

MIAMI BEACH


PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 24, 2022

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: **PB21-0435 – 723 N Lincoln Lane MCUP – Lincoln Eatery – Progress Report.**

BACKGROUND

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 (File No. PB18-0239).

September 24, 2019: The Planning Board approved a modification to the approved CUP to expand the occupant content to include the rooftop (File No. PB19-0310).

October 26, 2021: The Planning Board approved a modification to the approved CUP to expand to include outdoor entertainment on the rooftop (File No. PB21-0435).

December 22, 2022: Sound testing of the outdoor entertainment took place with the applicant's sound consultant and staff.

February 28, 2022: A cure letter was sent to the operator requesting that the applicant appear before the Planning Board for a progress report.

March 22, 2022: The Planning Board discussed the progress report and continued it to the April 26, 2022 hearing.

April 26, 2022: The Planning Board discussed the progress report and continued it to the May 24, 2022 hearing.

PROGRESS REPORT

On February 28, 2022, the attached cure letter was sent to PPF 723 Lincoln Lane, LLC, the applicant for the modified CUP approved by the Planning Board on October 26, 2021, pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on March 22, 2022 for a progress report.

STAFF ANALYSIS

The following is a summary of the previously identified violations issued to the property, as recorded in the City's code case management system.

- 11/30/2021 – **CUP2021-00046:** CUP Condition Violation - Appeal
1st Offense
BWC
H Castillo 738

Notes indicate:

Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Ref: Modification of CUP PB19-0310 (originally PB18-0239) not finalized, under review.
Live Dj on the rooftop of eatery.

I responded to a noise complaint on 11/28/2021 that was reported to be coming from the rooftop of the Lincoln Eatery located at 723 Lincoln Ln N. I then proceeded to make my way to the Lincoln Eatery and approached from the West side of the property. As I approached music was heard coming from both a stationed car and from the eatery. I then made my way inside the eatery and was approached my Maximo Mele, Manager for the rooftop establishment known "COCKTAILS AT THE LINCOLN EATERY, LLC". I advised Mr.Mele of the complaint and requested to go upstairs to the rooftop. Mr.Mele agreed and we both proceeded to the elevator and made our way up. Once at the rooftop the music heard was not unreasonably loud/excessive. However a DJ was observed at the rooftop during this inspection. Additional information obtained by Mr. Thomas Mooney from the Planning and Zoning revealed that the establishments CU has not been finalized.

- 1/30/2022 – **CUP2022-00047:** CUP Condition Violation – Notice of Violation
2nd Offense
BWC
Guerra 716

Notes indicate:

Sections: 142-153, 118-194, 114-8. Failure to operate your business in accordance with your conditional use permit.

RE: Violation of Noise Ordinance - Ref: NC2021-21441

Arrival Time: 11:59 PM

Departure Time: 2:07 AM

CCO Guerra and I received a call from dispatch in reference to loud music coming from 723 N Lincoln Ln. CCO Guerra met with the complainant to survey for loud music and it was determined that music was heard from 1111 Lincoln Rd (Juvia) (NC2022-11775). Later a second complainant called for 723 N Lincoln Ln while finishing up the call at 1111 Lincoln Rd (Juvia). The complainant stated that they did not want to meet and to survey from in front of their property at 1614 Pennsylvania Ave, she stated she heard rap music. Upon our arrival CCO Guerra and I started at 1614 Pennsylvania Ave and surveyed for loud music. We heard intermittent rap music several times while trying to pinpoint the location the music originated from. We followed the music to Lincoln Ln N and then to 723 N Lincoln Ln (Lincoln Eatery rooftop). We were able to determine that was where the rap music came from. There we met with Max and Jo the part owners of SkyDesk (COCKTAILS AT THE LINCOLN EATERY) on the roof of the establishment where rap

music was being played. We departed with the owners to Lincoln Ln N, towards Pennsylvania Ave. We stopped over 100ft away from the property line, rap music was heard and confirmed by both co-owners on BWC. Max departed and returned to 723 N Lincoln Ln and we continued with Jo the the middle of the 1600 Block of Pennsylvania Ave to survey for loud music that was heard again intermittently. A conversed for several minutes and departed. We then returned at 2:03 AM and hand delivered 2 violations the first a 1st Offense (NC2022-22782) for music heard over 100ft away from the property, The second was for violating the Conditional Use Permit (CUP2022-0047) 2nd offense. Both violations were signed for and hand delivered to Jo. No music was heard when hand delivering the violations.

