

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: November 24, 2014

FROM: Thomas R Mooney, AICP  
Planning Director



SUBJECT: **File No. 1898 – 1100 West Avenue. The Mondrian - Modification to Conditional Use Permit**

The applicant, 1100 West Properties LLC., is requesting modification to a previously approved Neighborhood Impact Establishment Conditional Use consisting of a restaurant and bar/lounge located throughout the garden, lobby and pool deck areas. Specifically, the applicant is requesting to clarify the condition related to the maximum occupancy on the pool deck pursuant to Chapter 118, Article IV and Chapter 142, Article V of the Land Development Regulations of the City Code.

#### **RECOMMENDATION**

Approval

#### **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.

*July 23, 2013* The applicant, 1100 West Properties, LLC, requested approval for a modification to a MCUP in order to modify certain conditions pertaining to hours and entertainment for interior and exterior portions of the project which was continued.

*October 29, 2013* The Board made an amendment to the CUP, as well as continued the application.

*February 25, 2014* The applicant, 1100 West Properties, LLC, was approval for a modification to a MCUP in order to modify certain conditions pertaining to hours and entertainment for interior and exterior portions of the project (see the attached Final Order).

#### **STAFF ANALYSIS**

The applicant is before the Board to request two (2) modifications to the Conditional Use Permit as follows:

- A. The addition of the words "and its affiliates" after the words "Morgans Hotel Group Co" in all places in the MCUP where "Morgans Hotel Group Co" appears.
- B. The deletion of the word occupancy load and the addition of the phrase "maximum number

of persons on” in condition number twenty-one (21) which is projected to become number twenty (20) on the new final order if granted:

21. The occupancy ~~load~~ maximum number of persons ~~of~~ 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 Property.

While staff does not have an objection to the first request (A), the second request (B) would be very hard for City staff to enforce, putting a large burden on Code Compliance to estimate the number of persons on the pool deck.

As of this writing, the pool deck has applied for a permanent occupant content from the Fire Department, but has not yet received the final number. But to give the board an idea of how many people can fit on the pool deck, one of the last occupant content received for the pool deck through the special events process (BMS1000891) was for 900 persons.

The applicant has identified a method of controlling the capacity to the 299 person limit on its "Supplemental Letter of Intent" dated September 25, 2015 which is included in the Board packages. While staff would not recommend that an artificial cap for areas covered under a CUP for any current or future CUP, since the condition has been in the CUP since 2008 and was agreed to by all the parties, the proposed clicker system regulated by security staff seems to be an acceptable alternative.

Please see the attached code compliance report and the Progress Report for all open violations.

### **STAFF RECOMMENDATION**

In view of the foregoing analysis, staff recommends approval subject to the following conditions. Strikethrough signifies deletions by staff and by the Board; single underlining signifies new language added by staff and by the Board, and double underlining signifies new language proposed by the applicant:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall provide a progress report to the Board within 90 days from the approval of this Modified 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 1100 West Properties, LLC as owner of the property and to Morgans Hotel Group Co. and its affiliates as operator of property. Subsequent owners ~~and~~ 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 1100 West Properties, LLC exceeding twenty-four (24%) percent of the ownership interests in 1100 West Properties, 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 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 and its affiliates, is in addition to the applicant, responsible for compliance with the conditions. Operations shall not begin until Morgans Hotel Group Co. and its affiliates acting through a senior executive officer, has executed and filed with the Planning Department a notarized statement, in such form and substance as complies with this Condition and is approved by the City Attorney.
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, 1100 West Properties, 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 pm 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 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, will 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 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 I h.
- l. No outdoor live music shall be permitted at any time, except as may be permitted in a valid Special Event permit issued by the City with prior notice to the adjoining properties upon application for such a permit and prior to its issuance. No such permit shall include the use of percussion instruments, as described in subsection h, unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit shall be for a private noncommercial party or charitable event and shall be limited to no more than one day in any given month and during national holidays.
- m. Rooftop use shall be solely for unit owners, their lessees, invitees and guests, and hotel guests.
- 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.
- o. Commercial fireworks shall not be permitted on the property, except as may be permitted during events held pursuant to a Special Event Permit issued by the City.
- p. Temporary lighting equipment used in connection with events or productions on the Pool Deck shall be placed in such a way to minimize spillover onto neighboring properties. In no event shall such lighting be turned on between midnight and 7:00 a.m. seven days a week, except as may be permitted in a Special Event permit issued by the City.
- q. 1100 West shall install signage on the property instructing vehicular traffic to refrain from noise from honking truck, car horns, and car alarms, subject to the review and approval of staff.

