

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: January 22, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB0616-0034, f.k.a., File No. 1898. 1100 West Avenue – The Mondrian  
Progress Report**

#### **RECOMMENDATION**

Set a revocation/modification hearing for March 26, 2019.

#### **BACKGROUND**

- October 28, 2008* The Board approved a Conditional Use Permit for a Neighborhood Impact Establishment for 1100 West Properties, LLC consisting of a restaurant and bar/lounge located throughout the garden, lobby and pool deck areas.
- August 25, 2009* The Board approved a Modification to the Conditional Use Permit (MCUP) to extend the hours of operation of the interior portion of Sunset Lounge from 2:00 AM to 5:00 AM.
- October 29, 2013* The Board approved a modification to the MCUP, modifying certain conditions pertaining to hours and entertainment for interior and exterior portions of the project.
- Feb. 25, 2014* The Board approved additional modifications to the MCUP pertaining to hours and entertainment for interior and exterior portions of the project.
- Nov. 24, 2015* The applicant appeared before the Board for a Progress Report. The Board approved a minor modification to the MCUP, and a clarification of the condition related to the maximum occupancy on the pool deck. The Board also required a Progress Report be scheduled for January 26, 2016.
- August 23, 2016* The applicant, 1100 West Investments, LLC, is requested a modification to a previously issued MCUP. Specifically the applicant is requesting to change the ownership/operator, pursuant to Section 118, Article IV of the City Code.
- Dec. 27, 2018* The Planning Department sent a cure letter to the applicant, 1100 West Investments, LLC, in response to outstanding code violations related to the conditions of the CUP. The cure letter advised the applicant that a progress report was scheduled for the January 22, 2019 meeting.

#### **PROGRESS REPORT**

Staff research of city records found that the following warnings, complaints, and violations are showing in the city's records as of this writing:

1. **NC2018-06315 2/18/2018** Noise Complaint "loud music by the pool" *Written Warning*

*Notice*

2. **NC2018-07581** 05/29/2018 Noise Complaint "loud music coming from the rooftop" *Fine Paid*
3. **CC2018-06764** 12/31/2018 Failing to comply with conditions of special event permit *Notice of Violation*

**STAFF ANALYSIS**

The subject hotel is situated on West Avenue, which is primarily a high density residential area of the City. The building was converted into a condominium hotel in the early 2000's and is located between two high-rise residential buildings. While hotel uses and the customary accessory uses associated with hotels were allowed in the RM-3 zoning district at the time, today hotels are not permitted in the West Avenue corridor.

Due to the overall size of the venues and the outdoor areas on the site, a CUP was required. The conditions of the CUP are structured to promote the peaceful co-existence of the hotel's accessory uses and the nearby residential uses. The reason the applicant has been asked to appear before the board is because noise violations have been issued and the venue has not permitted Code Compliance officers to access to the property to inspect when noise complaints have been made.

Additionally, when the venue was issued a special event permit for New Year's Eve, they violated the specified hours for the pool bar outlined in the special event permit and guidelines as required in Section 12-5 of the City Code.

Below are the conditions of the CUP that are related to the warnings, violations and open offenses:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns
5. The applicant, ~~Morgans Hotel Group Co~~ 1100 West Investments, LLC and its affiliates, as operator of the property, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
7. (n.) Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.
22. 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.

25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.

In light of the inconsistencies with the above CUP conditions, as well as the absence of any documentation from the applicant advising of corrective actions or measures to ensure compliance with the CUP in the future, staff recommends the Board discuss the matter and consider the issue of noncompliance. It is further recommended that the Board set a modification hearing, so that the CUP may be amended, in order to require that City Code Compliance officers be allowed access to the property. Absent being allowed access to the site, there is not any way to determine compliance with the conditions of the CUP.

#### **STAFF RECOMMENDATION**

Staff recommends that the Planning Board discuss the issue of non-compliance and set a modification hearing for March 26, 2019, in order to amend the CUP conditions to require the applicant to grant access to Code Compliance officers for inspections.