- 11/13/2021 – **NC2021-21790**: Noise Complaint – Notice of Violation
Written Warning
BWC
Rodriguez 711

music/17th st/meridian ave

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. Ref: Music loud and excessive. Plainly audible from 100ft
Written Warning. Arrival: 12:57 AM. Departure: 1:50 AM

- 1/30//2022 – **NC2022-22782**: Noise Complaint – Notice of Violation
1st Offence
BWC
CCO Russell755 & CCO Guerra716

MUSIC

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.
RE: Music heard over 100Ft
1st Offense
Fine: \$250.00

Arrival Time: 11:59 PM

Departure Time: 2:07 AM

CCO Guerra and I received a call from dispatch in reference to loud music coming from 723 N Lincoln Ln. CCO Guerra met with the complainant to survey for loud music and it was determined that music was heard from 1111 Lincoln Rd (Juvia) (NC2022-11775). Later a second complainant called for 723 N Lincoln Ln while finishing up the call at 1111 Lincoln Rd (Juvia). The complainant stated that they did not want to meet and to survey from in front of their property at 1614 Pennsylvania Ave, she stated she heard rap music. Upon our arrival CCO Guerra and I started at 1614 Pennsylvania Ave and surveyed for loud music. We heard intermittent rap music several times while trying to pinpoint the

location the music originated from. We followed the music to Lincoln Ln N and then to 723 N Lincoln Ln (Lincoln Eatery rooftop). We were able to determine that was where the rap music came from. There we met with Max and Jo the part owners of SkyDesk (COCKTAILS AT THE LINCOLN EATERY) on the roof of the establishment where rap music was being played. We departed with the owners to Lincoln Ln N, towards Pennsylvania Ave. We stopped over 100ft away from the property line, rap music was heard and confirmed by both co-owners on BWC. Max departed and returned to 723 N Lincoln Ln and we continued with Jo the the middle of the 1600 Block of Pennsylvania Ave to survey for loud music that was heard again intermittently. A conversed for several minutes and departed. We then returned at 2:03 AM and hand delivered 2 violations the first a 1st Offense (NC2022-22782) for music heard over 100ft away from the property, The second was for violating the Conditional Use Permit (CUP2022-0047) 2nd offense. Both violations were signed for and hand delivered to Jo. No music was heard when hand delivering the violations.

- 3/25/2022 – **NC2022-23341**: Noise Complaint – Notice of Violation

Ref: Unreasonably loud and excessive music from the rooftop.

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.

2nd offense; \$1500 fine

Arrival: 7:34 PM

Departure: 9:30 PM

BWC Used

S. Beharry (736)

Notes Indicate:

Notice of violation. 2nd Offense. While patrolling the area for Code-related issues, we noticed unreasonably loud and excessive music coming from the rooftop of the property. The music was plainly audible along Michigan Avenue located several streets west of the property. We followed the source of the music going east on Lincoln Lane North, crossing over Jefferson Avenue and then Meridian Avenue, which brought us to 723 Lincoln Lane North. The music was determined to be coming from the rooftop.

We proceeded up to the rooftop where we met with the owner of the business, Cocktails at the Lincoln Eatery, Maximo, and explained the violation. As we met with Maximo, immediately he had to raise his voice to talk to us, as the music exceeded normal conversation. Maximo called his partner Joey to meet with us as well. We explained to

both owners that they are in violation of the noise ordinance and that we would need to do research to identify if they violated their Conditional Use Permit as well.

We walked with the owner Joey toward Michigan Avenue to show them where exactly we began hearing their music from. We educated the owner of the ordinance and asked that they continue to monitor their music throughout the night.

After further research, the business tenant had violated the properties Conditional Use Permit by playing music that exceeds normal conversation and by playing music heard outside of the listening area off property.

Cases were created and hand-delivered to the business owners on site. They obtained copies of the violation, but refused to sign for them. Service obtained. Additional copies were posted on site.

BWC used.

