

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 26, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0310, aka PB 18-0239. 723 North Lincoln Lane – Lincoln Eatery.**

An application has been filed requesting a modification to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment and an occupant content in excess of 200 person, Specifically the applicant requested to include outdoor entertainment on the rooftop, pursuant to chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND

On January 22, 2019, the applicant, obtained a conditional use permit (CUP) from the Planning Board for a Neighborhood Impact Establishments with indoor entertainment and an occupant content in excess of 200 persons. On September 24, 2019, the Planning Board approved a modification to the approved CUP to expand the occupant content to include the the rooftop.

ZONING/SITE DATA

Legal Description:

Parcel C:

The South 37 ½ feet of Lot 4 and all of Lot 3, in Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida;

And

A strip of land thirty (30) feet wide and marked "BRIDLE PATH", adjacent to and lying East of North thirty-one and one quarter (31-1/4) feet of Lot 3 and the South thirty-seven and one-half (37-1/2) feet of Lot 4, Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida.

Zoning District:

CD-3 (Commercial High Intensity District)

Future Land Use Designation:

CD-3 (High Intensity Commercial Category)

Surrounding Uses:	North:	Commercial Establishment (Macy's)
	South:	Commercial Establishments
	West:	Public Parking Lot
	East:	Public Parking Garage

(See Zoning/Site map at the end of the report)

THE PROJECT

On September 24, 2019, the Planning Board approved expanding the previously approved Neighborhood Impact Establishment (NIE) for a food hall, known as the Lincoln Eatery, to include the rooftop. This approval did not allow for outdoor entertainment and the applicant is requesting approval to allow entertainment at the rooftop level. The applicant has indicated that the rooftop entertainment will consist of DJ's, live performances, and televisions, but not live music.

The affected area is located on the rooftop of a three-story commercial building located at 723 Lincoln Lane North, which currently contains a Marshall's Department Store on the second and third floors. The food hall area is on the ground floor and rooftop. The existing food hall has a total of 443 seats (110 interior seats, 177 ground level outdoor seats, 156 rooftop seats) with alcohol service and indoor entertainment. Per Section 142-1361 of the Land Development Regulations, an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons, constitutes a Neighborhood Impact Establishment (NIE).

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 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 – The request is consistent with the permissible uses in the High Intensity Commercial Category (CD-3) as designated on the Future Land Use Map within the Comprehensive Plan.

- 2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

Consistent – The proposal does not increase the number of seats or occupancy limits and as such should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

- 4. Public health, safety, morals and general welfare would not be adversely affected.**

Partially Consistent – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The facility would have to comply with all applicable laws and regulations for licensure.

5. Adequate off-street parking facilities would be provided.

Consistent – The site is located in parking district No. 2, and as such, restaurant uses have no parking requirement. Additionally, there are adequate public parking facilities adjacent to the site.

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

Consistent – Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

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

Consistent – There are other restaurants within the vicinity, however restaurants and entertainment uses are appropriate for Lincoln Road and its vicinity. Therefore, no negative impact through the concentration of uses is expected.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental review guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

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.

An updated operational plan was submitted with the application and details hours for deliveries and trash pickup, hours of operation, hours of entertainment, number of employees, alcohol control procedures, and other procedures.

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

The site is located in parking district No. 2 and as such has no parking requirement for the proposed use. The site is across the street from the 17th Street parking garage and the Meridian Avenue parking lot which are expected to provide sufficient parking to serve the establishment.

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 would be controlled.

There is no change from the previously approved operation. The applicant has indicated that they don't expect queuing in the outdoor areas, as there is plenty of room for queuing on the interior of the ground floor for the roof top access.

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

There is no change from the previously approved operation. The applicant has indicated that there will be trained security staff in the evenings. However, because this is a food service establishment, there will be no restrictions on admission based on patron age.

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.

There is no change from the previously approved operation. As such, there is no traffic circulation analysis as stated on the LOI. Transportation Department review was not required.

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

There is no change from the previously approved operation. The applicant's operations plan indicates how trash pickups are handled. Pickups are through the building's loading dock which faces Meridian Court. The pickups are scheduled daily and recycling bins are also provided.

