

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: November 24, 2015

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **File No. 1840 –2301-2399 Collins Ave and 102 24<sup>th</sup> Street–The  
1Hotel–Progress Report**

#### **BACKGROUND**

*September 25, 2007* Sandy Lane Residential LLC, and related entities obtained approval for a Conditional Use Permit to operate two restaurants on site, a ground level VIP lounge, a ballroom and a rooftop pool and bar, which in the aggregate constituted a Neighborhood Impact Establishment.

*September 23, 2008* Several conditions of the Conditional Use Permit were modified by the Board to clarify terms and impose further restrictions intended to reduce negative impact on the residential neighbors.

*June 22, 2010* The applicants, Sandy Lane Residential, LLC, Sandy Lane Retail LLC, and Sandy Lane Beach Front, LLC were approved for a modification to a Conditional Use Permit (MCUP) to introduce the new operator and for the operator to affirm its understanding of the conditions of the Conditional Use Permit; and to modify the condition that refers to decibels in order to be consistent with the City's noise ordinance.

*December 14, 2010* Modifications were made to the final order due to a modification hearing resulting from a Progress Report. The modifications helped clarify terms and imposed further safeguards and restrictions intended to reduce negative impact on the residential neighbors.

*April 24, 2012* The applicant, 2377 Collins Resort, L.P., was approved for a modification to a MCUP to introduce new property owners and operators of the property as required by Condition 3 of the Modified Conditional Use Permit.

*October 29, 2013* The applicant, 2377 Collins Resort, L.P., was approved for a Conditional Use Permit (File No. 2138), for a mechanical parking system within the existing parking garage which expired and the applicant will be reapplying to the Board at the December 15, 2015 meeting.

*June 24, 2014* The applicant, 2377 Collins Resort, LP, was approved for a Modification to a MCUP, in order to relocate a portion of the hotel kitchen serving the rooftop level from the ground floor to just below the rooftop level.

Roney Plaza condominium (2301 Collins Ave) and the 1Hotel (2377 Collins Ave) and Residences (102 24<sup>th</sup> Street).

Additionally, in the interest of clarity, during the last decade, the hotel component has been known as “The Paradiso”, “The Gansevoort”, and “The Perry” (not necessarily in that order). And the restaurants, lounge and rooftop operations have been known as “STK”, “Phillipe Chow”, “The Gansevoort Lounge”, “Louis”, “Beachcraft”, and “Plunge”.

### **PROGRESS REPORT**

Since the October 15, 2015 Cure Letter, staff research of City records found that the following warnings and violations are showing in the City’s records as of this writing (the current status is in parenthesis):

1. **CE15006804** 03/26/2015 2377 Collins Avenue (Bill Paid) “LOUD GENERATOR  
Arrival Time: 4:08 AM Departure Time: 5:09 AM

*Upon arrival, 749 and I (756) parked our vehicles on the 100 Blk of 24th St. Once we got out of the vehicle we could see a large refrigerator inside of the property. Once on the location we could not hear any noise coming from the refrigerator. We made contact with security and advised them of the complaint. The security advised that the refrigerator comes on every 15 minutes due to the temperature increase. We waited for another 15 minutes and the refrigerator eventually turned on. The noise was unreasonably and excessively loud. We walked north on Collins and could still hear the unreasonably loud noise coming from the refrigerator truck. I advised the security manager that a first offense Violation would be issued. Complainant was anonymous 1st offense - \$250.00 Fine B.Nunez- 756/Rosa – 749.”*

Note: On November 5, 2015 Special Master dismissed the case.

2. **CE15007779** 04/13/2015 STK MIAMI LLC at 2305 Collins Avenue (Open) “Failing to obtain a BTR/CU.”
3. **CE15008856** 5/12/2015 2377 COLLINS RESORT LP, DBA 1 HOTEL SOUTH BEACH at 2341 Collins Avenue (Open) “Failing to obtain a BTR/CU.”
4. **CE15013854** 10/3/2015 2377 COLLINS RESORT, LP. D/B/A 1 HOTEL SOUTH BEACH at 2377 Collins Avenue (Violation) “LOUD MUSIC COMING FROM ROOF TOP POOL AT THE 1 HOTEL 741 Noise complaint Arrival 7:40 PM

