the CUP, a satisfactory sound field test was conducted on April 19, 2018 by the Planning Department.

Should you require any additional information, please contact the undersigned.

Very truly yours,

GREENSPOON MARDER LLP



James E. Rauh, Esquire

Enclosure



EDWARD DUGGER + ASSOCIATES, P.A.
Consultants in Architectural Acoustics

PROJECT MEMORANDUM

Date: 24 April 2018

To: Tom Donall

Palace Bar LLC
1052 Ocean Drive
Miami Beach, Florida 33139

Cc: James E. Rauh, Esq.

Greenspoon Marder, LLP
1601 Washington Avenue, Suite 300
Miami Beach, Florida 33139

From: Sam Shroyer, ASA
Edward Dugger, FAIA ASA INCE NCAC

Re: **Acoustic Study – City of Miami Beach
Palace
1052 Ocean Drive
Miami Beach, Florida, 33139
ED+A 17957**

Tom,

This report has been prepared to demonstrate compliance with Conditions 6(A)(vi), 6(A)(vii), 6(A)(viii), and 6(A)(ix) of Palace's Conditional Use Permit, issued by the City of Miami Beach on February 27, 2018. Edward Dugger + Associates, P.A. (ED+A) visited the establishment on two occasions and confirmed that Palace's audio system was operating as designed. Additionally, vibration levels were measured in a hotel unit above Palace on March 21, 2018. The testing was done with the intention of adjusting the audio system to achieve compliance with the vibration criteria (VC) standards published by the International Standards Organization (ISO) for residential buildings, but the results demonstrate that these standards were not exceeded. It is ED+A's belief that meeting these criteria would satisfy Condition 6(A)(viii) of Palace's Conditional Use Permit.

Please contact ED+A with any questions, comments, or concerns regarding this report or its contents.

Measurement Results

Sam Shroyer and Irineo Jaimes of ED+A visited Palace and a Congress Hotel guest suite situated directly above the venue on the evening of March 21, 2018. Vibration level measurements were performed in the hotel space with Palace's audio system operating and the resulting data were plotted on a VC curve. ED+A's measurement equipment is detailed in Table 1 and more information relating to the VC system is provided in Table 2. When the results were plotted, it was revealed that at no point during ED+A's measurements were vibration levels in the space in excess of what has been deemed unacceptable for residential spaces by ISO. This was true for both the measured equivalent-continuous vibration levels (L_{eq}) and maximum vibration levels (L_{Max}) for each of the measurements, as demonstrated by Figures 1 and 2, respectively.

