

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. 2136 – 4041 Collins Ave–The Thompson–Progress Report**

BACKGROUND

June 24, 2014

The applicant, the Crown Miami Hotel Owner LLC, was granted a Conditional Use permit for a neighborhood impact establishment with a maximum occupant content of 1,284 persons.

August 26, 2014

The applicant, the Crown Miami Hotel Owner LLC, was granted a Modified Conditional Use Permit (MCUP) for a neighborhood impact establishment with a maximum occupant content of 1,590 persons.

March 24, 2015

The applicant came before the Board for the required 90 day Progress report.

August 24, 2015

The Planning Department sent a Cure Letter to the applicant in response to three (3) outstanding code violations. The Cure Letter advised the applicant that a Progress Report was scheduled for the September 30, 2015 meeting, which was re-scheduled for October 9, 2015.

October 9, 2015

The Progress Report was continued by the Board to the November 24, 2015 meeting.

PROGRESS REPORT

Since the August 24, 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. **CE15009673 5/30/2015 (Written)**

"LOUD MUSIC I CCO Munera arrived at the complainant's on a noise complaint at 1816hrs. Upon my arrival I parked my vehicle in front of the property and began to make my way to meet the complainant. Upon my arrival to the unit I began my investigation. Complainant gave me access to inside his unit and to his balcony. Before I opened the sliding door I was able to hear music coming from the outside, once I opened the sliding door I was able to hear loud music coming from the pool bar area of the location that I was able to identify as 4041 Collins Ave The Thompson Hotel when I inspected the area. The music was loud due that I was able to hear audible and excessive 21 floors up at 4201 Collins Ave. I proceeded to make contact with manager of the bar area, I explained my visit and advised that music is extremely loud to the point that it could be heard three buildings up the street and 21 floors up. I advised him of the city ordinance and issued violation.

Complainant Contacted Valid C.Munera 757”

2. **CE15010228** 6/13/2015 (Billpaid)

“LOUD MUSIC Arrival Time: 12:13 am Departure Time: 1:10 am We, BNunez and JParodi, arrived at the location. We parked on the south side of this location. We proceeded to make contact with the complainant. He informed us he was located in a building to the south. We could hear the music from 40th Street. We walked the boardwalk, the music was plainly audible at a distance of 191 feet. We made contact with hotel staff and informed them of the violation. A 1st offense was issued and compliance was achieved immediately.

Plainly audible at a distance of 191 feet Complainant was contacted Valid Compliance achieved immediately(signed for by James Wark at 12:47 am) Violation issued 1st Offense JParodi 755 & BNunez 756”.

3. **CE15011974** 8/07/2015 (Violation)

“Loud music coming from pool area of Thompson Hotel. This complaint was received from dispatch @ 12:41 AM (0041 hours) stating that there is loud music in the pool area. CCO 755 J. Parodi took the complaint. Shortly after his arrival @ 12:45 PM (0045 hours) he raised me and inquired as the status of the BTR. I researched same and found they do have Dance and Entertainment with Alcohol as well as a 5AM Liquor category.

Footnote: when 755 raised me on the radio the noise level I heard over the telephone, was unreasonable, excessive and unnecessary. 755 request a noise history and I found they have received a Written Warning on 05/30/15 and a 1st Offense on 06.03.15, which they paid.

CCO J Parodi added a caveat to the face of the (Excessive and unnecessarily loud music audible at over 100 feet). NOV which is a second offense which carries a fine of \$1,000.00. Their appeal time window ends on August 16, 2015. All in order. CCA Becerra

Arrival Time: 12:45 AM Departure Time: 1:50 AM I arrived at the location. I parked my vehicle on 40th Street, south of the location. When I stepped out of the vehicle, I could immediately hear the music. I approached the board walk. When I was standing on the board walk, the excessive and unnecessarily loud music could be heard. I conducted my measurement from the south and the north side, along the boardwalk. From both directions the music was plainly audible at a distance over 100 feet. I approached the location from the rear of the property. I made contact with management. While I was in the patio area making contact, I could hear the excessive and unnecessarily loud music. I identified the source as a singer and guitarist playing indoors. The location does have a dance and entertainment license, no additional violations needed to be issued. However the music was being reproduced over a speaker system located near the pool area. The manager was compliant and the music was lowered almost immediately.