*Upon arrival to the 2400 block of Collins Ave Near the beach walk parking I immediately heard unreasonably loud and excessive music within the confines of my vehicle. As I stepped out of my vehicle I was met by unreasonably loud and excessive encompassing the area. A survey of the area revealed the unreasonably loud music reverberating from the adjacent building north of the property in question. I traced the source the loud bass 2377 Collins Ave. where I could hear the music emanating from the roof top pool area. Shortly thereafter I was met by Officer Munera where he heard the same unreasonably loud music. I continued my investigation and where I was later advised of a pool party taking place at the roof top confirming the origin of the unreasonably loud music. I then made my way into the lobby where contact was made with management where I advised them of the reason of I was there and the nature of the complaint. We then walked to the area where I first conducted my inspection. Upon arrival the same unreasonably loud*

*bass was heard. I then educated the manager of the city's noise ordinance and of future complaints. The complaint was anonymous and no further information was available therefore it was later determined valid and second offense was issued. A.Tejada Departure 8:30 PM"*

### **STAFF ANALYSIS**

Since the last modification on June 24, 2014. , it has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the lack of a new Business Tax Receipt (BTR) and Building Certificate of Use (BCU) for the operation of various venues and noise violations for the rooftop operation. Also, as evidenced by the noise violation and photographs, there appears to have been entertainment on the rooftop venue, which is expressly prohibited in the MCUP. Additionally, the property has failed to pay the required fee in lieu of parking for areas covered under the MCUP.

Below are the conditions of the final order that are related the warnings, violations and open offenses as well as other inconsistencies with conditions of approval contained in the Modified Conditional Use Permit:

6. The applicant shall continue to pay a fee in lieu of providing required parking as determined by staff in accordance with applicable law and any newly provided spaces.
9. Entertainment, as defined in the City Code shall be prohibited in the Rooftop Operation. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
20. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about loud, excessive, unnecessary, or unusual noise.
21. A violation of Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, 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. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
30. 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.

Staff would suggest that the Board discuss the violations issued, as well as the issue of entertainment on the roof-top. Staff would further suggest that the Board continue this Progress Report to either the December or January meeting, in order to afford the applicant time to address the issues herein.

The applicant has made a separate application for a modification scheduled for December 15, 2015 to change the name of the owner/operator from 2377 Collins Resort, L.P., a Delaware Limited Partnership., to SB Hotel owner, L.P, a Delaware Limited Partnership.

**STAFF RECOMMENDATION**

In view of the inconsistencies with the above conditions, staff recommends that the Board consider the issue of noncompliance, discuss the item, and continue the Progress Report to a date certain of December 15, 2015.

TRM/MAB/TUI

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# MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

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

October 15, 2015

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

2377 Collins Resort LP,  
C/O Michael Tillman  
2377 Collins Avenue  
Miami Beach, FL 33139

Re: Planning Board File No. 1840 – 2301 Collins Avenue

Dear Sir/Madam:

A Modified Conditional Use Permit (MCUP) to modify certain conditions of a neighborhood impact establishment was issued to 2377 Collins Resort LP, on June 24, 2014. It has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the lack of a new Business Tax Receipt (BTR) and Building Certificate of Use (BCU) for the operation of the venue and noise from the rooftop. Also, as evidenced by the noise violation and photographs, there appears to have been entertainment on the rooftop venue, which is expressly prohibited in the MCUP. Additionally, the property has failed to pay the required fee in lieu of parking for areas covered under the MCUP.

In light of the aforementioned pending code violations and the inconsistencies with the following conditions of approval contained in the Modified Conditional Use Permit, **you are requested to appear at the November 24, 2015 Planning Board hearing** for a verbal progress report:

6. The applicant shall continue to pay a fee in lieu of providing required parking as determined by staff in accordance with applicable law and any newly provided spaces.
9. Entertainment, as defined in the City Code shall be prohibited in the Rooftop Operation. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
20. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about loud, excessive, unnecessary, or unusual noise.

21. A violation of Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, 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. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
30. 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.

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

1. **CE15006804 03/26/2015 2377 Collins Avenue Bill Paid "LOUD GENERATOR**  
Arrival Time: 4:08 AM-Departure Time: 5:09 AM

*Upon arrival, 749 and I (756) parked our vehicles on the 100 Blk of 24th St. Once we got out of the vehicle we could see a large refrigerator inside of the property. Once on the location we could not hear any noise coming from the refrigerator. We made contact with security and advised them of the complaint. The security advised that the refrigerator comes on every 15 minutes due to the temperature increase. We waited for another 15 minutes and the refrigerator eventually turned on. The noise was unreasonably and excessively loud. We walked north on Collins and could still hear the unreasonably loud noise coming from the refrigerator truck. I advised the security manager that a first offense Violation would be issued. Complainant was anonymous 1st offense - \$250.00 Fine B.Nunez- 756/ Rosa - 749."*

