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VIA ELECTRONIC SUBMITTAL

September 21, 2020

Michael Belush, Chief of Planning and Zoning
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: **Letter of Intent - PB20-0392: Request for Conditional Use Permit for Proposed Neighborhood Impact Establishment located at 200 South Pointe Drive**

Dear Mr. Belush:

This law firm represents Oche Miami, LLC (the "Applicant") the tenant of the property located at 200 South Point Drive within the City of Miami Beach ("the Property"). Please consider this letter the Applicant's letter of intent in support of a Conditional Use Permit ("CUP") to allow operation of a Neighborhood Impact Establishment on the above-captioned Property in connection with an exciting new social dining concept that will incorporate dining and darts in an upscale restaurant atmosphere. It should be noted that this application is being processed concurrently with a code amendment to permit Neighborhood Impact Establishments as a conditional use in the R-PS4 District. See File No. PB20-0384

Description of the Property. The Property is located in the South of Fifth neighborhood between the Continuum on South Beach Condominium Towers to the east, the Portofino Condominium Tower to the west, and the South Pointe Tower Condominium to the South in the City of Miami Beach (the "City"). The Miami-Dade County Property Appraiser's Office identifies the Property with Folio No. 02-4210-000-0134. The Property is within a high-density performance standard zoning district ("R-

PS4 District”). It was developed in 2014 with an accessory restaurant building within the Continuum on South Beach development site. The building is approximately 11,933 square feet in size and features interior dining areas, an interior mezzanine, a modest ground floor terrace, and an approximately 5,756 square foot rooftop terrace. See Figure 1, below. This application does not propose any exterior modifications to the existing building.



Figure 1: Aerial of the Property

Property History. The Property was formerly occupied by a well-known restaurant and wine bar known as CIBO Wine Bar (“CIBO”). CIBO operated as a legal nonconforming use under a settlement agreement with the City that provided the applicable limitations for use of the Property. Under the Settlement Agreement the Property was permitted use of the rooftop terrace and ground floor outdoor area until 11 P.M. on Sunday through Wednesday, and 12:00 AM (midnight), Thursday through

Saturday. CIBO was permitted eight (8) special events permits per year, with three (3) permitted during the month of December. Further, the agreement provided a five (5) ton weight limitation for delivery trucks accessing the existing loading area at the rear of the building, due to the underground parking garage below the Ocean Drive extension area leading into the Continuum.

The Settlement Agreement provided no other apparent limitations on hours of operation or the interior occupancy of CIBO, other than the maximum occupancy load of the building itself. According to building permit plans associated with Building Permit No. BCO15147 the rooftop area was limited to 177 seats. According, to CIBO's Business Tax Receipts from 2018 and 2019, CIBO operated with a total of 400 seats. See Exhibit B, 2018-2019 CIBO Business Tax Receipts.

Upon CIBO's closure in 2019, the Property could no longer operate at with occupancies greater than 299 persons, as neighborhood impact establishments are only permitted in the R-PS4 under limited circumstances not applicable to the Property. Consequently, the Applicant has proposed legislation to allow neighborhood impact establishments as a conditional use in the R-PS4 District subject to approval of a CUP at a public hearing before the Planning Board. This gives the Applicant the opportunity to restore the occupancy previously permitted on the Property through approval of a CUP for a neighborhood impact establishment by the Planning Board at a public hearing.

Proposed Use. The Applicant proposes a restaurant and darts hall concept from Norway with similar intensity as CIBO. The restaurant will feature a total of 395 seats, consisting of: 13 darts playing booths with a total of 89 seats, and 110 traditional dining seats in the interior dining rooms for a total of 199 interior seats, and 196 seats on the rooftop terrace.¹

Importantly, the legislation that permits restoration of the Property's occupancy includes safeguards to ensure compatibility with the surrounding residential community that CIBO was not subject to. Specifically, the proposed legislation limits hours of operation for the rooftop terrace such that it must not be occupied by 8:00 PM, sets a maximum patron occupant load for the rooftop terrace, prohibits outdoor speakers or

¹ It should be noted that the proposed legislation as drafted limits the patron-occupant load of the rooftop to 250 seats. The Applicant is working with staff to provide limitations that ensure the rooftop occupancy load will never exceed 250 persons by limiting use of the rooftop to 196 seats with no congregation of standing patrons permitted and no public rooftop bar. This limitation is proposed as a potential amendment to the legislation proposed by File No. PB20-0384. In any case, the Applicant will comply with the applicable limitation(s) on rooftop occupancy and/or seating prior to obtaining a building permit.

television sets whether amplified or non-amplified, prohibits outdoor bar counters, and prohibits special events permits. Consistent with the existing R-PS4 District regulations the Applicant does not propose any entertainment, the ground floor outdoor area will close by 12:00 AM, and the interior dining areas will close at 2:00 AM.