Complainant was not contacted (anonymous) Valid - 2nd Offense Issued Violation delivered and signed for by I'Ssha Scott at 1:37 am J. Parodi 755”.

4. **JC15000652** 6/02/2015 (Open) Special Master case for #3 hearing scheduled for 01/07/2016.

STAFF ANALYSIS

It appears from the detailed descriptions of the violations that the noise transgressions are coming from the pool area. The pool, known as "Venue 4" was allowed by the MCUP to stay open until 3:00 AM and the "The Grove" which is part of "Venue 3" and is an outdoor area immediately adjacent to the pool also was permitted to stay open until 3:00 AM. Although both of these areas are authorized by the MCUP "to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation", it appears from the Code Compliance officers that the venue has not complied with the conditions of the MCUP (see below and attached).

Condition No. 7

c. 1930's House / "Venue 3"

- i. 334 Total Occupancy.
- ii. A bar lounge which contains approximately 50 seats located in the interior of the house. Entertainment and dancing shall be permitted until 5 a.m in the bar lounge portion of the venue.
- iii. The "Outdoor Northside", includes approximately 19 seats and shall only be permitted to play ambient background music, and shall be permitted to stay open until 3:00 a.m.
- iv. The "Outdoor Southside", which shall include approximately 39 seats.
- v. "The Grove", includes approximately 64 seats, and shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation, and shall be permitted to stay open until 3:00 a.m.

d. Pool / "Venue 4"

- i. 382 Total Occupancy.
- ii. The venue, located in the rear of the property, contains approximately 224 outdoor seats.
- iii. Lunch and dinner service shall be permitted until 3:00 a.m., at which time the venue shall be closed.
- iv. The pool shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation.

Below are the conditions of the final order that are related the warnings, violations and open offenses:

20. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory uses proposed for the project should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
21. 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.
24. 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.

STAFF RECOMMENDATION

In view of the inconsistencies with the above conditions, as well as the absence of any documentation from the applicant advising of corrective actions or measures that the applicant will put in place to ensure such violations do not occur in the future, staff recommends that the Board consider the issue of noncompliance and set a modification/revocation hearing for a date certain of January 26, 2016 to consider modifications to the hours of operation of the pool bar, pool area and "The Grove".

TRM/MAB/TUI

MIAMI BEACH

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

August 24, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Crown Miami Hotel Owner LLC
Pier 5 Embarcadero
Ste. 102
San Francisco, CA 94111

Certified Mail #
7002 2410 0003 5176 6017

Thompson Miami Beach
4041 Collins Avenue
Miami Beach, FL 33139

Certified Mail #
7002 2410 0003 5176 6000

Re: Planning Board File No. 2136 - The Thompson Hotel

Dear Sir/Madam:

A Modified Conditional Use Permit for a neighborhood impact establishment was issued to Crown Miami Hotel Owner LLC on August 26, 2014. It has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the operation of the venue.

Therefore, in light of the inconsistencies with the following conditions of approval contained in the Modified Conditional Use Permit and the pending code violations **you are requested to appear at the September 30, 2015 Planning Board hearing** for a verbal progress report:

20. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory uses proposed for the project should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
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The following warnings, violations and open offenses are still showing in the City's records as of this writing:

1. **CE15009673** 5/30/2015 Written

"LOUD MUSIC

I GCO Munera arrived at the complainant's on a noise complaint at 1816hrs. Upon my arrival I parked my vehicle in front of the property and began to make my way to meet the complainant. Upon my arrival to the unit I began my investigation. Complainant gave me access to inside his unit and to his balcony. Before I opened the sliding door I was able to hear music coming from the outside, once I opened the sliding door I was able to hear loud music coming from the pool bar area of the location that I was able to identify as 4041 Collins Ave The Thompson Hotel when I inspected the area. The music was loud due that I was able to hear audible and excessive 21 floors up at 4201 Collins Ave. I proceeded to make contact with manager of the bar area, I explained my visit and advised that music is extremely loud to the point that it could be heard thre buildings up the street and 21 floors up. I advised him of the city ordinance and issued violation.