2. **CE15008856 5/12/2015 2341 Collins Avenue "Failing to obtain a BTR/CU."**
3. **CE15013854 10/3/2015 2377 Collins Avenue Violation "LOUD MUSIC COMING FROM ROOF TOP POOL AT THE 1 HOTEL 741 Noise complaint Arrival 7:40 PM**

*Upon arrival to the 2400 block of Collins Ave Near the beach walk parking I immediately heard unreasonably loud and excessive music within the confines of my vehicle. As I stepped out of my vehicle I was met by unreasonably loud and excessive encompassing the area. A survey of the area revealed the unreasonably*

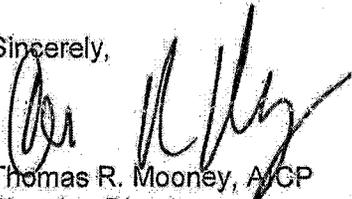
*loud music reverberating from the adjacent building north of the property in question. I traced the source the loud bass 2377 Collins ave where I could hear the music emanating from the roof top pool area. Shortly thereafter I was met by Officer Munera where he heard the same unreasonably loud music. I continued my investigation and where I was later advised of a pool party taking place at the roof top confirming the origin of the unreasonably loud music. I then made my way into the lobby where contact was made with management where I advised them of the reason of I was there and the nature of the complaint. We then walked to the area where I first conducted my inspection Upon arrival the same unreasonably loud bass was heard. I then educated the manager of the city's noise ordinance and of future complaints. The complaint was anonymous and no further information was available therefore it was later determined valid and second offense was issued. A. Tejada Departure 8:30 PM"*

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 at the next available meeting of the Board.

If a modification/revocation hearing is set at that public hearing, 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 revoke the approval, modify the conditions thereof, or impose 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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CFN 2014R0504085  
 UR Bk 29233 Pgs 4347 - 4358 (10pgs)  
 RECORDED 07/17/2014 15:37:06  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

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

**PROPERTY:** 2301 Collins Avenue

**FILE NO.** 1840

**IN RE:** The applicant, 2377 Collins Resort, LP, is requesting a Modification to a Conditional Use Permit, pursuant to Article IV, Section 118 of the Miami Beach City Code, in order to relocate a portion of the hotel kitchen serving the rooftop level from the ground floor to just below the rooftop level.

**LEGAL DESCRIPTION:** See Attached Exhibit "A"

**MEETING DATE:** June 24, 2014

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, 2377 Collins Resort, L.P., filed an application with the Planning Director for a Modified Conditional Use Permit pursuant to Article IV, Section 118 of the Miami Beach City Code, in order to relocate a portion of the hotel kitchen serving the rooftop level from the ground floor to just below the rooftop level. 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 RM-3 - Residential Multi Family, 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.

**RECORD & RETURN TO:**  
 Carter N. McDowell, Esq.  
 Bilzin Sturnberg Baena Price & Axelrod LLP  
 1450 Brickell Ave., 23rd Floor  
 Miami, FL 33131

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact and the staff report and analysis, which are adopted herein, including the staff recommendations, that the Conditional Use Permit be Granted subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction over this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board before the time stipulated herein. 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). This condition does not limit any other remedies available to the Board or the City with respect to this Conditional Use.
2. Prior to the issuance of a building permit, 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.
3. This Conditional Use Permit is issued to 2377 Collins Resort, L.P. Any change of control shall require review by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, within 90 days of the change of ownership or operator, to affirm their understanding of the conditions listed herein.
4. This Conditional Use Permit includes the rooftop area (n/k/a "Rooftop Operation") and the commercial uses within the building - two restaurants on the southwest and northwest corners; the VIP Lounge; the ballroom; the Gym and spa; and the commercial/retail spaces are hereby approved as part of this request for Conditional Use approval.
5. The relocation of the kitchen servicing the rooftop area from the ground floor to the rooftop level shall be subject to verification that the former mechanical area was previously included in the floor area calculations for the entire building, as determined by the Planning Director, and with the requirement that the floor slab of the existing mechanical room shall remain at its current height.
6. The applicant shall continue to pay a fee in lieu of providing required parking as determined by staff in accordance with applicable law and any newly provided spaces.
7. Live music outdoors shall be prohibited. This condition is applicable to the entirety of Applicants' property, as set forth in Item 3 of their Application dated July 17, 2007. Music played outdoors shall be background music only, played at a level that does not interfere with normal conversation. Additional conditions for sound applicable to the Rooftop Operation, as set forth in this Conditional Use Permit, are incorporated into this condition as well. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
8. Only the permanently installed, hotel management-controlled sound system shall be permitted in the Rooftop Operation, which shall be under the strict and complete control of management subject to all other terms and conditions of this Conditional Use Permit. No other sound system shall be permitted. Non-compliance with this condition shall be deemed a violation of this

- Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
9. Entertainment, as defined in the City Code shall be prohibited in the Rooftop Operation. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
  10. Any stage structure as well as smoke machines shall be prohibited in the Rooftop Operation, except that a temporary stage may be approved through the normal City of Miami Beach Special Events permitting process, except that the restriction on temporary stage structure is not applicable to the existing management-owned bridge used to bridge the pool. However, at no time during any Special Event shall the provisions of Conditions number 6, 13, 14, 16, 19 and 20 herein be contravened.
  11. No temporary lighting equipment on the rooftop shall be permitted other than that associated with a City approved Film and Print Permit. However no temporary lighting equipment shall be set up during the hours of midnight and 7:00 a.m.
  12. Lighting shall not shine on or into any neighboring residential units and all lights shall be appropriately shielded to minimize spillover onto neighboring residential areas. There shall be no flashing or spinning lights.
  13. Fireworks shall be permitted only on the ground level east of the building.
  14. Special "teen night," "all-ages" events, "wet T-shirt," "thong" or "bikini" contests or games shall be prohibited in all the venues proposed in this application. This shall include, but not be limited to events such as Jell-O wrestling, best-tan contests, and similar type of activities.
  15. Enforcement of age restriction of 21 years and over, as provided in Section 6-5 of the City Code shall be the responsibility of the applicant. A violation of this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
  16. Street flyers and handouts shall be prohibited, including handbills from third-party promotions.
  17. The Rooftop Operation shall be subject to the conditions proffered by the applicant, which are hereby enumerated:
    - a. The maximum number of guests that may be permitted shall not exceed 425 persons.
    - b. Closing time shall be 3:00 a.m. Thursday, Friday and Saturday nights, as well as for citywide special events and on national holidays, and 12:00 midnight all other nights.
    - c. The following sound conditions shall govern the Rooftop Operation:
      - (i) Compliance in all respects with the following noise studies: Cerami & Associates, Inc., dated June 9, 2006, and The Audio Bug, Inc., all as submitted by Applicant under Tab 16 of its "Hearing Notebook" filed with the Planning Board at the Board's July 29, 2008 meeting, as amended by The Audio Bug, Inc. report dated September 17, 2008; and under second amendment by The Audio Bug, Inc.

November 16, 2010; and the following ten additional sound conditions-(ii - xi) shall govern to the extent that they are not inconsistent with said studies and report:

- (ii) The Audio Bug, Inc. or other sound engineer acceptable to City Staff, commencing on January 15, 2011 and quarterly thereafter shall provide to the Planning Director, Riviera Condominium Association and Roney Condominium Association a copy of a report that confirms that the sound system is in compliance with all the noise studies in 16 c. (l) in this Conditional Use Permit. The report shall also confirm that, based upon a recent inspection, the sound system has not been altered in any manner that would permit the sound system to operate at sound levels that violate the City's Noise Ordinance.
- (iii) The applicant shall notify the Riviera Condominium Association and Roney Condominium Association when The Audio Bug, Inc., or other sound engineer acceptable to City staff, will be performing his inspections. The Condominium associations, at their discretion have the right to send board members and/ or their own sound engineers to be present and participate while Audio Bug, Inc. (or another qualified engineer acceptable to City staff) conducts inspections of the sound system.
- (iv) Deployment of many small, closely spaced speakers, each of which is unable to operate above the maximum sound levels specified above in 17 c (i); No speaker shall exceed 8 inches in diameter.
- (v) A distributed sound system which distributes sound uniformly within the Rooftop Operation and which operates in a manner that does not interfere with normal conversation;
- (vi) A sound system which is locked and which will not permit sound above the maximum levels specified above;
- (vii) A sound system for which only the hotel general manager will have full responsibility and to which disc jockeys and other individuals, whether employed by the hotel or not, will not have access;
- (viii) A sound system which has a centralized computer control and digital processor which will allow only limited access via password security among other security options;
- (ix) Speakers, each of which is equipped with small woofers incapable of producing appreciable levels of low-frequency energy;
- (x) Speakers, each of which will be aimed in a manner which will minimize sound propagation to other properties; and
- (xi) A prohibition upon the introduction or use of any other sound-generating equipment of any kind, whether from an outside source or from within the Applicant's property.

