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September 3, 2025

VIA EMAIL:

Miami Beach Planning Board
PB@miamibeachfl.gov

RE: PB25-0775 – 801 South Pointe Drive, Unit CU-2

Dear Members of the Planning Board:

The undersigned law firm represents Marea Condominium Association, Inc. (the “Association”), the mixed-use condominium association located at 801 South Pointe Drive, and consisting of thirty (30) residential units and three (3) commercial units. Gaia Miami Beach, LLC (the “Applicant”), the tenant of Units CU-2A and CU-2B2, which are subdivisions of Unit CU-2 and governed by the Association’s Declaration of Condominium, submitted the petition for PB25-0775 and seek to modify their existing Conditional Use Permit (“CUP”).

Following receipt of the Notice of Public Hearing to consider the Applicant’s modification request, the Association reviewed the supporting documents submitted by the Applicant and became concerned regarding the nature of the modifications and the potential impact on neighboring units within the Association. The Association certainly understands the value of the Applicant’s restaurant to the community and continues to support its construction and future operation, but the proposed CUP modification reduces the sound isolation methods presently required under the existing CUP and raises a legitimate concern whether the reduction will cause noise disturbances within neighboring units. By the Association’s reading and understanding, the sole basis for the requested reduction relies upon setting a lower maximum limitation on the restaurant’s ambient music levels and does not appear to consider other noises associated with the operation of a 200+ seat restaurant that will be open until 2:00 a.m. and is adjacent to residential condominium units. The Association’s Board of Directors, in furtherance of the fiduciary obligation owed by each Director to the members of the Association to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the collective best interests of the Association, retained SR Acoustics to conduct an independent review of the proposed CUP modification and opine regarding the validity of any risks or concerns to the peace and well-being of the neighboring units within the Association. A copy of the independent review completed by SR Acoustics is attached to this correspondence as *Exhibit “A”* for the Planning Board’s consideration.

The SR Acoustics independent review confirms the CUP modification “rel[ies] on electronic limiters, a solution that addresses only music playback while ignoring the far greater contributions of patron voices, impulsive events, and low-frequency mechanical noise,” and “[e]very independent study of restaurant environments shows that noise escalates to levels well above the thresholds cited [in the CUP modification].” The SR Acoustics independent review asserts that the CUP modification will *not* provide

protection equivalent to the existing CUP and, as result, the peace and well-being of the Association's residents will be at risk if the CUP modification is approved.

For the collective best interests of the Association's unit owners and members, the Association requests that the Planning Board deny the CUP modification and require the Applicant's compliance with the existing approved CUP.

Sincerely,

HABER LAW, LLP

/s/ Justin Smith, Esq.
JUSTIN SMITH, ESQ.



EXHIBIT "A"

*providing
excellence in design
for over 35 years*

September 3rd, 2025

Prepared for: Marea Condominium Association
Oswaldo Anglero LCAM
General Manager
Email: oswaldo.anglero@fsresidential.com

This document is an **independent review** prepared at the request of the Marea Condominium Association. The undersigned was not the original acoustical consultant on this project and has not been provided with essential baseline data including, but not limited to, the thickness of the structural slab, any in-situ field transmission measurements, or verified STC/ASTC ratings of either the approved or proposed assemblies.

Because this data has not been supplied, it is not possible for any reviewer to offer conclusions within the realm of certainty regarding the actual performance of the proposed deviation. This limitation should in itself raise concern: without empirical field data, there is no verifiable basis upon which to conclude that the deviation meets the intent of CUP PB22-0563 or the requirements of §118-192 of the Miami Beach Code.

Accordingly, the findings expressed herein are professional opinions derived from comparable project experience, published scientific literature, relevant building codes and standards, the documents submitted by the Applicant, and the original CUP conditions. All conclusions are deliberately framed to reflect the absence of empirical data and should not be construed as a guarantee, warranty, or certification of and or lack thereof.

Summary

This report evaluates GAIA Restaurant's request to deviate from CUP PB22-0563, approved March 28, 2023. The original CUP mandated a spring-isolated, double-layer gypsum ceiling system and additional acoustical safeguards designed to protect residents in the condominium units above.

The Applicant now proposes to substitute this system with a lighter CRC/hat channel ceiling carrying a single layer of gypsum board, paired with reduced insulation. No field data, transmission loss testing, or slab details have been provided to support this request.