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Arrival Time: 12:13 am

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We made contact with hotel staff and informed them of the violation. A 1st offense was issued and compliance was achieved immediately.

Plainly audible at a distance of 191 feet

Complainant was contacted

Valid

Compliance achieved immediately (signed for by James Wark at 12:47 am)

Violation issued 1st Offense

JParodi 755 & BNunez 756"

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Complainant was not contacted (anonymous)

Valid - 2nd Offense Issued

Violation delivered and signed for by I'Ssha Scott at 1:37 am

J. Parodi 755"

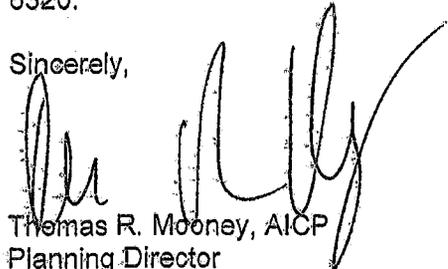
4. **JC15000652 6/02/2015 Open Special Master case for #3**
Loud music coming from pool area of Thompson Hotel.

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

TRMTUI

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CFN 2014RD0637542
DR. Bk 29308 Pgs 0216 - 2217 (6pgs)
RECORDED 09/15/2014 09:10:13
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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

PROPERTY: 4041 Collins Avenue

FILE NO. 2136

IN RE: The application by Crown Miami Hotel Owner, LLC, requesting a Conditional Use Permit pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content of 1,590 persons.

LEGAL DESCRIPTION: See "Exhibit A" attached in the application.

MEETING DATE: August 26, 2014

MODIFIED CONDITIONAL USE PERMIT

The applicant, Crown Miami Hotel Owner, LLC, filed an application with the Planning Director requesting Conditional Use approval pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content of ~~4,284~~ 1,590 persons. 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 - Multifamily Residential 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.



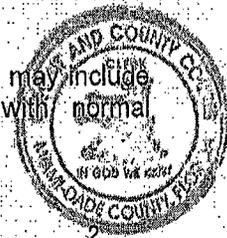
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IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including staff recommendations, as may have been modified by the Planning Board, that a Conditional Use Permit as requested and set forth above, be GRANTED subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR, and again within 180 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Crown Miami Hotel Owner, LLC, as owner of The Thompson Miami Beach Hotel for a Neighborhood Impact Establishment, consisting of restaurants, lounges, bars and pool deck. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the following venues, with a maximum occupant content of 1,590 persons or any lesser such occupant content as determined by the Fire Marshal:

a. 3-Meal Restaurant / "Venue 1"

- i. 334 Total Occupancy
- ii. Full-service restaurant with approximately 245 seats, which shall be permitted to serve breakfast, lunch and dinner until 2 a.m.
- iii. Interior and exterior seating facing another ground floor venue, "the Grove."
- iv. Only permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation.



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b. La Esquina Taqueria / "Venue 2"

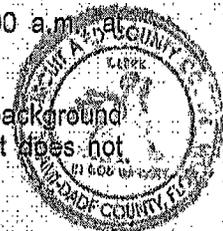
- i. 234 Total Occupancy
- ii. Full-service restaurant and café with approximately 129 seats which may serve lunch and dinner until 5 a.m. It shall be permitted to provide
- iii. Entertainment and dance may be permitted in the interior restaurant.
- iv. The café shall be permitted to operate until 3 a.m. and includes approximately 48 interior seats and approximately 36 exterior seats.
- v. The café shall only be permitted to play ambient background music at a volume that does not interfere with normal conversation.

c. 1930's House / "Venue 3"

- i. 334 Total Occupancy.
- ii. A bar lounge which contains approximately 50 seats located in the interior of the house. Entertainment and dancing shall be permitted until 5 a.m. in the bar lounge portion of the venue.
- iii. The "Outdoor Northside", includes approximately 19 seats and shall only be permitted to play ambient background music, and shall be permitted to stay open until 3:00 a.m.
- iv. The "Outdoor Southside", which shall include approximately 39 seats.
- v. "The Grove", includes approximately 64 seats, and shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation, and shall be permitted to stay open until 3:00 a.m.