TRM/MAB/TUI

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

PLANNING DEPARTMENT  
Tel: 305-673-7550 Fax: 305-673-7559

December 27, 2018

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

1100 West Investments LLC  
2200 Biscayne Boulevard  
Miami Beach, FL 33137

Re: PB0616-0034 fka Planning Board File No. 1898 – 1100 West Avenue

Dear Sir/Madam:

A Modified Conditional Use Permit to modify the owner/operator was issued to 1100 West Investment, LLC on August 23, 2016. It has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the operation of the venue. Specifically, noise violations have been issued and the venue has not permitted Code Compliance officers to access to the property to inspect.

Therefore, in light of the inconsistencies with the following conditions of approval contained in the Modified Conditional Use Permit and the pending code violations **you are requested to appear at the January 22, 2019 Planning Board hearing** for a verbal progress report:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns
5. The applicant, ~~Morgans Hotel Group Co~~ 1100 West Investments, LLC and its affiliates, as operator of the property, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
7. (n.) Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.
22. 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.

25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.

The following warnings, violations and open offenses are still showing in the City's records as of this writing:

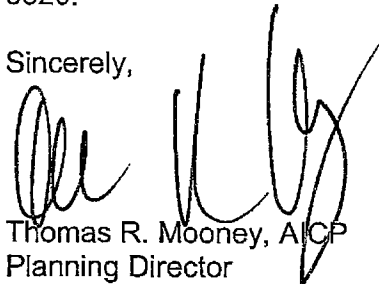
1. **NC2018-06315 2/18/2018** Noise Complaint "loud music by the pool" *Written Warning Notice*
2. **NC2018-07581 05/29/2018** Noise Complaint "loud music coming from the rooftop" *Fine Paid*
3. **SMN2018-00051 6/01/2018** Special Master case for #2 *Closed*.

Please be advised that at the time of the progress report, in accordance with the provisions of the City Code, Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings. Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings, this issue may be placed on the next available meeting of the Board.

If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Ms. Tui Munday at (305) 673-7000 ext. 6320.

Sincerely,



Thomas R. Mooney, AICP  
Planning Director

TRM/TUI

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

**PROPERTY:** 1100 West Avenue  
**FILE NO:** PB0616-0034, f.k.a., File No. 1898.  
**IN RE:** The application for a modification to a previously issued Conditional Use Permit to change the ownership/operator, pursuant to Section 118, Article IV of the City Code.

**LEGAL DESCRIPTION:** Lots 7 and 8 and north 50 feet of Lot 9, Alton Beach Realty Co., as recorded in Plat Book 6, Page 12 of the Public Records of Miami-Dade County, Florida, as described in Declaration of Condominium recorded in Official Records Book 25780, Page 0498 of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** August 23, 2016

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, 1100 West Investments, LLC, filed an application with the Planning Director for a Conditional Use Permit pursuant to Section 118-193 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the RM-3, Residential High 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 City Code;

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 is adopted herein, including the staff recommendations which were amended by the Board, that the modification to the

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Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed: Strikethrough denotes deleted words; underlining denotes new language:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. 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 Modified Conditional Use Permit is issued to ~~4400 West Properties, LLC as owner of the property and to Morgans Hotel Group Co.~~ 1100 West Investments, LLC as owner of the property and its affiliates as operator of property. Subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein. Any change to the ownership interests in ~~4400 West Properties, LLC~~ 1100 West Investments, LLC exceeding twenty-four (24%) percent of the ownership interests in ~~4400 West Properties, LLC, 1100 West Investments, LLC,~~ shall be deemed to create a "subsequent owner" of the property requiring said owner to appear before the Board 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's owners, operators, and all successors in interest and assigns.
4. The applicant, ~~Morgans Hotel Group Co~~ 1100 West Investments, LLC and its affiliates, as operator of the property, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
5. With respect to the operation of the property, ~~Morgans Hotel Group Co~~ 1100 West Investments, LLC and its affiliates, are in addition to the applicant, responsible for compliance with the conditions.
6. The maximum number of people that shall be permitted at any one time in each of the interior and exterior areas of each of the lounge, pool bar, and restaurant shall be as set forth on Page A-1.0, dated April 19, 2007 and signed September 25, 2008 of the site plans submitted as part of the Application.
7. The applicant, ~~4400 West Properties, LLC~~ 1100 West Investments, LLC shall comply with all of the following operational conditions:
  - a. The hours of operations shall be as proposed by the applicant:
    - (i) Restaurant 7:00 a.m. until midnight, except on weekends and holidays they shall be 2:00 a.m. indoors and 12:00 a.m. outdoors.
    - (ii) Sunset Lounge: 11:00 a.m. until 5:00 a.m. seven days per week in the air-conditioned interior area: 11 a.m. until 2:00 a.m. seven days per week on the pool deck portion: provided that security personnel are posted at each of the access points to the outdoor terrace and pool deck at 2:00