18. Regular valet protocol, other than for unit owners of the Paradiso Condominium shall be as follows:

- a. Cars returned via the garage exit on 23<sup>rd</sup> Street and make only right turns. However, at times of excessive demand, the valet manager may use his reasonable discretion in using the 24<sup>th</sup> Street out ramp for all customers who parked at the valet station on 24<sup>th</sup> Street in order to maintain appropriate car return times. This valet station, Valet Station #4, shall be located at the westernmost corner of 24<sup>th</sup> Street and the porte-cochere and no awning shall be permitted on this station.
- b. All of the valet spots on Valet Station #4 will be for transient valet use only; no parking shall be permitted on this valet station ramp.
- c. There shall not be any drop off/pick up at valet stations 3 and 4, for customers of the commercial uses past the hours of 11:00 p.m. on Sunday through Thursday and 12:00 a.m. on Friday and Saturday.
- d. Unit owners of Paradiso Condominium shall have full access at all times to the 24<sup>th</sup> Street porte-cochere for drop-off/pick up.
- e. Valet Station No. 2 shall have signs posted indicating that this is the location for drop-off/pick-up area for the Rooftop bar and restaurants.
- f. Senior hotel manager and food and beverage manager shall meet on a monthly basis with the Boards of 2401 Collins Avenue (Riviera Condominium) and the Roney Palace Condominium to maintain an open dialogue to air concerns, answer questions and respond to issues that may come up.

19. Loading bays located on 23<sup>rd</sup> and 24<sup>th</sup> Streets shall be used only in accordance with the following conditions:

- a. 23<sup>rd</sup> Street – The applicant shall continue to use this loading bay for the disposal of garbage. The existing 34 yard compactor shall remain in use at this location. The applicant shall annually submit to the Planning Director documentation that Applicant has informed its tenants where to dispose of the garbage. This shall insure that no more than approximately sixty percent (60%) of the building's total garbage disposal shall be through 23<sup>rd</sup> Street. Garbage shall be picked up no more than two (4) times per week on weekdays. Best efforts shall be used so the compactor is only picked up between 10 a.m. and 5 p.m., and shall not be picked up on weekends or federal holidays. If, in the future, the applicant can clearly demonstrate the need to increase garbage pickup to five (5) times per week, that request can be brought to the Planning Director upon notice to the Riviera and Roney for consideration and approval.
- b. 24<sup>th</sup> Street – The applicant shall install the awning for the loading bay at 24<sup>th</sup> Street, as depicted on the design dated November 22, 2010, entitled "24<sup>th</sup> Street Loading Bay Plan" within 90 days of this Modified Conditional Use Permit being rendered. The applicant shall maintain a retractable gate, approved by staff, that fully encloses the loading bay fronting 24<sup>th</sup> Street, which shall remain closed at all times when the loading bay is not in use, i.e.

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garbage pickup or deliveries. The Applicant within 30 days of the order being rendered shall apply to the Board of Adjustment for a variance to permit the height of the gates to be 8'. After the awning and gate are installed, the applicant shall install a 34 yard trash compactor within the enclosed and covered bay. The applicant shall annually submit to the Planning Director documentation that Applicant has informed its tenants where to dispose of the garbage. This shall insure that no more than approximately forty percent (40%) of the building's total garbage disposal shall be through 24<sup>th</sup> Street. Garbage shall be picked up no more than two (2) times per week on weekdays. Best efforts shall be used so the compactor is only picked up between 10 a.m. and 5 p.m. and shall not be picked up on weekends or federal holidays. If, in the future, the applicant can clearly demonstrate the need to increase garbage pickup to three (3) times per week, that request can be brought to the Planning Director upon notice to the Riviera and Roney for consideration and approval.