J. Goehring (745)
S. Beharry (736)

- 3/25/2022 – **CUP2022-00052**: CUP Condition Violation – Notice of Violation

Ref: Failing to comply with Section 2 (a)(vi)(1) of the conditional use permit by playing music that exceeds normal conversation.

Failing to comply with Section 2 (a)(vi)(4) of the conditional use permit by playing music heard outside of the listening area off property.

Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

1st Offense.

BWC used.

J. Goehring (745)
S. Beharry (736)

Notes Indicate:

Notice of violation. 1st Offense. While patrolling the area for Code-related issues, we noticed unreasonably loud and excessive music coming from the rooftop of the property. The music was plainly audible along Michigan Avenue located several streets west of the property. We followed the source of the music going east on Lincoln Lane North, crossing over Jefferson Avenue and then Meridian Avenue, which brought us to 723 Lincoln Lane North. The music was determined to be coming from the rooftop.

We proceeded up to the rooftop where we met with the owner of the business, Cocktails at the Lincoln Eatery, Maximo, and explained the violation. As we met with Maximo, immediately he had to raise his voice to talk to us, as the music exceeded normal conversation. Maximo called his partner Joey to meet with us as well. We explained to

both owners that they are in violation of the noise ordinance and that we would need to do research to identify if they violated their Conditional Use Permit as well.

We walked with the owner Joey toward Michigan Avenue to show them where exactly we began hearing their music from. We educated the owner of the ordinance and asked that they continue to monitor their music throughout the night.

After further research, the business tenant had violated the properties Conditional Use Permit by playing music that exceeds normal conversation and by playing music heard outside of the listening area off property.

Cases were created and hand-delivered to the business owners on site. They obtained copies of the violation, but refused to sign for them. Service obtained. Additional copies were posted on site.

BWC used.

J. Goehring (745)

STAFF ANALYSIS

As identified above, the Lincoln Eatery has received several violations for noise. In addition to the violations mentioned above, there were several complaints made by residents in February and March, though they did not result in violations. As noted previously, a pattern of non-compliance is of concern to staff as it can negatively impacts the quality of life of nearby residents. The following conditions of approval contained in the approved CUP are applicable regarding the above noted violations:

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:*
 - *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.*

- 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 385 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 222 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 2 AM, 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.*
 - (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, live performance, live music and televisions may play music in the indoor portions of the restaurant. 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.*
- 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.*
- 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.*
- 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.*
- 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.*

Staff would emphasize that per Condition 15 of the CUP, the establishment and operation of this Conditional Use must comply with all the conditions of approval and non-compliance shall constitute a violation of the City Code. Additionally, the CUP is subject to enforcement procedures set forth in Section 114-8 of the Code and such enforcement procedures as are otherwise available.

UPDATE (May 24, 2022)

Since the last progress report on April 26, 2022, there have been no additional violations or noise complaints. The applicant updated staff as to the steps that have been taken to ensure compliance with the conditions of the CUP. As such, staff is comfortable suspending further progress reports. Should there be future violations, staff could send a new cure letter to reinstate future progress reports.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report and provided that there are no open violations related to the CUP at the time of the meeting, suspend further progress reports.



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

March 8, 2022

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

IC, LLC
1826 Collins Avenue
Miami Beach, FL 33139

Re: Cure Letter regarding Planning Board File No. PB21-0452, a.k.a. PB File No. 1903.

Dear Sir/Madam:

A Conditional Use Permit (CUP) was issued to IC, LLC, on January 27, 2009, to operate a robotic parking system in a commercial main use parking garage. Included in this CUP approval was an accessory use, 240-seat restaurant, as well as the ability to operate the garage after midnight (see attached CUP).

It has come to the Planning Department's attention that the robotic parking within the garage has not been operational for some time. This has serious implications regarding the CUP, as the accessory restaurant use is subordinate to the robotic parking structure, and the required parking for the accessory use was satisfied by the applicable number of spaces in the parking structure. If the parking portion of the structure is no longer going to be operational, you must still satisfy the minimum required parking for the restaurant use.

Additionally, written warnings and violations have been issued by the Code Compliance Department regarding the operation of the garage and restaurant. These include, but are not limited to, the following violations that are still pending as of the date of this letter:

- 5/25/2020 – **US2020-03447**: Unsafe Structures

NOTICE OF VIOLATION ISSUED.