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

A noise attenuation plan was provided by the applicant's sound consultant. The plan was reviewed by the City's Peer Reviewer. Staff has recommended conditions to ensure that the noise does not negatively affect the surrounding community.

8. Proximity of proposed establishment to residential uses.

The project is surrounded by commercial uses and public parking lot.

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

Restaurants are a typical and encouraged use within the Lincoln Road corridor. As such, there will be no cumulative effect on adjacent pre-existing uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

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

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

- (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.**

Not Applicable, as this is an existing building and establishment.

- (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.**

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

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

Not Applicable, as this is an existing building and establishment.

- (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.**

Not Applicable, as this is an existing building and establishment.

- (10) Where feasible and appropriate, water retention systems shall be provided.**

Not Applicable, as this is an existing building and establishment.

ANALYSIS

The proposal affects the rooftop of the Lincoln Eatery, located at 723 Lincoln Lane North. The Lincoln Eatery is a food hall that has been operating since 2019. The applicant has submitted a request to authorize outdoor entertainment on the rooftop, including DJ's, live performances, and televisions; however, the applicant will not be seeking approval for live music. The site is currently approved for indoor entertainment. The applicant has also requested that a clarification be made to the hours in which the indoor entertainment is authorized to include legal holidays. All other

operations are intended to remain the same.

Sound

A sound study was prepared by the applicant's sound consultant, Edward Dugger + Associates (ED+A) and reviewed by the City's peer reviewer, Arpeggio. See the attached sound study and peer review. Based on the peer reviewer's recommendations, staff has incorporated the following conditions into the draft MCUP to ensure that the sound does not impact surrounding areas:

- (1) The entertainment shall be limited to a volume that does not interfere with normal conversation.*
- (2) The entertainment may consist of DJ's, live performances, and televisions; live music shall be prohibited, as described by the applicant.*
- (3) The entertainment may operate from 10:00 AM to 11:00 PM, Sunday thru Thursday, and 10:00 AM to midnight, Friday thru Saturdays and legal long weekends and legal holidays.*
- (4) The Outdoor Speaker System shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design shall physically distribute sound uniformly within the listening area and prevent sound from being audible anywhere north of the southern right-of-way line of 17th Street or of Lincoln Road.*
- (5) All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards nearby residential areas.*
- (6) Only the Applicant's approved outdoor speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related to outdoor sound.*
- (7) 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 and the conclusions of the City's peer review.*
- (8) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.*
- (9) Before a certificate of use is issued for entertainment on the rooftop, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.*
- (10) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.*

Additionally, the applicant's sound study recommended that televisions not be located near the edges of the rooftop to prevent crowds from gathering near the edges. In order to address this concern, staff has incorporated a condition that prevents televisions on the rooftop from being located closer than 20 feet from the rooftop parapet wall.