- c. If requested by the City, including the Planning Board, the Applicant shall provide data illustrating the utilization of the loading bays for garbage as the building becomes fully operational. Repeated violation of the garbage pickup times and gate closure rules as provided above shall result in reconsideration of this issue by the Board. The Applicant shall put all tenants and other garbage producing entities on notice of these conditions, with a copy of such notice submitted to the Planning Department.
  - d. Regarding the loading of trucks and vehicles at the loading docks on the 23<sup>rd</sup> and 24<sup>th</sup> Streets, the Applicant shall propose a plan for the distribution to the Planning Director, the Roney and the Riviera for their approval within 120 days of rendition of this approval. In the event an agreement is not reached between the Roney, Riviera, Planning Director and Applicant the Planning Director shall bring the issue and proposed plan before the Planning Board for review and approval. The Applicant shall notify each of its tenants and operators that all vendors shall only be allowed to unload at the designated loading docks with a copy of such notice submitted to the Planning Director for the file. The plan shall be incorporated by reference into and enforced as part of this Modified Conditional Use Permit.
20. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about loud, excessive, unnecessary, or unusual noise.
  21. A violation of Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, 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.
  22. Fireworks shall be permitted on July 4 and New Years Eve without notice to the Roney or Riviera if approved by appropriate city officials in advance and in writing. At all other times notice shall be given by the Applicant to both the Riviera and Roney 30 days in advance of the proposed fireworks in order to file any objections. However, notice is not required if written permission is granted by the Association Boards of each Condominium. Compliance with all other requirements of applicable law is required for any fireworks display.
  23. The Applicant shall prepare and submit to the Planning Department staff, the Riviera and the Roney a traffic circulation analysis prepared by a traffic engineer within 120 days from the rendition of the order. If the traffic engineer deems it necessary he may supply a revised traffic

circulation plan. The Roney and Riviera may also submit a traffic circulation analysis for consideration by the Planning Director. Any traffic improvements recommended by the analysis shall be implemented after approval by the Planning Director, Roney, Riviera and Applicant. Such agreement on such improvements shall be incorporated by reference and enforced as part of this Modified Conditional Use Permit. If an agreement is not reached between the Director, Applicant, Riviera and Roney, the Director shall bring the analysis and/or plan issue before the Planning Board to make a determination.

24. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter on Collins Avenue and 24<sup>th</sup> Street, in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times during the hours of operation.
25. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
26. The approval of this Conditional Use Permit shall be based upon the Operational Plan submitted as part of this application for Neighborhood Impact Establishment and other conditions and restrictions as articulated herein.
27. 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.
28. Mitigation measures to improve level of service standards and traffic conditions, especially on 24th Street shall be the sole responsibility of the applicant. The applicant shall coordinate these mitigation measures with the City's Transportation Manager, including but not limited to traffic light timing, left-hand turn signal for westbound traffic, and similar.
29. ~~This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a modified certificate of use. 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.~~
30. 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.
31. Nothing in this order authorizes a violation of the City Code or other applicable law, nor supersedes any requirement or standard set forth in the City Code (or City's Noise Ordinance, etc).

32. References to third parties in this Order are at the request of and by agreement of the Applicant, and shall not be considered an unlawful delegation of legislative authority.

Dated this 2nd day of JULY, 2014.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA  
BY: [Signature]  
Thomas R. Mooney, AICP  
Planning Director  
For Chairman

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 2nd day of July, 2014, by Thomas R. Mooney, AICP, Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[Signature]



TERESA MARIA  
MY COMMISSION # FF 042188  
EXPIRES: December 2, 2017  
Bonded Thru Budget Notary Se.

[NOTARIAL SEAL]

Notary:  
Print Name: TERESA MARIA  
Notary Public, State of Florida  
My Commission Expires: 12-2-17  
Commission Number: FF 042188

Approved As To-Form:  
Legal Department [Signature] (7-1-14)

Filed with the Clerk of the Planning Board 07/03/2014 [Signature]

[Signature]

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Page 1 of 2

**Parcel I:**

From a POINT OF BEGINNING, start at the Southeast corner of the intersection of Collins Avenue and Hotel Place (now known as Twenty Fourth Street); thence South along the East boundary line of Collins Avenue, and Collins Avenue produced across formerly Atlantic Avenue (and also formerly known as Twenty Third Street); a distance of six hundred twenty-five feet; thence East parallel to the South boundary of formerly Atlantic Avenue (and formerly Twenty Third Street) to the low water mark of the Atlantic Ocean; thence North along the low water mark of the Atlantic Ocean to a point where it intersects the South boundary line of Hotel Place (now known as Twenty Fourth Street) extended Eastwardly; thence West along the South boundary line and projection of Hotel Place (now known as Twenty Fourth Street) to the POINT OF BEGINNING, all as shown by an amended map or Plat of OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, recorded in Plat Book 5, Pages 7 and 8, of the Public Records of Miami-Dade County, Florida.