- r. In addition to the limitations specified herein, to the extent permitted by law, the 1100 West and successors and assigns shall prohibit on the premises noise that is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.
8. The installation plan for the updated sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit.
9. When the sound system is completely installed, but before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., but before the Business Tax Receipt has been issued, to ensure that all aspects of the system's performance comply with The Audio Bug, Inc.'s report dated September 19, 2008 as well as The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013. Operations shall not begin until staff has received and approved in writing a final written report by Mr. Washburn which states that as tested, the system complies with all the aforementioned reports and supporting materials.
10. Only the sound system operated and controlled by hotel management shall be permitted. Any extraneous or independent sound system that may be brought by DJs, 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-stripped 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-stripping 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 ~~occupancy load~~ maximum number of persons of 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 Property. Any physical expansion of the area covered under this MCUP 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.

### ZONING/SITE PLAN



City of Miami Beach Planning Board  
File No. 1898  
1100 West Ave

 The applicant, 1100 West Properties, LLC, is requesting approval for a modification to a Conditional Use Permit pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to modify certain conditions.

**MIAMI BEACH**  
PLANNING DEPARTMENT  
1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 P 305.673.7660 www.miami-beach1.gov





CFN 2014R0279433  
 OR Bk 29114 Pgs 4418 - 44251 (8pgs)  
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 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

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

**PROPERTY:** 1100 West Avenue

**FILE NO:** 1898

**IN RE:** The application by 1100 West Properties, LLC requesting a modification to a Conditional Use Permit pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to modify certain conditions.

**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:** February 25, 2014

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, 1100 West Properties, 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

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 applicant shall provide a progress report to the Board ~~in 90 days after the Business Tax Receipt has been issued. within 90 days from the approval of this Modified 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 1100 West Properties, LLC as owner of the property and to Morgans Hotel Group Co. as operator of the lounge ~~(Sunset Lounge) pool bar and deck, and to China Grill Management as operator of the restaurant Asia de Cuba property.~~ Subsequent owners and 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 1100 West Properties, LLC exceeding twenty-four (24%) percent of the ownership interests in 1100 West Properties, 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, and ~~joint venture partners,~~ Morgans Hotel Group Co., as operator of the lounge ~~(Sunset Lounge) pool bar and deck, and China Grill Management as operator of the restaurant Asia de Cuba 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 lounge, ~~pool bar and pool deck property,~~ Morgans Hotel Group Co, is in addition to the applicant, responsible for compliance with the conditions. ~~herein applicable to the lounge, pool bar and pool deck operation. With respect to the operation of the restaurant, China Grill Management is, in addition to the applicant, responsible for compliance with the conditions herein applicable to the restaurant operation.~~ Operations shall not begin until each of Morgans Hotel Group Co. and ~~China Grill Management,~~ acting through a senior executive officer, has executed and filed with the Planning Department a notarized statement, in such form and substance as complies with this Condition and is approved by the City Attorney.
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, 1100 West Properties, LLC ~~has preferred~~ and 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, seven days a week, except on weekends and holidays they shall be 2:00 a.m. indoors and 12:00 pm 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 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 8:00 p.m. 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 ~~will shall~~ install landscaping in the area near the north and south property line ~~lines~~ in order to create a transition between the Property and ~~Mirador North~~ 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. ~~Maintenance of such landscaping after installation will be the responsibility of Mirador 1200 after the hotel occupational license is issued.~~

c. 1100 West 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, ~~will 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 north of Line B in Exhibit B 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 will make the south service entrance the property's primary service access. Additionally, 1100 West 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 additional mechanical equipment will be located near the north ~~area~~ 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 loudspeakers 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 loudspeaker, with sound projected downward or laterally not vertically. ~~No audio amplified equipment shall be operated between the hours of 2 AM and 8 AM. At no time shall sound be a statutory nuisance to 1200 Mirador.~~ 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 between the hours of 2AM and 8AM. At no time shall sound be a statutory nuisance to 1200 Mirador, 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.