Evidence of water intrusion observed at the electrical room.

Need to disconnect the power in the affected areas, need to submit a report signed and sealed by an engineer to identify the cause of the water intrusion as well as to evaluate the extend of the damages together with methods of repairs.

Power cannot be re-connected until report from engineer certify safety conditions to re-connect.

- 10/30/2021 – **NC2021-21597**: Noise Complaint – Notice of Violation
2nd Offense
BWC
Guerra 716

Notes indicate:

Violation of: 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.

Ref: Playing bass that could be heard in complainants unit.
2nd Offense \$ 1000.00
CCO R Santana (705)
BWC Used.
Arrival 2:15 AM
Departure 3:20 AM

In addition to the aforementioned violations, there have been 84 noise complaints since February of 2020. Several of those complaints were routed to the Police Department.

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

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to IC, LLC as owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
5. 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.
6. The Final Order for File No. 6265 issued by the Historic Preservation Board on January 13, 2009 is hereby adopted and incorporated into this order by reference.
7. Storage of vehicles by valet operators for off-site facilities shall be permitted.

8. The off-street parking requirements for the accessory restaurant shall be satisfied only within the garage. Required parking for off-site venues shall not be satisfied at this garage.
9. The proposed accessory use restaurant on the site shall not be permitted to use the rooftop. The restaurant seating shall be contained inside the premises and restricted to no more than 208 seats and an occupant load that shall not exceed 240 persons or any lesser number as may be determined by the Chief Fire Marshal.
10. "Entertainment," as defined in the City Code shall be prohibited within the site, inclusive of the accessory use restaurant, rooftop and any outdoor area.
11. The robotic parking system and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer submitted to the Planning Department.
12. The parking garage shall consist of 139 spaces, of which 52 are required parking for the accessory restaurant. The garage operation will be 24 hours per day, seven days a week. Accessibility for public use, including the valet parking authorized in Condition No. 7 shall be available at all times. The facility shall be equipped with closed circuit recording monitors to assure the safety and security of the public. There shall be security personnel of at least one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the four-page letter dated January 16, 2009 from Automotion Parking Systems, LLC of West Hempstead, New York, as proffered by the applicant, except that the reference to the facility being unattended shall be deleted.
16. The facility must maintain adequate backup generators sufficient to power the car elevators. The generator shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure that any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum floodplain criteria.
26. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory restaurant should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise.
27. 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.

Therefore, in light of 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 March 22, 2022 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 26, 2022 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,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', with a long horizontal stroke extending to the right.

Thomas R. Mooney, AICP
Planning Director

TRM\RAM\AG



CFN 2009R0318964
OR Bk 26850 Pgs 0800 - 804; (5pgs)
RECORDED 05/01/2009 14:09:59
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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

PROPERTY: 1826 Collins Avenue.

FILE NO. 1903

IN RE: The Application by IC, LLC requesting a Conditional Use approval for a robotic parking system in a commercial main use parking garage to operate the garage after midnight with an accessory use 240-seat restaurant.

LEGAL DESCRIPTION: Lot 4, less the West 25 feet thereof, Block 2, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 27, 2009

CONDITIONAL USE PERMIT

The applicant, IC, LLC, is requesting a modification to an existing Conditional Use approval pursuant to Section 118-195 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit 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-2, Commercial Medium Intensity zoning district;

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

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are not consistent with the Land Development Regulations, but will be when Condition No. 3 is in compliance;

That the public health, safety, morals, and general welfare will not be adversely affected if the applicant complies with the conditions stated herein;