**AND TOGETHER WITH**

Easements and other rights, to the extent such rights constitute real property rights under Florida laws, as granted and reserved by that certain Declaration of Protective Covenants recorded in Official Records Book 17787, Page 1592, and as amended by the First Amendment recorded in Official Records Book 20545, Page 3905, both of the Public Records of Miami-Dade County, Florida.

**LESS AND EXCEPT THEREFROM:**

All of the RONEY PALACE, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 17787, at Page 1844; and as amended by the First Amendment of Declaration of Condominium of the RONEY PALACE, a Condominium, made by the RONEY PALACE Condominium Association, Inc., a Florida Corporation not for profit (the "Association"), adopted as of December 29, 1998, (but not executed or recorded) and dated May 2, 2001, and recorded on May 9, 2001, in Official Records Book 19650, at Page 1529; as further amended by the Second Amendment to Declaration of Condominium of the RONEY PALACE, a Condominium, made by the Association, dated May 5, 1999, and recorded on June 2, 1999, in Official Records Book 18631, at Page 2583; as further amended by the Third Amendment to Declaration of Condominium, made by the Association, dated February 20, 2002, and recorded on February 28, 2002, in Official Records Book 20231, at Page 3400; said Amendment being re-recorded on March 18, 2002, in Official Records Book 20297, at Page 579; as further amended by the Fourth Amendment to Declaration of Condominium, made by the Association, dated February 20, 2003, and recorded on March 31, 2003, in Official Records Book 21135, at Page 1163; as further amended by the Fifth Amendment to Declaration of Condominium, made by the Association, dated July 14, 2003, and recorded on July 17, 2003, in Official Records Book 21434, at Page 4207, all of the Public Records of Miami-Dade County, Florida.

**FURTHER LESS AND EXCEPT THEREFROM:**

All of RONEY PALACE COMMERCIAL CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 21818, at Page 4877; and as amended by First Amendment of Declaration of Condominium, dated August 9, 2004, and recorded on September 16, 2004, in Official Records Book 22862, at Page 647; as further amended by the Second Amendment to the Declaration of Condominium, dated September 10, 2004, and recorded on September 16, 2004, in Official Records Book 22862, at Page 694; said Second Amendment having been re-recorded on October 19, 2004, in Official Records Book 22744, at Page 2136, all of the Public Records of Miami-Dade County, Florida.

**FURTHER LESS AND EXCEPT THEREFROM:**

All of PARADISO, a Condominium according to the Declaration of Condominium thereof, as recorded in Official Records Book 26402, Page 2451, in the Public Records of Miami-Dade County, Florida.

**Parcel II: (Lot on West side of Collins Avenue)**

Beginning at the Northeast corner of Lot 12, Block 3 of the AMENDED PLAT OF THE OCEAN FRONT PROPERTY OF THE MIAMI-BEACH IMPROVEMENT COMPANY, according to the Plat thereof, as recorded in Plat Book 5, Pages 7 and 8, of the Public Records of Miami-Dade County, Florida; Thence Southerly along the Westerly line of Collins Avenue a distance of 45 feet to a point; Thence Westerly, parallel to the North line of Atlantic Avenue (now known as 23rd Street) for a distance of 285 feet to a point on the Easterly line of Palm Avenue (now known as Liberty Avenue); Thence Northerly along the said Easterly line of said Palm Avenue (now known as Liberty Avenue) a distance of 145 feet to a point; Thence run Easterly, parallel to said 23rd St. a distance of 285 feet; Thence Southerly along the Westerly line of Collins Avenue a distance of 100 feet to the Point of Beginning.

**Parcel III: (Strip of Land on the West Side of Collins Avenue)**

A strip of land described as follows: For a Point of Beginning, extend the South line of Hotel Place (now known as 24th St.) Westerly until it intersects with the West line of Collins Avenue; Thence South along the West line of Collins Avenue a distance of 217 feet; Thence West to the low water mark or bulkhead of that body of water designated as a "Lake"; Thence Northerly along the low water mark or bulkhead of said lake to a point where the South line of Hotel Place (now known as 24th St.) extended Westerly intersects said low water mark or bulkhead; Thence Easterly to the Point of Beginning; All as shown by AMENDED MAP (PLAT) OF MIAMI BEACH OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, recorded in Plat Book 5, Pages 7 and 8, of the Public records of Miami-Dade County, Florida.