- i. 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 h.
- l. No outdoor live music shall be permitted at any time, except as may be permitted in a valid Special Event permit issued by the City with prior notice to the adjoining properties upon application for such a permit and prior to its issuance. No such permit shall include the use of percussion instruments, as described in subsection h, unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit shall be for a private noncommercial party or charitable event and shall be limited to no more than one day in any given month and during national holidays.
- m. Rooftop use shall be solely for unit owners, their lessees, invitees and guests, and hotel guests. ~~Any music activities shall be controlled and regulated by the hotel operator.~~
- 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.
- o. Commercial fireworks shall not be permitted on the property, except as may be permitted during events held pursuant to a Special Event Permit issued by the City.
- p. Temporary lighting equipment used in connection with events or productions on the Pool Deck shall be placed in such a way to minimize spillover onto neighboring properties. In no event shall such lighting be turned on between midnight and 7:00 a.m. seven days a week, except as may be permitted in a Special Event permit issued by the City.
- q. 1100 West shall install signage on the property instructing vehicular traffic to refrain from noise from honking truck, car horns, and car alarms, subject to the review and approval of staff.
- r. In addition to the limitations specified herein, to the extent permitted by law, the 1100 West and successors and assigns shall prohibit on the premises noise that

is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.

8. The installation plan for the updated sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit.
9. When the sound system is completely installed, but before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., ~~but before the Business Tax Receipt has been issued, to ensure that all aspects of the system's performance comply with The Audio Bug, Inc.'s report dated September 19, 2008 and all supporting materials as submitted as Exhibit D of the applicant's application book dated September 22, 2008~~ as well as The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013. Operations shall not begin until staff has received and approved in writing a final written report by Mr. Washburn which states that as tested, the system complies with that report and these all the aforementioned reports and supporting materials.
10. Only the sound system operated and controlled by hotel management shall be permitted. Any extraneous or independent sound system that may be brought by DJs, 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. ~~The applicant shall remove the banner sign displayed on the seawall and violation closed and fines paid, if any, prior to the start of the new hours of operation for Sunset Lounge.~~
14. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
15. 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.
16. 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.
17. 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.

18. 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.
19. ~~Only~~ 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.
20. 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.
21. The occupancy load of 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 Property.
- ~~22. The lounge and pool bar (but not the restaurant) shall be operated by Morgans Hotel Group.~~
23. 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.
24. 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. This 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.
26. 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.
27. 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

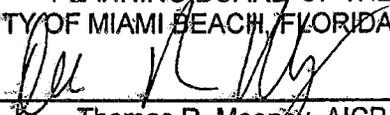
procedures set forth in Section 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use permit.

28. 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 17<sup>th</sup> day of MARCH, 2014.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY:

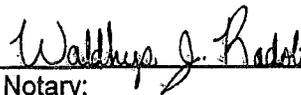
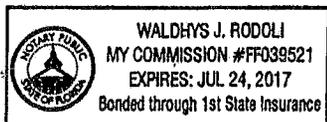


Thomas R. Mooney, AICP,  
Acting Planning Director  
FOR THE CHAIRMAN

STATE OF FLORIDA        )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2014, by Thomas R. Mooney, AICP, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

{NOTARIAL SEAL OR STAMP}



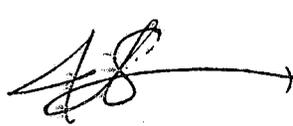
Notary:

Print Name Waldhys J. Rodoli  
Notary Public, State of Florida  
My Commission Expires: 7-24-17  
Commission Number: FF039521

Approved As To Form: Legal Department



Filed with the Clerk of the Planning Board on

03/17/14 

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