Based on peer-reviewed research, ASTM/ANSI/ISO standards, and professional practice, this deviation will substantially reduce isolation, particularly for low-frequency noise and impulsive sounds common in

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restaurants. The proposal also reframes operational safeguards by allowing amplified ambient music at 75 dBA/80 dBC, which is inconsistent with “background conversational levels” mandated by the CUP.

Conclusion: The deviation undermines the safeguards upon which the CUP approval was based and is therefore inconsistent with §118-192 CUP criteria.

Recommendation: The Planning Board should decline the deviation and uphold the original spring-isolated assembly as a minimum safeguard.

Section 1. Background

In March 2023, GAIA Restaurant was granted CUP approval (PB22-0563) with strict acoustical conditions. These conditions recognized the unique context: a restaurant operating directly below residential condominiums in Miami Beach.

The CUP framework was designed to safeguard public health, safety, and welfare, as well as to preserve neighborhood values by preventing noise conflicts. The original conditions required a spring-isolated double-layer ceiling, isolation of columns and walls, minimal penetrations, and restrictions on entertainment levels.

In July 2025, GAIA submitted a modification request seeking to replace the approved system with a lighter construction. Condo owners raised objections, citing potential risks to peace, livability, and CUP compliance. This peer review has been prepared on their behalf.

Section 2. Scope and Disclaimer

This review is limited in scope. Key limitations include:

- No access to field test data (ASTC, FSTC, or in-situ sound transmission results).
- No confirmation of structural slab thickness, reinforcement, or in-field continuity.
- No empirical measurements of existing ambient levels inside the restaurant.

Given these omissions, no consultant can certify adequacy. Instead, this report applies comparative analysis: examining the proposed deviation against established science, published data, and the specific safeguards required by the CUP.

Section 3. CUP Framework

Miami Beach Code §118-192 requires that conditional uses:

1. Do not adversely affect the health, safety, or welfare of the public.
2. Provide necessary safeguards for surrounding property and neighborhood values.

The City also enforces §46-152, the noise ordinance, which prohibits plainly audible sound across property lines.

The CUP (PB22-0563) established the following acoustical safeguards:

- **Ceiling assembly:** Two layers of 5/8" Type X gypsum board on spring hangers, 6" insulation, and 12" airspace.
- **Columns and walls:** Two layers of gypsum on isolation mounts.
- **Penetrations:** None permitted except sprinklers.
- **Secondary ceiling:** Concealing MEP to preserve acoustical integrity.

- **Operations:** Background music only at conversational levels; not plainly audible beyond premises. **Importantly, these requirements applied to the entire facility, not just the dining room.**

Section 4. Proposed Deviation (July 2025 Letter)

The Applicant proposes:

- **Ceiling substitution:** CRC/hat channel with one layer of 5/8" gypsum and reduced insulation depth.
- **Elimination of 4-layer option:** CUP had allowed reinforcement with additional mass if feasible; this has been removed.
- **Loosened penetration guidelines:** No longer restricted to sprinklers only.
- **Operational reframing:** Instead of conversational background music, proposes “ambient music” at 75 dBA/80 dBC with limiters.

This represents both a structural weakening and an operational loosening of CUP safeguards.

Section 5. Comparative Analysis

Table 1 – CUP vs. Proposed Deviation

CUP Requirement	Proposed Deviation	Issue
Spring-isolated double 5/8" GWB ceiling	CRC/hat, single 5/8" GWB	Removes springs, halves mass → weaker isolation, esp. bass
Columns/walls isolated w/ 2 layers GWB	1 layer on furring	Reduced flanking control
No penetrations except sprinklers	Not clarified	Greater leakage risk
Secondary ceiling for MEP	Omitted	Increased mechanical noise bypass
Conversational background music only	75 dBA/80 dBC with limiter	Higher source levels; inconsistent with CUP intent

Table 2 – Consultant Claims vs. Independent Findings

Consultant Claim	Review Finding
75 dBA/80 dBC is adequate	Ignores Lombard escalation (75-85 dBA Leq; peaks 90 dBA)
Glazing offset obviates façade concerns	Flanking is cumulative; downgrading ceiling exacerbates
CRC/hat acceptable	Field STC 6-10 points lower than spring system
A-weighting sufficient	A-weighting under-reports bass; C-weighting essential for music

Section 6. Scientific Discussion

Low-frequency propagation (<125 Hz): STC ratings ignore bass. HVAC (31.5-63 Hz), voices (85-120 Hz), and furniture impacts are key restaurant sources. Lightweight ceilings re-radiate bass energy.