LEGAL DESCRIPTION

Parcel V: (Submerged Land - Easterly 1/2 of Lagoon):  
(Surveyor's Revised Legal Description)

Commence at the concrete monument situated at the Northwest corner of Block 2, as said Block 2 is shown on a plot entitled "Amended Map of the Ocean Front Property of the Miami Beach Improvement Company", recorded in Plot Book 3 at Pages 7 and 8, of the Public Records of Miami-Dade County, Florida; Thence run Northerly along the East Right-of-Way line of Palm Avenue (now Liberty Avenue), for 493.28 feet to point of curvature of a circular curve to the left; Thence continue along the arc of said curve having for its elements a central angle of 01°58'23", a radius of 494.0 feet, for an arc distance of 17.01 feet to the point of intersection of the East right-of-way line of Palm Avenue (now Liberty Avenue) and the Northerly face of concrete bulkhead on the southerly shore of the Collins Canal; Thence run Northeastery and Southeastery meandering said Northerly face of concrete bulkhead for 204.8 feet to a point; Thence along a line from last described point, to a point where the South right-of-way line of Hotel Place (now 24th Street) extended to West, intersects the concrete bulkhead on the Easterly shore of Lake Pancoast, for 80.0 feet to the Point of Beginning of the Easterly one-half of the lagoon (Lake Pancoast); From said Point of Beginning, thence in a Southeastery direction, along the Westerly line of the Easterly one-half of said lagoon, for 215.0 feet, more or less to a point on the Northerly face of concrete bulkhead at the South end of said lagoon, this point being 33.0 feet West of the Westerly right-of-way of Collins Avenue; Thence run Easterly along face of concrete bulkhead or low water mark of said lagoon, to point on a line 217.0 feet South of and parallel to the South line of Hotel Place (now 24th Street); Thence run Northwesterly, meandering along Westerly face of concrete bulkhead on Easterly shoreline of said lagoon or the low water mark of said lagoon, to a point of intersection with South right-of-way line Hotel Place (now 24th Street) extended Westery; Thence across Northerly portion of said lagoon, to the Point of Beginning.

Parcel VI:

Condominium Units 838, 1436, 1634, 1635, 1637, PH-11 and Condominium Units CU-1 through CU-14, inclusive of THE RONEY PALACE, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 17787, Page 1644, of the Public Records of Miami-Dade County, Florida; as amended by the First Amendment to Declaration of Condominium recorded in Official Records Book 19650, Page 1529; as further amended by Second Amendment to Declaration of Condominium recorded in Official Records Book 18631, Page 2583; as further amended by Third Amendment to Declaration of Condominium recorded in Official Records Book 20231, Page 3400, said amendment was re-recorded in Official Records Book 20287, Page 379; as further amended by that Fourth Amendment to Declaration of Condominium recorded in Official Records Book 21135, Page 1163; as further amended by Fifth Amendment to Declaration of Condominium recorded in Official Records Book 21434, Page 4207, all of the Public Records of Miami-Dade County, Florida, and any subsequent amendments thereto, together with an undivided share in the common elements.

AND TOGETHER WITH:

Easements and other rights to the extent such rights constitute real property rights under Florida law, as granted and reserved by that certain Declaration of Protective Covenants recorded in Official Records Book 17787, Page 1592 and as amended by First Amendment recorded in Official Records Book 20545, Page 3905, both in the Public Records of Miami-Dade County, Florida.

Parcel VI:

All of RONEY PALACE COMMERCIAL CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 21816, Page 4877; and as amended by First Amendment to Declaration of Condominium recorded in Official Records Book 22662, Page 647; as further amended by Second Amendment to Declaration of Condominium recorded in Official Records Book 22662, Page 694; said Second Amendment was re-recorded in Official Records Book 22744, Page 2136, all of the Public Records of Miami-Dade County, Florida, and any subsequent amendments thereto.

AND TOGETHER WITH

Easements and other rights to the extent such rights constitute real property rights under Florida law, as granted and reserved by that certain Declaration of Protective Covenants recorded in Official Records Book 17787, Page 1592 and as amended by First Amendment recorded in Official Records Book 20545, Page 3905, both in the Public Records of Miami-Dade County, Florida.

Parcel VII:

All of PARADISO, according to the Declaration of Condominium thereof, as recorded in Official Records Book 26402, Page 2451, in the Public Records of Miami-Dade County, Florida, and any amendments thereto, less: Unit Numbers 934, 1022, 1106 and 1411

AND TOGETHER WITH

Easements and other rights to the extent such rights constitute real property rights under Florida law, as granted and reserved by that certain Declaration of Protective Covenants recorded in Official Records Book 17787, Page 1592 and as amended by First Amendment recorded in Official Records Book 20545, Page 3905, both in the Public Records of Miami-Dade County, Florida.