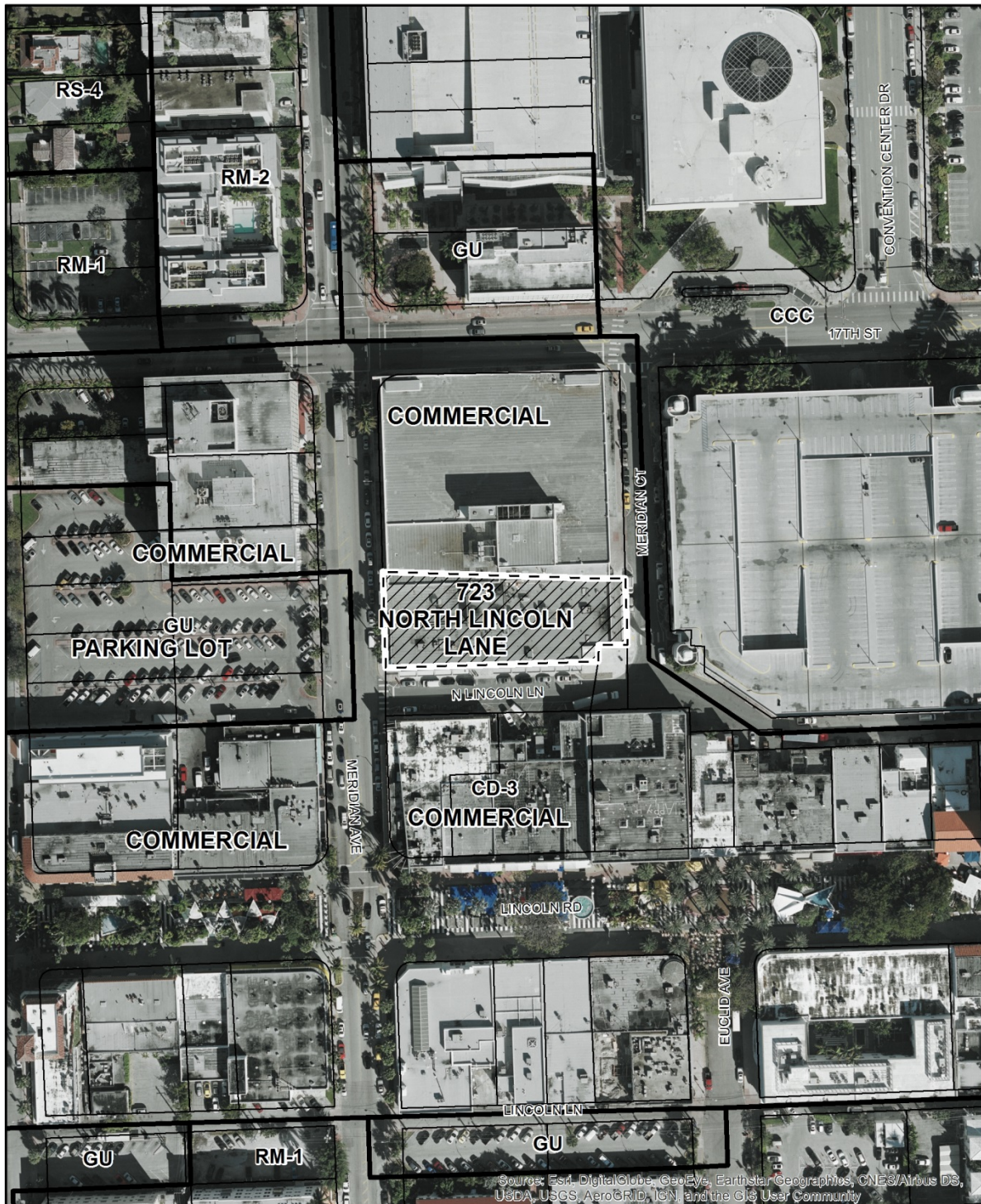
SUMMARY

Due to the location of the establishment, which is surrounded by commercial uses and parking lots/garages, the proposed outdoor entertainment on the rooftop is not expected to negatively impact the surrounding area, provided the conditions that staff has incorporated into the Draft Order are approved. Staff, therefore, does not object to the applicant's request for outdoor entertainment on the rooftop of the Lincoln Eatery.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 723 North Lincoln Lane

FILE NO. PB21-0435, aka PB 19-0310, aka PB 18-0239

IN RE: An application for a modification to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment and an occupant content in excess of 200 person, Specifically the applicant requested to include outdoor entertainment on the rooftop, pursuant to chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL

DESCRIPTION:

Parcel C:

The South 37 ½ feet of Lot 4 and all of Lot 3, in Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida;

And

A strip of land thirty (30) feet wide and marked "BRIDLE PATH", adjacent to and lying East of North thirty-one and one quarter (31-1/4) feet of Lot 3 and the South thirty-seven and one-half (37-1/2) feet of Lot 4, Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: ~~September 24, 2019~~ October 26, 2021

MODIFIED CONDITIONAL USE PERMIT

The applicant, PPF 723 Lincoln Lane, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content in excess of 200 persons with entertainment, pursuant to Section 142, Article V. 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 CD-3, Commercial High Intensity District zoning district; and

That the use is consistent with the Comprehensive Plan for the area in which the property is located; and

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; and

That structures and uses associated with the request are consistent with the Land Development Regulations; and

That the public health, safety, morals, and general welfare will not be adversely affected; and

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

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, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions: Underlining = new language; Strikethrough = deleted language.

1. This Conditional Use Permit is issued to PPF 723 Lincoln Lane, LLC, as owner/operator of the Lincoln Eatery for a Neighborhood Impact Establishment, consisting of an over 200 seat food service establishment with entertainment. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
2. 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 443 seat restaurant with the criteria listed below:
 - i. The indoor and outdoor areas may operate until 2 AM daily.