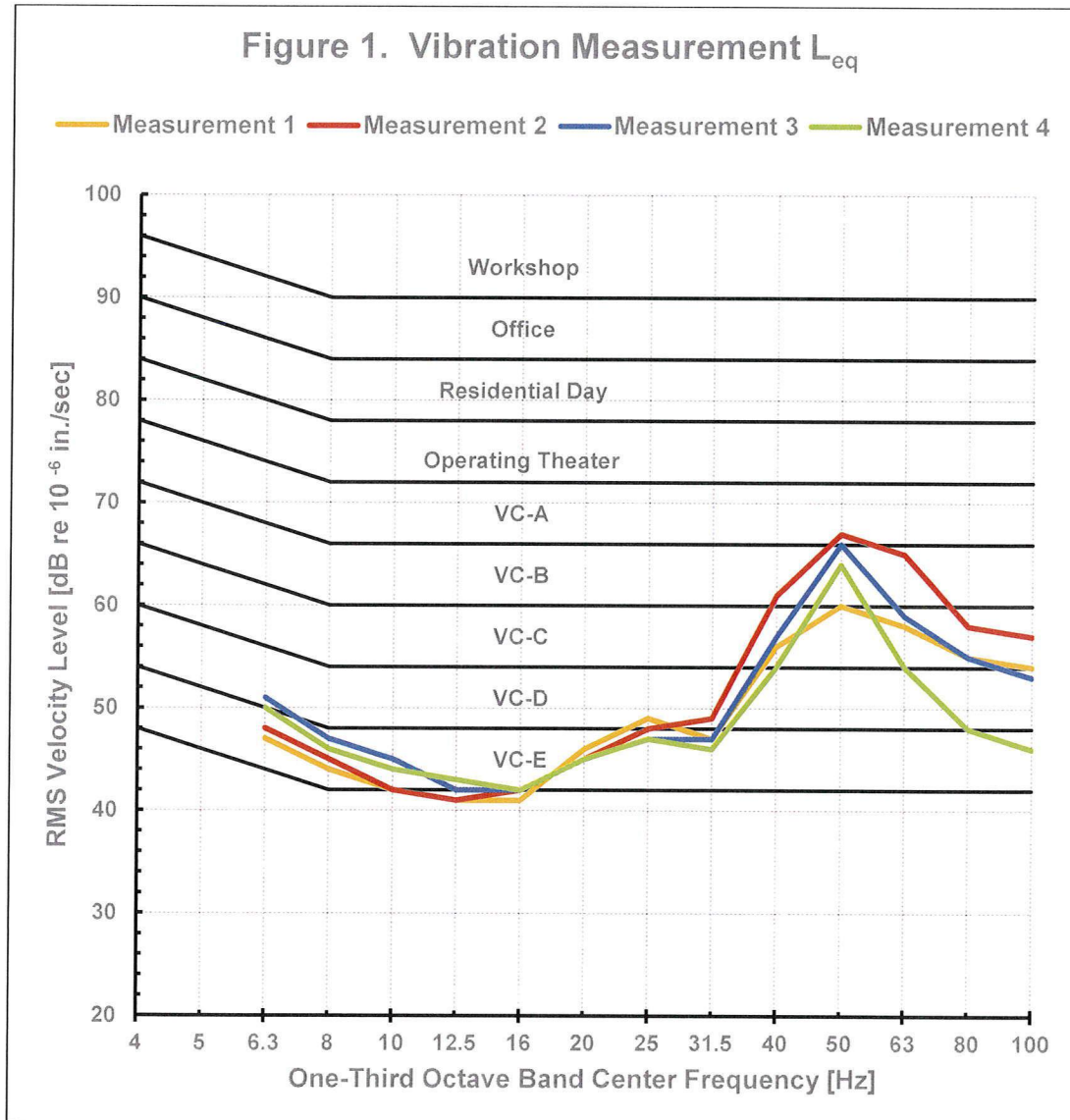
Tables

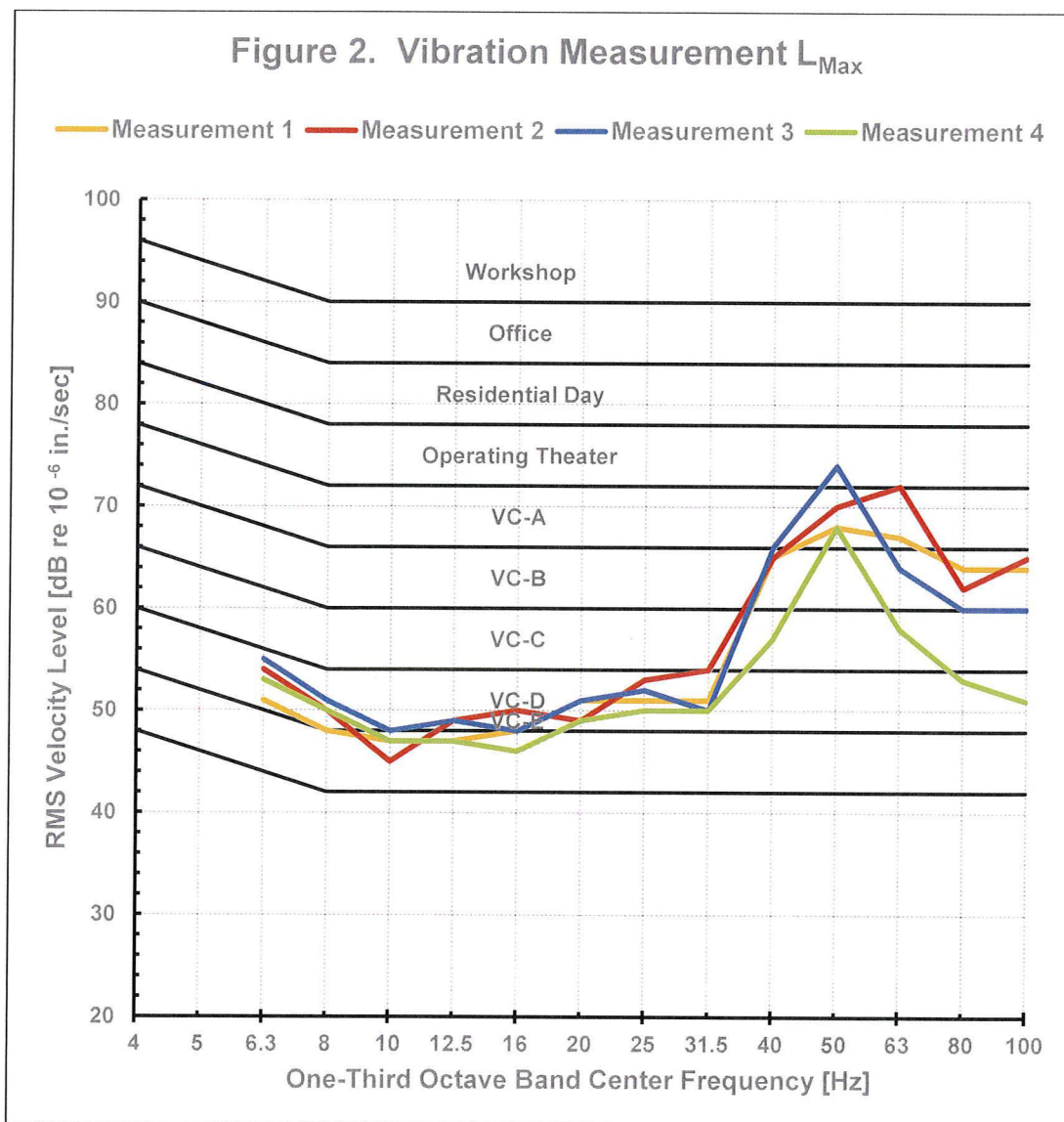
Table 1. Measurement Equipment			
Manufacturer	Model	Serial No.	Laboratory Calibration Date
Brüel and Kjær	Type 2270 Hand-Held Analyzer	2706869	3/24/2017
Brüel and Kjær	Type 4189 ½" Pre-Polarized Microphone / ZC 0032 Preamplifier	2726328 / 14336	3/27/2017
Brüel and Kjær	Type 2250 Hand-Held Analyzer	3023769	12/22/2017
Brüel and Kjær	Type 4189 ½" Pre-Polarized Microphone / ZC 0032 Preamplifier	2662768 / 14974	12/12/2017
Brüel and Kjær	Type 4513-001 Accelerometer	57576	5/30/2017
Brüel and Kjær	Type 4231 Sound Calibrator	2394124	8/2/2017
Brüel and Kjær	Type 4294 Calibration Exciter	2344898	8/3/2017

Table 2. Application and interpretation of the generic vibration criterion (VC) curves*			
Criterion Curve	Maximum Level [dB re $\mu\text{in/s}$]	Detail Size [microns]	Description of Use
Workshop (ISO)	90	N/A	Distinctly feelable vibration. Appropriate to workshops and nonsensitive areas.
Office (ISO)	86	N/A	Feelable vibration. Appropriate to offices and nonsensitive areas.
Residential Day (ISO)	78	75	Barely feelable vibration. Appropriate to sleep areas in most instances. Probably adequate for computer equipment, probe test equipment and low-power (to 20X) microscopes.
Operating Theater	72	25	Vibration not feelable. Suitable for sensitive sleep areas. Suitable in most instances for microscopes to 100X and for other equipment of low sensitivity.
VC-A	66	8	Adequate in most instances for optical microscopes to 400X, microbalances, optical balances, proximity and projection aligners, etc.
VC-B	60	3	An appropriate standard for optical microscopes to 1000X, inspection and lithography equipment (including steppers) to 3 micron line widths.
VC-C	54	1	A good standard for most lithography and inspection equipment to 1 micron detail size.
VC-D	48	0.3	Suitable in most instances for the most demanding equipment including electron microscopes (TEMs and SEMs) and E-Beam systems, operating to the limits of their capability.
VC-E	42	0.1	A difficult criterion to achieve in most instances. Assumed to be adequate for the most demanding of sensitive systems including long path, laser-based, small target systems and other systems requiring extraordinary dynamic stability.