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 her in, including the staff recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to IC, LLC as owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. The applicant shall redesign the driveway to a width of 22 feet in order to conform to the requirements of the City Code, or in the alternative shall apply to the Board of Adjustment to obtain a variance in accordance to Chapter 118, Article VIII, "Procedures for Variances."
4. 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 of the modified plans.
5. 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.
6. The Final Order for File No. 6265 issued by the Historic Preservation Board on January 13, 2009 is hereby adopted and incorporated into this order by reference.
7. Storage of vehicles by valet operators for off-site facilities shall be permitted.
8. The off-street parking requirements for the accessory restaurant shall be satisfied only within the garage. Required parking for off-site venues shall not be satisfied at this garage.
9. The proposed accessory use restaurant on the site shall not be permitted to use the rooftop. The restaurant seating shall be contained inside the premises and restricted to no more than 208 seats and an occupant load that shall not exceed 240 persons or any lesser number as may be determined by the Chief Fire Marshal.
10. "Entertainment," as defined in the City Code shall be prohibited within the site, inclusive of the accessory use restaurant, rooftop and any outdoor area.
11. The robotic parking system and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer submitted to the Planning Department.
12. The parking garage shall consist of 139 spaces, of which 52 are required parking for the accessory restaurant. The garage operation will be 24 hours per day, seven days a week. Accessibility for public use, including the valet parking authorized in Condition No. 7 shall be available at all times. The facility shall be equipped with closed circuit recording monitors to assure the safety and security of the public. There shall be security personnel of at least

one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the four-page letter dated January 16, 2009 from Automotion Parking Systems, LLC of West Hempstead, New York, as proffered by the applicant, except that the reference to the facility being unattended shall be deleted.

13. The facility shall ensure that noise or vibration from the operation of the robotic parking system and car elevators shall not be plainly audible or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. Noise and vibration barriers shall be incorporated into the final design to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage. The robotic parking system shall use sound deadening material between all connections from the robotic parking system to the building in order to eliminate all sound transference and vibration in the system and the building as well.
14. When construction has been completed, but before the commencement of the garage operations authorized by this Conditional Use Permit and before the issuance of a Business Tax Receipt, the garage operations shall be fully tested under the supervision of Mr. Donald J. Washburn, President of The Audio Bug, Inc. to ensure that all aspects of the garage operation fully comply with the Parking Garage Noise Impact Study by The Audio Bug, Inc., dated November 8, 2008 as amended by The Audio Bug, Inc. letter dated January 20, 2008, all as submitted by the applicant. The garage shall not begin operating until staff has received and approved in writing a final written report by Mr. Washburn stating that as tested, all aspects of the garage operation fully comply with the Parking Garage Noise Impact study as amended. Thereafter, all aspects of the garage operation shall fully and continuously comply with the aforementioned Noise Study as amended.
15. The parking platforms must be sealed and of a sufficient width and length (minimum of 7.5' by 16') to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.
16. The facility must maintain adequate backup generators sufficient to power the car elevators. The generator shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure that any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum floodplain criteria.
17. Deliveries and garbage pickup shall be conducted directly on site and not on the street. The trash/garbage container shall have rubber wheels and shall not be permitted to be wheeled to curbside for pick-up. Deliveries and pickups shall be handled and managed by a dock master supervisor who shall be responsible for controlling traffic when these activities are scheduled in order to minimize the disruption of traffic on Collins Avenue. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
18. Plans shall be modified to reflect on site service of trash removal and deliveries in order to maintain a free-flow of the right of way, including the public sidewalk.

19. The applicant shall submit an MOT (Method of Transportation) 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.
20. The applicant shall increase the driveway turning radii at Collins Avenue to at least 10 feet, and place double yellow lines and a stop bar/stop sign on the driveway in order to clearly delineate the inbound and outbound lanes, as per the recommendations of the Traf Tech traffic impact analysis report dated November 6, 2008.
21. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum of two feet in order to provide adequate sight distance at the project driveway.
22. 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 by the Concurrency Management Division.
23. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit.
24. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
25. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.
26. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory restaurant should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise.
27. 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.
28. 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.
29. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Building Permit
30. 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.

Dated this 5 day of February, 2009.

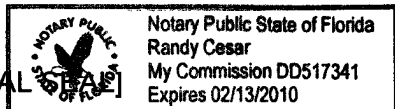
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Jorge G. Gomez, Planning Director
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 5 day of February, 2009, by Jorge G. Gomez, Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



[Signature]
Notary:
Print Name: Randy Cesar
Notary Public, State of Florida
My Commission Expires: 2/13/2010
Commission Number:

Approved As To Form:
Legal Department (Skld 2-5-09)

F:\PLAN\SPLB\2009\1-27-09\1903 - 1826 Collins Ave CU.doc