The Applicant is extremely mindful of the Property's location within an established residential community, especially with respect the Property's immediate neighbors at the Continuum, the Portofino, and the South Pointe Tower. As a result, the Applicant has secured support letters from neighboring property owners and public support for the proposed use throughout the legislative process. See Exhibit C, Support Letters. The Applicant intends to continue working with the neighboring property owners to ensure the proposed use operates in a manner that is compatible with the existing neighborhood context.

The Property is ideally suited for the proposed use, as the large restaurant building provides the interior space needed for the darts equipment and dining seats, while the rooftop terrace compliments the interior use as a lunch and early evening venue. Through Building Permit No. BCC 2014282, the Applicant is proceeding with interior demolition and renovation of the Property to operate the proposed use with an occupancy below the 299-person neighborhood impact establishment threshold, and no rooftop seating. This conditional use request will allow the Applicant an additional (3) darts booths and associated seats in the interior, and will permit use of the rooftop terrace in a limited manner that preserves the existing neighborhood context.

Satisfaction of Conditional Use Permit Review Criteria. The Applicant's request satisfies the two different sets of review criteria and guidelines as follows:

Conditional Use Standards in Section 118-192(a) of the Code of the City of Miami Beach (the "Code").

(1) The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.

CONSISTENT - Policy RLU 1.1.25 provides that the R-PS4 Future Land Use Designation permits accessory uses and conditional uses approved at public hearings as permitted by the Land Development Regulations. The proposed use is consistent with Policy RLU 1.1.25 as it will be permitted as a conditional use subject to approval of the Planning Board at a public hearing.

(2) 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.

CONSISTENT – As mentioned, the proposed use is reestablishing a restaurant use at a location where a similar use existed as recently as 2019. Accordingly, the scale and intensity of the proposed use is practically identical to that of the previously approved restaurant on the Property. Further the building in which the proposed use will be located was designed, approved, and built specifically for the purpose of being used as an accessory restaurant. Thus, the establishment of the proposed use will not cause impacts to levels of service that will exceed thresholds established by the City’s comprehensive plan.

(3) Structures and uses associated with the request are consistent with these land development regulations.

CONSISTENT – The structure and use associated with the Applicant’s request for a CUP for a neighborhood impact establishment are consistent with the City’s land development regulations (LDRs). The existing structure on the Property was approved through the building permit process when it was developed in 2014 as part of the Continuum on South Beach Development. See Building Permit No. BCC14082. The use will be permitted by the LDRs upon adoption of the proposed code amendment to permit neighborhood impact establishments in the R-PS4 District as conditional uses. Consequently, the structures and uses associated with the request are consistent with the LDRs.

(4) The public health, safety, morals, and general welfare will not be adversely affected.

CONSISTENT – The Applicant proposes an exciting social dining concept that will revitalize the existing structure on the Property, which has been vacant since mid-2019. Rather than allow the Property to become a blighted nuisance due to an unsuitable market for such a large restaurant building with low permitted occupancy, the proposed use will revive the Property and provide a neighborhood amenity for the surrounding residential community. Moreover, reestablishment of a restaurant in this building provides badly needed business tax revenue to the City. Finally, the proposed legislation to permit neighborhood impact

establishments in the R-PS4 District as conditional uses includes various safeguards, such as reduced hours of operation for the rooftop terrace, which protect the public health, safety, welfare, and morals. Accordingly, the public health, safety, morals, and general welfare will not be adversely affected.

(5) Adequate off-street parking facilities will be provided.

CONSISTENT - The venue will not provide off-street parking and will utilize a valet parking vendor providing 120 valet spaces. There are also numerous nearby parking lots and garages, and metered self-parking on surrounding streets. The Applicant further anticipates that many patrons will arrive by foot, ride-share services, or taxi.

(6) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

CONSISTENT - As mentioned, the proposed code amendment that permits this application includes various safeguards to protect property persons, and neighborhood values. In addition, the Applicant has heard the concerns of neighbors with respect to valet parking operations and trash collection and has specifically addressed them through its business operations plan. The Applicant will carefully control and monitor valet parking operations, ensuring only patrons are permitted to use valet services, and refuse collection on weekend will only occur after 9:00 AM. The Applicant has an open line of communication with the surrounding residential condominiums at the Continuum on South Beach, Portofino, and South Pointe Towers, and will continue to hear and respond to concerns of neighbors regarding its operations.

(7) The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

CONSISTENT - As this proposed use will reestablish a use that already existed, the concentration of similar types of uses will not increase. Further, the legislation that will permit neighborhood impact establishments in the R-PS4 District is narrowly drafted to prevent a concentration of similar uses in the predominantly

residential south of fifth neighborhood. Therefore, there will no concentration of similar uses conditional uses and no negative impact on the surrounding community.

Neighborhood Impact Establishment Review Guidelines in Section 142-1362(a) of the Code - supplemental review guidelines.

(1) An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.

CONSISTENT - The Applicant has provided a business operation plan with the application that details its history, goals, menu items, employee demand, security, loading and refuse collection, and general operational characteristics.

