

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

February 7, 2023

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Washington Ave. Associates, LLC,
915-955 Washington Avenue
Miami Beach, FL 33139

Re: PB 0616-0033 – 915-955 Washington Avenue – Moxy South Beach – Cure Letter

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate the subject venue was issued to Washington Avenue Associates, LLC, on November 15, 2016 (see attached). It has come to the Planning Department's attention that written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue.

These violations include, but are not limited to, noise violations that are still pending as of the date of this letter, as more specifically summarized hereto:

- 09/04/2022 – **NC2022-24461** Written Warning Issued

Notes indicate: 8:23 PM Arrive 10:13 PM Depart Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary, or unusual noise. YOU SHALL IMMEDIATELY CEASE THE VIOLATION. LOUD MUSIC COMING FROM WASHINGTON AVE P Godsill 756 BWC used.

- 08/08/2021 – **NC2021-2185** Noise Complaint – Fine Paid

Notes indicate: Ref: Unreasonably loud and excessive music coming from a live DJ on the rooftop. Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. YOU SHALL IMMEDIATELY CEASE THE VIOLATION. You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law. Arrival Time: 7:43 PM Departure Time: 9:15 PM 1st Offense; \$250.00 Fine. BWC used. J. Goehring (745) A. Lacayo (754)

- 02/09/2021 – **NC2021-18487** - Noise Complaint – Closed

Notes indicate: *Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made any unreasonably loud, excessive, unnecessary or unusual noise. Arrival: 3:47 PM Departure: 4:55 PM REF: Loud music. Written warning issued. BWC used. D. Giraldo/752.*

In addition to the items listed above, there were five other noise complaints made between March 5, 2022 and December 18, 2022.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

1. This Conditional Use Permit is issued to Washington Ave. Associates, LLC, to construct a seven (7) story mixed use hotel project, with restaurant and retail space on the ground floor, and food and beverage areas located on the second floor deck, poolside and the roof. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.
2. 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 business tax receipt (BTR) for the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
8. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or

limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

- a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed restaurants, outdoor café and two (2) outdoor areas located on the roof deck of the first floor (2nd level) with the criteria listed below:
 - i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 1350 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The hours of the venues and the hours of the entertainment for each venue shall be as follows:

VENUE	HOURS	HOURS OF ENTERTAINMENT
Indoor Restaurant	7 AM-5 AM	until 5 AM
Outdoor Café	7 AM-2 AM	until 11 PM
Hotel Bar & Lounge	7 AM-2 AM	n/a
2nd Level Bar	11 AM-2 AM	11 AM-11 PM
2nd Level Outdoor Bar	11 AM-2 AM	11 AM-11 PM
Pool Deck (guests only)	7 AM-11 PM	11-AM-11 PM
Rooftop (guests only)	7 AM-2 AM	n/a

- iii. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application.
- iv. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. Additionally, 60 days after the issuance of a BTR, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application. Additionally the sound levels will be documented at the two hotels located on the west side of Washington and once the appropriate sound level have been established, each system be locked as to prevent future

mi-adjustments that might cause an impact to the neighborhood.

15. 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.

These violations and noise complaints exhibit repeated and intermittent noncompliance with the conditions of this CUP and underscore a concern about further repeated or intermittent noncompliance with the conditions of the CUP.

Therefore, considering the inconsistencies with the aforementioned conditions of approval contained in the CUP, the repeated and intermittent noncompliance with the conditions of this CUP, and the pending code violations, **you are requested to appear at the February 28, 2023 Planning Board hearing** for a verbal progress report. Please be advised that at the time of the progress report, in accordance with the provisions of 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 noted herein, and initiate modification/revocation proceedings, this matter may be placed on the April 25, 2023 agenda meeting of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Mr. Rogelio Madan at (305) 673-7000 ext. 26131 or via email at rogeliomadan@miamibeachfl.gov.

Sincerely,



Thomas R. Mooney, AICP
Planning Director

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