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- a.m. with the responsibility of preventing access to those areas after 2:00 a.m.
- (iii) Pool Bar counter: 9:00 a.m. until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. Friday and Saturday, as well as the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4<sup>th</sup> and Easter, provided the applicant obtains a variance from the Board of Adjustment. Otherwise, the bar counter shall close from 8:00 PM until 9:00 AM seven days a week.
- (iv) All exterior clean-up activities relating to the restaurant, sunset lounge and pool bar counter operations, including the depositing of trash and recycling, shall cease one (1) hour following the close of daily operations at 2:00 a.m. seven days a week and all exterior set-up activities for said venues shall not commence before 6:30 a.m. in the covered areas and 8:00 a.m. in the uncovered areas of the pool deck
- b. 1100 West Avenue shall install landscaping in the area near the north and south property lines in order to create a transition between the Property and the neighbors to the north and south, and in order to attempt to create a sound buffer and reasonable artificial light buffer. The type, size and quantity of the landscaping will be subject to City staff review and approval.
- c. 1100 West Avenue shall install and maintain sound buffering panels along its north and south property lines in order to create additional sound buffering, subject to City review and approval.
- d. The outdoor bar that is located close to the Mirador North property line, shall be moved to the area near the south boundary of the Property, the exact location of which will be at 1100 West's sole discretion but no closer than south of the east/west median line as defined as Line A on Exhibit B (copy attached).
- e. After 8:00 P.M, and before 8:00 AM, all tables and chairs that are used for meal service in the rear of the Property shall be confined to the covered areas. Lounge chairs or day beds with accessory tables are allowed around entire pool area for lounge or bar service. No service shall occur on the Pool Deck after 11:00 PM except for table service in the cabanas. North and south cabanas service will be limited to groups of 6 or less individuals and food service will end at 12:00 Midnight and drink service at 2:00 AM.
- f. 1100 West Avenue will make the south service entrance the property's primary service access. Additionally, 1100 West Avenue will build and use a trash room only on the South side of its property; all access to the trash room for pickup and delivery shall be along the south side of 1100 West. In the event of an emergency or other extraordinary event or circumstance beyond the control of the applicant, such as war, strike, riot, crime or act of nature, the limitation shall not apply.
- g. Unless required by law, and no reasonable alternative could be found, no

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additional mechanical equipment will be located near the north or south areas of the Property.

- h. During all operating hours of the marina, the marina will be staffed by an attendant and will be under 24 hour surveillance. No loudspeakers shall be affixed to marina facilities except as may be required for fire or building code purposes, or necessary for operation of a marina. Any such amplification devices shall be utilized solely for marina operations, not for entertainment or non-operational purposes.
- i. No speakers shall be affixed to and located on the exterior of the premises, except as may be required for fire or building code purposes, and except for the ground installed speakers such as the Bose FreeSpace 360P Series II Loudspeaker (or substantial equivalent) as described in The Audio Bug, Inc.'s report dated September 19, 2008, intended to limit noise disbursement with the intent to distribute sound within a limited radius of each speaker, with sound projected downward or laterally not vertically. Additional speakers may be added to more evenly distribute sound, provided that:
  - (i) Such speakers are consistent with the type of speakers described in the aforementioned report,
  - (ii) The location of such speakers are consistent with The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013, and
  - (iii) The volume of the music shall not exceed background levels. For purposes of this provision, "background levels" shall mean levels that do not interfere with normal conversation.