Lombard Effect: Crowds raise voices in noisy environments. Even with music capped at 75 dBA, total levels may rise to 85 dBA Leq.

Impulse noise: Dishes, chairs, and cheering exceed 95-100 dBA. Through ASTC 52, these may still transmit upstairs at ~45-50 dBA, plainly audible in residences.

Flanking noise: Glazing, penetrations, and structural coupling bypass the ceiling barrier. Reducing ceiling performance compounds this.

Hours of Operation: Hours of operation. The restaurant is open until 2:00 A.M. some days reaching far into the quiet time needed for healthy sleep in neighboring units.

AMBIENT, IMPULSE, AND STEADY-STATE NOISE IN MIXED-USE BUILDINGS

One of the most critical issues in assessing noise control in a mixed-use development is understanding the difference between ambient noise, impulse noise, and steady-state noise. Each type interacts with residential environments in different ways, and each presents unique challenges for acoustical control. The failure of the Applicant's consultant to address these distinctions is a significant omission, as the CUP conditions were imposed precisely to manage the complex noise environment of a restaurant beneath residences.

Ambient noise refers to the continuous background sound level in a space. In restaurants, this is the combination of patron conversations, music, and the general hum of activity. While often less startling than other forms of noise, ambient levels are critical in determining overall exposure. Sustained levels of 75-85 dBA, which are common in restaurants, exceed the thresholds established by health authorities for sleep disturbance and chronic annoyance in nearby dwellings. In mixed-use contexts, where residents above require quiet during evenings and nighttime hours, uncontrolled ambient noise may intrude into bedrooms and interfere with rest, even if it remains relatively steady.

Steady-state noise is typically generated by mechanical systems such as refrigeration units, HVAC equipment, or continuous background music. These sources produce relatively uniform sound levels that may persist for hours. While not as startling as impulses, steady-state noise is highly intrusive in residences because it raises the baseline sound floor, making spaces feel restless and preventing natural quiet. Over time, this can erode residents' quality of life. Importantly, low-frequency steady-state sounds, such as the 31.5-63 Hz bands from compressors or ductwork, penetrate structures readily and are poorly represented by A-weighted measurements.

Impulse noise, by contrast, is characterized by sudden, sharp bursts of sound with rapid rise times and high peak levels. Examples in restaurant environments include dish crashes, chairs scraping, loud bursts of laughter, or cheering during social events. These events regularly exceed 95-100 dBA at the source. Unlike steady noise, impulses are more likely to awaken residents, interrupt concentration, or be perceived as disruptive even when their measured average contribution to sound energy is relatively small. In apartments and condominiums, especially during nighttime quiet hours, impulse noise has been shown to be among the most disturbing types of sound intrusions.

From a scientific perspective, both steady-state and impulse noise require robust architectural controls. Steady-state noise needs mass, decoupling, and absorption to prevent long-duration transmission, while impulse noise requires assemblies resilient to short-duration high-energy bursts. The proposed deviation to a lighter CRC/hat channel ceiling fails to adequately address either type. Ambient background noise from patrons is not controlled by electronic limiters, and impulse events remain highly transmissible through a reduced-mass system.

The omission of these distinctions in the Applicant's consultant letter is a cause for concern. By treating all noise as if it were equivalent to limited ambient music levels, the consultant overlooks the dominant contributors to disturbance in mixed-use environments. Residents do not only experience the hum of music; they experience the escalation of voices, the persistence of mechanical systems, and the sudden impact of impulsive events. Each of these requires explicit analysis and mitigation. Without it, the deviation cannot be considered equivalent to the safeguards required by CUP PB22-0563.

Section 7. Relevant Codes and Standards

Miami Beach Code §118-192 (CUP Criteria): Requires that proposed uses not adversely affect public health, safety, morals, or general welfare, and that necessary safeguards protect surrounding property and neighborhood values.

Miami Beach Code §46-152 (Noise Ordinance): Prohibits "unreasonably loud, excessive, unnecessary or unusual noise" that disturbs neighbors; music plainly audible at 100 ft between 11 p.m. and 7 a.m. is prima facie unlawful.

ASTM E336 / E413: Field measurement and rating of sound isolation; STC values are single-number ratings based on frequencies 125-4000 Hz, and thus do not capture low-frequency bass.

ANSI S12.9 / ISO 1996: Community noise guidelines stress evaluation of L_{max} and impulsive events in addition to L_{eq} .