(2) A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, selfpark, shared parking, after-hour metered spaces and the manner in which it is to be managed.

CONSISTENT - As provided in its business operations plans, the proposed use will utilize PPK Parking, an independent valet parking vendor, to manage its valet operations. PPK parkin will provide a fill-time on-site manager and an online application to facilitate valet parking operations. There are also numerous other nearby parking lots and garages, and metered self-parking on surrounding streets. The Applicant further anticipates that many patrons will arrive by foot, ride-share services, or taxi.

(3) An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises will be controlled.

CONSISTENT - Indoor and outdoor crowd control is incorporated into the Applicant's business operations plan. The Applicant intends to train all employees regarding crowd control procedures, and will limits ingress and egress to the two doorways on Ocean Drive and South Pointe Drive in order to monitor and control entry into the establishment.

(4) A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.

CONSISTENT - The Applicant intends to utilize numerous security cameras located at the entrance and exits to manage security operations for the proposed use. In addition, access to entrances and exits will be controlled such that only the only two doorways will be utilized by the public to ensure crowd control and enforcement of patron age restrictions. Reception staff at the entrance and all food and beverage wait staff will prevent underage alcohol consumption by checking for identification to verify the age of patrons requesting alcohol. All staff will be trained to ensure that all guests leaving the Property do so showing due consideration to the surrounding residential community.

(5) A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.

CONSISTENT - The Applicant has retained Alfka, LLC to conduct a traffic circulation analysis and propose measures to mitigate impacts. Further, a traffic analysis was conducted as part of the development of the Property and the establishment of the former restaurant use. Accordingly, impacts to traffic circulation have been, and continue to be reviewed. Appropriate mitigation of impacts caused by the proposed use will be evaluated and implemented where necessary.

(6) A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.

CONSISTENT - Sanitation guidelines are included in the Operational Breakdown - Deliveries and Collections.

(7) A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.

CONSISTENT - A noise study was not required with this application as no entertainment is proposed. All darts activities will occur indoors, preventing

excessive noise from impacting the adjacent residences, and all music will be played at ambient levels that do not interfere with normal conversation.

(8) Proximity of proposed establishment to residential uses.

CONSISTENT - The Property is adjacent to numerous residential uses, and the Applicant has carefully considered how its operations can be designed to enhance the quality of life for residents in the area. Specific concerns with respect to valet operations and garbage collection have been addressed through the business operations plan.

(9) Cumulative effect of proposed establishment and adjacent pre-existing uses.

CONSISTENT - As this proposed restaurant will replace the approved CIBO restaurant, and there are few, if any, structures that can accommodate an establishment similar to what is proposed, the concentration of similar types of uses will not increase. Therefore, there will not be any negative impact of the surrounding uses.

Sea Level Rise and Resiliency Criteria. Sea Level Rise and Resiliency Criteria.

The proposed project advances the sea level rise and resiliency criteria in Section 133-50(a) as follows:

(1) A recycling or salvage plan for partial or total demolition shall be provided.

The Applicant will provide a recycling or salvage plan during permitting where feasible and appropriate.

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

The existing structure constructed in 2014 features hurricane proof impact windows.

(3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

The Applicant does not propose any changes to the exterior of the structure. However, the existing building provides abundant glass doors that can be opened and utilized as a passive cooling system when appropriate.

(4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

The Applicant will preserve the existing Florida friendly landscaping.

(5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

The building where the proposed use will be located was constructed in 2014 and is substantially elevated from grade in consideration of future sea level rise projections.

(6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

The Applicant will ensure that its operations do not interfere with efforts to harmonize the Property with future projects to raise rights-of-way or adjacent land.

(7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Proper precautions will be taken to ensure the critical mechanical and electrical systems are located above base flood elevation where feasible and appropriate.

(8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

The existing building was constructed above base flood elevation.

(9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Proper precautions will be taken to protect the Property from potential floods.

(10) As applicable to all new construction, stormwater retention systems shall be provided.

The Applicant does not propose any new construction.

(11) Cool pavement materials or porous pavement materials shall be utilized.

The Applicant does not propose changes to existing pavers or pavement. However, it should be noted that the existing building, and the public rights of way to the east of the building were developed with porous pavers and cool pavement materials.

(12) The design of the project shall minimize the potential for heat island effects on-site.

The design of the existing building features an activated rooftop with abundant planters, a water feature, and trellises that minimize the potential for heat island effects on site. To the extent the applicant changes any aspects of the existing design, the design shall consider and minimize the potential for heat island effects.

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Conclusion. The Property is well-suited for such a use and has already operated at a similar intensity. The Applicant has taken great care to ensure that the proposed use coexists peacefully with its neighbors and operates successfully at this location. Accordingly, we respectfully request your favorable review and recommendation of approval of the Applicant's request. If you have any questions or comments regarding the application, please call me at 305-374-5300.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael W. Larkin".

Michael W. Larkin

CC:
Gilles Gillesen
Karla Ibarra
Nicholas Rodriguez