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- ii. Up to 110 seats may be located in the indoor area, as proposed. The occupancy load for the interior area of the ground floor shall not exceed 285 persons, as identified by the applicant, or such lesser number as determined by the Fire Marshal.
 - iii. Up to 177 seats may be located in the outdoor area fronting Meridian Avenue and Lincoln Lane North, as proposed.
 - iv. Up to 156 seats may be located in the rooftop area, as proposed. The occupancy load of the rooftop shall not exceed 186 persons, as proposed by the applicant or such lesser number as determined by the Fire Marshal.
 - v. Background music played at a volume that does not interfere with normal conversation may be permitted in the outdoor areas including the ground level and the rooftop. Entertainment shall not be permitted ~~in~~ on the ground level outdoor areas.
 - vi. Entertainment shall be permitted on the rooftop outdoor areas. The rooftop sound system shall be subject to the following regulations:
 - (1) The entertainment shall be limited to a volume that does not interfere with normal conversation.
 - (2) The entertainment may consist of DJ's, live performances, and televisions; live music shall be prohibited, as described by the applicant.
 - (3) The entertainment may operate from 10:00 AM to 11:00 PM, Sunday thru Thursday, and 10:00 AM to midnight, Friday thru Saturdays and legal long weekends and legal holidays.
 - (4) The Outdoor Speaker System shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design shall physically distribute sound uniformly within the listening area and prevent sound from being audible anywhere north of the southern right-of-way line of 17th Street or of Lincoln Road.
 - (5) All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards nearby residential areas.
 - (6) Only the Applicant's approved outdoor speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related to outdoor sound.
 - (7) 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 and the conclusions of the City's peer review.

- (8) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
- (9) Before a certificate of use is issued for entertainment on the rooftop, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
- (10) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
- vii. A DJ or live performance may play music in the indoor portions of the restaurant only. The indoor music may start at 10:00 AM and shall not operate past 11:00 PM, Sunday-Wednesday, and 10:00 AM to 2:00 AM, Thursday thru Saturdays and legal long weekends and legal holidays.
- viii. Full meals shall be available during all hours that entertainment is present.
- ix. Speakers may not be installed within twenty (20) feet of the main entrance, within the interior.
- x. 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. 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. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicants sound engineer and Planning staff shall verify that the volume limits on the sound system are set at a level that is not audible at the edges of the property that abut residential properties.
- xi. All operable windows shall be closed at all times that there is entertainment.
- xii. Televisions shall not be located anywhere in the ground exterior areas of the property.
- xiii. Televisions shall be permitted on the rooftop; however, shall no be located closer than 20 feet from the rooftop parapet wall. Televisions shall be limited to a volume that does not interfere with normal conversation.

- xiv.** After normal operating hours the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between closing and 7 am.
- b. Deliveries may only occur between 7:00 AM and 5:00 PM, daily.
- c. Delivery trucks shall only be permitted to park within the loading dock on Meridian Court.
- d. Delivery trucks shall not be allowed to idle in the loading zone area.
- e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- f. Trash collections may occur daily between 7:00 AM and 5:00 PM.
- g. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- h. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- i. Garbage dumpster covers shall be closed at all times except when in active use.
- j. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by code, for the kitchens of any commercial restaurants on the premise that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the interior of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved or in the alternative any such exhaust system shall be located along the west side of the property not directly adjacent to the southernmost or northernmost property lines.
- k. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
- l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

- m. As proposed by the applicant, a security guard shall be onsite between 5 pm. and 2 am. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads.
 - n. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.
 - o. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
- 3. The applicant shall coordinate with the Parking Department to designate a minimum of two (2) spaces for passenger loading.
- 4. The Applicant shall coordinate with the Parking Department to submit an updated comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a BTR for the expanded uses of the rooftop.
- 5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.
- 6. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.
- 7. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - b. Prior to the issuance of a building permit, 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 as determined by the Concurrency Management Division.
 - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - d. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of

Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.

8. 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.
9. 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 for the expanded use of the rooftop. 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).
10. 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.
11. 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.
12. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
13. 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.
14. 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.
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.
16. 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.

17. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Filed with the Clerk of the Planning Board on _____ ()