WHO Guidelines for Community Noise (1999): Recommend 30 dBA L_{Aeq} at night indoors and 45 dBA L_{max} for single sound events.

WHO Night Noise Guidelines (2009): Identify 40 dB $L_{night, outside}$ as a long-term target.

WHO Environmental Noise Guidelines (2018): Highlight associations between environmental noise and cardiovascular disease, annoyance, and sleep disturbance.

Section 8. Assessment

This Application represents a significant departure from the conditions upon which the Planning Board originally based its findings of fact. The substitution of a single-layer CRC/hat channel ceiling for a spring-isolated double-layer system reduces mass, eliminates mechanical decoupling, and shrinks the cavity depth available for absorption. Published data and professional experience suggest that such a system may achieve apparent field STC values in the low 50s, compared to the high 50s or low 60s achievable with a properly detailed spring-isolated ceiling. While laboratory ratings are often quoted, real-world apparent isolation is consistently several points lower due to flanking and construction variability. The frequencies most affected by this reduction are precisely those that matter most in mixed-use settings: bass from music systems, refrigeration compressors, and human vocal fundamentals, as well as short-duration impulsive sounds such as dish crashes, chairs scraping, and bursts of cheering. These sounds are not fully represented in the STC metric and require more robust systems to mitigate.

Equally concerning is the reframing of operational safeguards. While a limiter may cap the amplified music system at 75 dBA, it does nothing to control the Lombard effect, whereby patrons and staff unconsciously raise their voices in noisy environments. Research indicates that busy restaurants routinely reach sustained levels of 80 to 85 dBA, with peak events exceeding 90 dBA. A ceiling system already weakened by reduced mass and decoupling will be more susceptible to transmitting this elevated energy into the residences above. In addition, impulsive sounds, which may measure 95 to 100 dBA at the source, can still transmit at perceptible and disturbing levels through an ASTC 50–54 ceiling system, possibly producing audible sound events in the residential spaces above. For comparison, the World Health Organization has indicated that indoor nighttime disturbance begins at approximately 40 dBA, and peer-reviewed studies have consistently linked chronic exposure above this threshold to sleep disruption and associated health impacts.

The Applicant's letters and supplied information, does not adequately address these risks. Their application fails to provide critical baseline information such as the structural slab thickness, in-situ transmission tests, or octave-band predictions. It does not acknowledge the Lombard effect, ignores impulse noise, and oversimplifies the use of A-weighting while dismissing the relevance of C-weighting, which is the appropriate measure for bass-heavy music and crowd noise. The applicant also suggests that glazing offset from the residential façade obviates concerns of flanking, an assertion inconsistent with established acoustical science which shows that flanking is cumulative and becomes more critical when primary barriers are weakened. In short, the applicant's submission does not demonstrate equivalency to the CUP-mandated safeguards and omits the very information that would be required to support such a claim.

In my professional opinion, the proposed deviation could significantly compromise the isolation performance of the restaurant's ceiling system and therefore undermine the factual basis upon which the Planning Board originally granted CUP approval. The CUP is a safeguard tool, designed to prevent harm before it occurs. Weakening these conditions without verifiable data to prove equivalency is inconsistent with both the spirit and the letter of §118-192. Approving the deviation could expose residents to excessive noise, undermine neighborhood values, and erode public trust in the process.

For these reasons, I cannot recommend acceptance of the proposed deviation. The original spring-isolated double-layer ceiling assembly represents the minimum safeguard consistent with CUP approval PB22-0563 and should be retained. Should the Board nevertheless consider approval, it is my professional recommendation that it impose strict conditions including **independent** ASTM E336/E1007 field testing, octave-band criteria with C-weighted controls, use of different measurement criteria like peak and Lmax coupled with an impulse source for testing, continuous monitoring, strict limits on penetrations, a requirement for silent times, indoor noise transmission requirement for existing residential units, and verification of isolation treatments on walls, columns, and façade interfaces before final approval is granted. Without such measures, the deviation poses unnecessary risks to the health, welfare, and quality of life of the residents of Marea Condominium Association and to the integrity of the City's CUP process.

APPLICANT'S OWN ADMISSIONS

The Applicant has already conceded, in writing, that sound levels inside the GAIA Restaurant require treatment. Their original design included a spring-isolated, double-layer gypsum ceiling because the predicted sound levels from amplified music and patron activity were recognized as high enough to require robust safeguards. The consultant's letter dated June 11, 2025, refers to "ambient music" and assigns internal limits of 75 dBA and 80 dBC. By selecting these values, the consultant has effectively admitted that the space, without treatment, could produce levels that would be disturbing to the residential units above.