With the exception of the covered areas in the exterior of the Property (including the cabanas), no audio amplified equipment shall be operated on the Pool Deck later than 10:00 p.m. Sundays through Thursdays and 11:00 p.m. Fridays and Saturdays. Audio amplified equipment may also be played until 11:00 p.m. on the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4<sup>th</sup> and Easter. With respect to said covered areas, no audio amplified equipment shall be operated beyond 2:00 a.m. No speakers shall be located on the property boundaries and all speakers shall be placed in such a way that they direct sound inward away from the neighboring properties.

- j. In the exterior common areas, the use of percussion instruments shall not be permitted on the premises, outdoors on the premises, or on open air portions of the premises, or within any rooms or facilities operating on the premises with doors or windows that open directly onto the exterior except as explicitly permitted under a Special Event permit.
- k. Portable audio or amplified equipment, (inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or devices for the producing or reproducing of sound) shall not be permitted on the pool deck or rooftop. But television sets will be allowed if their sound systems use the sound system described in paragraph 7(i).

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promoters, performers or any other individuals shall be strictly prohibited.

11. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of the lounge.
12. Prior to the issuance of a Certificate of Occupancy or Certificate of Completion, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined. 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.
13. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
14. The westbound approach of the 11th Street and West Avenue intersection shall be re-striped by adding a thru-arrow to the existing painted left-turn arrow in order to show the allowed through-movement into the project.
15. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum height of two feet in order to provide adequate sight distance at the north (exit) driveway. Any revision to the landscaping plan shall be submitted to staff for review and approval.
16. A "DO NOT ENTER" sign facing the street, shall be installed at the north driveway. In addition, removable bollards shall be installed so that a right-turn only movement is permitted. Bollards may be removed during special events to allow the flow of traffic with security personnel or off-duty officers directing traffic.
17. The applicant shall coordinate with the Public Works Department any proposed street improvements, including but not limited to the re-striping of the 11th Street and West Avenue intersection.
18. Food and beverage service to boat patrons shall be permitted, except that no food and beverage sales shall be provided to vessels docked at the south marina. No other services shall be provided to vessels docked on the property. The applicant shall satisfy the required parking for a commercial marina by either providing the required spaces, or paying a fee in lieu of providing the required parking.
19. Access to the open rooftop area on the top floor, located between two groups of units, facing east, shall be limited to unit owners, their lessees, their respective social invitees and their guests, and hotel guests. In the open rooftop area, none of the following shall be permitted at any time: (a) any musical instrument or any sound-producing device, instrument, system, or component of any kind, or (b) any social or commercial event or function of any kind, or (c) flashing or spinning lights.
20. The maximum number of persons on the Pool Deck shall not exceed 299 persons, except during special events. For purposes hereof, the term "Pool Deck" shall mean as designated on Exhibit "A," attached hereto and incorporated herein, as the "Pool Deck." Without limitation, the Pool Deck shall exclude any covered areas in the exterior of the

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Property. Any expansion of the MCUP approved site and/or floor plan shall require the review and approval of the Planning Board.

21. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant load should there be complaints about loud, excessive, unnecessary, or unusual late night noise.
22. 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.
23. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant, and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
24. 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.
25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.
26. 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 30<sup>th</sup> day of September, 2016.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

Michael Belush, Planning and Zoning Manager  
For Chairman

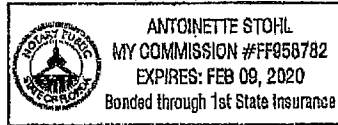
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STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 30<sup>TH</sup> day of SEPTEMBER, 2016, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Antoinette Stohl  
Notary:  
Print Name ANTOINETTE STOHL  
Notary Public, State of Florida  
My Commission Expires:  
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:  
Legal Department [Signature] 9/30/16

Approved As To Form: Legal Department [Signature] 9/30/16

Filed with the Clerk of the Planning Board on 09/30/16 [Signature]

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