*Table reproduced from *Generic Vibration Criteria for Vibration-Sensitive Equipment* by Colin G. Gordon, 2002.

Figures





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

PROPERTY: 1052 Ocean Drive – The Palace

FILE NO. PB 17-0171

IN RE: The applicant, Palace Bar LLC, requested conditional use approval for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment, with an occupant content in excess of 200 persons pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL

DESCRIPTION: Lot 2 and 3, Block 15, "Ocean Beach Addition No.2", according to the plat thereof, as recorded in Plat Book 2 at page 56 of the public records of Miami-Dade County, Florida.

MEETING DATE: February 27, 2018

CONDITIONAL USE PERMIT

The applicant, Palace Bar LLC, 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 MXE, Mixed-Use Entertainment 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.

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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 Palace Bar LLC, as tenant/operator, of this Neighborhood Impact Establishment consisting of a restaurant with outdoor entertainment. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
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 the entire facility:
 - A. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 101 interior seats, outdoor seat count of 72 (private property) and potential sidewalk café (subject to the review and approval of the Public Works Department), with the criteria listed below:
 - i. The CUP shall have a maximum occupant content (including within the interior and exterior portion located on private property) of approximately 220 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the venue may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m.
 - iii. The outdoor portion of the venue located on private property may remain open:

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Monday through Sunday from 8:00 a.m. to 2:00 a.m.

- iv. Indoor entertainment, to include a DJ and or live shows as specified in the application, may operate Monday through Sunday from 11:00 am to 3:00 am.

- v. The outdoor entertainment and performance operations on private property may operate:

Monday through Friday: 11:00 am to 2:00 pm.
6:00 pm to 11:30 pm.

Saturday and Sunday: 11:00 am to 11:30 pm.

National Holidays that do not fall on Saturday or Sunday and other City recognized Special Events including White Party, Winter Party, and Gay Pride: 11:00 am to 11:30 pm.

Any entertainment/crowd control/circulation plan on public property shall require the review and approval of a Special Event permit or other City authorized approval as determined by the City Manager.

- vi. 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. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.
- vii. No later than 11:30 pm nightly, the volume on the interior sound system shall be adjusted to ensure that sound levels on the exterior do not exceed a level that would interfere with normal conversation at the eastern property line with the doors open.
- viii. After 11:30 pm Monday to Friday and 12:30 am Saturday and Sunday the bass level shall be minimized so as to not vibrate in upper levels of the building.
- ix. The volume on the exterior outdoor terrace sound system shall not exceed a level that would interfere with normal conversation, except during times of actual live performances (which shall not include a DJ.) as authorized in condition 6.A.v. above.

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- x. Televisions shall not be located anywhere on the exterior areas of the property.
- B. The applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive adopted as of the February 27, 2018 meeting date.
- C. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- D. Delivery trucks shall not be allowed to idle in the loading zone.
- E. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- F. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
- G. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
- H. 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. 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. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
- 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 owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
- N. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

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- O. 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.
 - P. Any future sidewalk café shall be subject to Public Works approval and the Ocean Drive Sidewalk Café Design Guidelines, if applicable. Such approvals shall be granted prior to the installation of any sidewalk café furniture, including but not limited to chairs, tables, and umbrellas.
 - Q. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk café permit to be reviewed and approved by the Public Works department.
- 7. The applicant shall amend the Business Tax Receipt (BTR) to reflect the correct number of seats in private property and set up the existing Parking Impact fee account (PIF 422) to their BTR approval.
 - 8. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.
 - 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, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
 - 10. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days.
 - 11. 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.
 - 12. 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.
 - 13. 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

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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.

14. 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.
15. 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.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
17. 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.
18. 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.

Dated this 5th day of MARCH, 2018.

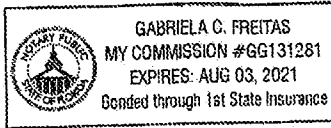
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 5th day of March, 2018, 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.

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{NOTARIAL SEAL}

Notary:
Print Name *Gabriela C. Freitas*
Notary Public, State of Florida
My Commission Expires: *8-3-21*
Commission Number: *GG131281*

Approved As To Form:
Legal Department

Ernest A. Smith , 3/5/18

Filed with the Clerk of the Planning Board on

Jessie Gully (3/5/18)

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