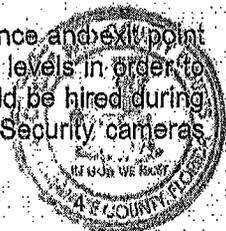
d. Pool / "Venue 4"

- i. 382 Total Occupancy.
- ii. The venue, located in the rear of the property, contains approximately 224 outdoor seats.
- iii. Lunch and dinner service shall be permitted until 3:00 a.m. which time the venue shall be closed.
- iv. The pool shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation.



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- e. Library/VIP Area & Banquet / "Venue 5"
- I. 306 Total Occupancy.
 - II. The venue is a lounge located in the interior second floor of the Thompson Hotel containing approximately 238 seats.
 - III. Entertainment, including live music and dancing, shall be permitted.
 - IV. This venue shall be permitted to operate until 5:00 a.m.
8. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff, except that during the first ninety days following the issuance of a TCO, occupancy loads for Special Events shall not exceed aggregated permitted on paragraph 7. The Board reserves the right to modify occupancy loads for Special Events at the time of progress reports. Live entertainment may be permitted.
 9. The equipment and installation plan for each proposed new sound system, including the location of all speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit. Ninety days after opening, the sound systems in all the venues shall be tested by a qualified acoustic professional, and a report shall be submitted to staff for review.
 10. Hotel security personnel and other hotel staff shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 11. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 12. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
 13. Valet attendants shall be prohibited from using 43 Street in their route to store and retrieve vehicles.
 14. Valet operator and hotel security personnel shall monitor pick-up and drop-off areas to ensure that queuing of vehicles will not interfere with traffic on Collins Avenue.
 15. As proposed by the applicant, security staff shall be posted at each entrance and exit point to the hotel. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads. Additional security staff would be hired during special events, holidays, and high occupancy days, based on demand. Security cameras



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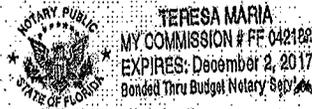
- shall be installed around the perimeter of the property, as well as throughout the interior of the property, as needed.
16. During weekends and large events the Applicant shall maintain additional security staff to control crowds when the 41st Street entrance is in operation.
 17. Trash collection shall take place seven days a week and noise from trash dumpsters shall be mitigated with rubberized wheels and/or other noise reducing materials, subject to the review and approval of staff.
 18. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Building Permit.
 19. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
 20. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory uses proposed for the project should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
 21. 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.
 22. 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.
 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. 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.
 25. 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.



MM

Dated this 7th day of SEPTEMBER, 2014

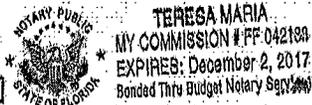
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA



BY: Thomas R. Mooney
Thomas R. Mooney, JCP,
Planning Director
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 7th day of September, 2014, by Thomas R. Mooney, 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]

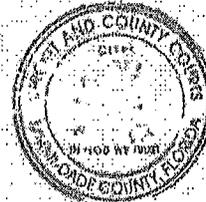
Teresa Maria
Notary:
Print Name: TERESA MARIA
Notary Public, State of Florida
My Commission Expires: 12-2-17
Commission Number: FF042138

Approved As To Form: Oked (9-5-14)
Legal Department

Filed with the Clerk of the Planning Board on 09/09/14 (JB)

F:\PLAN\PLB\2014\06-24-14\2136-4041 Collins The Thompson\2136 CUP.docx

STATE OF FLORIDA, COUNTY OF DADE
HEREBY CERTIFY that this is a true copy of the
original filed in this office on SEP 15 2014, A.D. 20
WITNE my hand and Official Seal.
HARVEY BRUVIN, CLERK of Circuit and County Courts
Tina Truxall
TINA TRUXALL - 305 201 265



PB 2136, 4041 Collins Avenue - The Thompson Miami Beach Hotel
August 26, 2014

TM