However, the claim that simply applying electronic limiters to the music system will reduce risk is scientifically unsound and inconsistent with both established acoustical research and the Applicant's own prior design decisions. Limiters address only the amplified sound system; they cannot control human voices, cheering, or the frequent impulsive noises inherent in restaurant and bar operations. The phenomenon known as the Lombard effect ensures that once music is present at any significant level, patrons and staff will raise their voices to be heard. This escalation results in average background levels of 80–85 dBA with peaks around 90 dBA, regardless of limiter settings. The Applicant has not denied the reality of the Lombard effect; rather, it is simply omitted from their analysis.

By reframing the issue as one of electronic control rather than architectural control, the Applicant attempts to substitute a fragile operational safeguard for the permanent, robust safeguards imposed by the CUP. This substitution is not equivalent. Indeed, their own initial design proves the point: had electronic limiters alone been sufficient, the spring-isolated ceiling assembly would never have been specified. The change in narrative is not based on new scientific evidence or field test data but appears instead to be based on something else.

It is important to note that the Applicant's consultant does not provide any in-field transmission loss data to show that the reduced ceiling assembly will perform adequately under real conditions. Nor do they provide octave-band predictions, which are essential in evaluating low-frequency performance. Instead, the argument relies on the assumption that limiter-controlled music at 75 dBA will define the acoustic environment of the space. This assumption is shortsighted. The acoustic environment of a restaurant is shaped by a complex interaction of music, patron behavior, kitchen noise, and impulsive events. By ignoring these contributions, the Applicant presents an incomplete picture that downplays the risks to neighboring residents.

Even under the most generous assumption of a 6-inch structural slab thickness, it appears likely that noise generated within the restaurant could remain audible in neighboring residential units. This is especially true for low-frequency energy and impulsive events, which are only partially attenuated by concrete mass. The Applicant's own wording in the original CUP application acknowledged that such noise required mitigation through a spring-isolated ceiling system and related safeguards. By seeking to remove or weaken those safeguards without supplying verifiable transmission data, the Applicant has not demonstrated that the original concern has been resolved. Instead, the available information suggests that the very conditions contemplated in the CUP's approval process could still manifest, placing residents at risk of exposure to disruptive noise intrusions.

Therefore, even using the Applicant's own data, it is clear that the space was recognized from the outset as requiring substantial treatment. The decision to remove that treatment while claiming that noise will somehow be less, solely on the basis of a limiter, is not credible. It reframes reality without addressing the actual sources of disturbance identified in both the original CUP proceedings and in decades of published acoustical research.

SECTION 9. FINAL SUMMARY

GAIA Restaurant was granted a Conditional Use Permit on the basis of strict acoustical safeguards designed to protect the health, welfare, and neighborhood values of the residents above. The Applicant now seeks to remove those safeguards without providing the most basic evidence, no slab thickness, no in-situ transmission data, no octave-band predictions, and no demonstration of equivalency. Instead, they propose a lighter ceiling system and rely on electronic limiters, a solution that addresses only music playback while ignoring the far greater contributions of patron voices, impulsive events, and low-frequency mechanical noise.

The Applicant's own prior design choices confirm that robust acoustical treatment was necessary. Their present effort to substitute less construction while reframing the problem as one of "ambient music control" is not supported by science, by the CUP criteria, or by common sense. Every independent study of restaurant

environments shows that noise escalates to levels well above the thresholds cited, with impulses and bass transmission among the most disturbing elements in residential spaces.

In my professional opinion, the Applicant has failed to demonstrate that the proposed deviation can provide equivalent protection. Without verifiable data, the City cannot reasonably conclude that the deviation meets the requirements of §118-192. The prudent course is clear: the Planning Board should reject the deviation and uphold the original CUP conditions as the minimum safeguard necessary to preserve peace, livability, and community trust.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Drapak', with a stylized flourish at the end.

Mike Drapak
Principal Consultant

Appendix A — Full References (APA 7)

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World Health Organization. (2018). Environmental Noise Guidelines for the European Region. Copenhagen, Denmark: WHO Regional Office for Europe. <https://iris.who.int/bitstream/handle/10665/279952/9789289053563-eng.pdf>