



200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6236 office
305.377.6222 fax
MLarkin@brzoninglaw.com

VIA CSS AND HAND DELIVERY

July 25, 2022

Rogelio Madan, Chief of Community Planning &
Sustainability
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **Letter of Intent** – PB22-0542 – Modification of
Conditional Use Permit Under File No. PB20-0392 for 200 S
Pointe Drive

Dear Mr. Madan:

This law firm represents 200 S. Pointe Hospitality LLC (the "Applicant") with regard to the above-referenced property (the "Property") within the City of Miami Beach (the "City"). This letter serves as the required letter of intent for a modification of the existing Conditional Use Permit ("CUP") under File No. PB20-0392 (the "Existing CUP"). The Applicant proposes to update the CUP to change the operator and implement a proposed amendment to the high-density performance standard zoning district ("R-PS4 District") regulations that permit modified hours of operation and ambient background level music on certain rooftop terraces.

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. 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 5,750 square foot rooftop terrace. See Figure 1, below.

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 (the "Settlement Agreement"). 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, with 30 minutes for cessation of operations each night. CIBO was permitted eight (8) special events permits per year, with three (3) permitted during the month of December.

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 CIBO's Business Tax Receipts from 2018 and 2019, CIBO operated with a total of 400 seats, and was permitted alcohol service in indoor areas until 5:00 AM. See Exhibit A, 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 City adopted an amendment to the R-PS4 District regulations 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, and a number of neighborhood safeguards, including prohibition of special events permits, limited rooftop hours of operation, and maximum rooftop occupancy of 250 persons.

In 2020, the Planning Board issued the Existing CUP under File No. PB20-0392 in accordance with the legislation to permit neighborhood impact establishments in the R-PS4 District as an accessory use. The Existing CUP permitted a restaurant and darts hall known as Oche, with a maximum occupancy of 450 persons on the ground floor (or such lesser number to be determined by Fire Marshall), and a maximum occupancy of 250 persons on the rooftop, as determined by the Fire Marshall. On the rooftop, pre-recorded background music of any kind was strictly prohibited, and the rooftop was required to be closed by 8:00 PM. The Existing CUP essentially prohibits dinner service on the rooftop, making it difficult for operators to efficiently utilize the Property. Under the Existing CUP,

the interior of the restaurant was permitted to operate until 2AM, and the ground floor outdoor area until 12AM.

The currently pending amendment to the R-PS4 District regulations restores the hours of operation previously permitted on the rooftop terrace for CIBO (11:00 PM on Sunday-Wednesday, and 12AM on Thursday-Saturday, with 30 minutes for cessation of operations each night). In addition, proposed amendment allows ambient background level music on the rooftop terrace, provided that the Applicant installs an automatic tamper resistant noise level limiter and implores noise mitigation best practices to avoid adverse impacts to neighboring properties. Notably, the Applicant will be subject to all of the neighborhood safeguards contained in the existing R-PS4 District regulations, such as a maximum occupancy of 250 persons on the rooftop, a requirement that full meals be served at all times that alcohol is served, as well as prohibition of special events, outdoor bar counters, and outdoor television sets. The proposed legislation and associated modifications to the CUP are equivalent to the prior use of the Property by CIBO with respect to hours of operation, but less intense with respect to special events (none permitted whereas CIBO was permitted 8 per year) and rooftop occupancy (limited to 250 persons). Overall, the intent of the legislation and this related application is to restore the right to serve dinner on the existing rooftop terrace with reasonable restrictions intended to prevent adverse neighborhood impacts.

Proposed CUP Modifications. The Applicant seeks to modify the CUP to change the operator and implement the proposed amendment to the R-PS4 District regulations. The modification of the Existing CUP will facilitate the introduction of "Catch," an acclaimed restaurant that is known for world-class fine dining with premium outdoor/rooftop components. Catch has celebrated locations in New York, Los Angeles, Aspen, and Las Vegas, and is eager to establish their brand in Miami Beach's South of Fifth neighborhood. Catch's experience with rooftop venues in sensitive residential areas paired with their successful fine dining concept is an ideal fit for the South of Fifth neighborhood, as evinced by the support they have received from the South of Fifth Neighborhood Association ("SOFNA") and the Continuum on South Beach Master Association, the neighbor directly adjacent to the Property. See Exhibit B, Support Letters.

Catch proposed the following modifications to the Existing CUP:

Condition No. 1:

This Conditional Use Permit is issued to 200 S. Pointe Hospitality Group, LLC Oche Miami, LLC, as ~~owner~~/operator of the subject Neighborhood Impact Establishment, with an occupancy load exceeding 199 and including indoor entertainment. Any change of operator of fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by the 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 issuance of a Business Tax Receipt.

Condition 2.a.(ii):

The rooftop shall be limited to the following hours of operations:

~~a. Monday-Sunday: 11:00 AM to 8:00 PM~~

Sunday – Wednesday: 5:00 pm - 11:00 pm (+30 minutes for closing)

Thursday – Saturday: 5:00 pm - 12:00 am (+30 minutes for closing)

Dinner Ground Floor Outdoor Seating: 5:00 pm - 12:00 am

Brunch / Lunch Hours: 11:00 am - 5:00 pm

Condition 2.a.(v.):

Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all indoor and outdoor areas, except that recorded background music, played at a level that does not interfere with normal conversation, may be permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties.

Sound Study. The Applicant has submitted an Acoustical Analysis prepared by Criterion Acoustics dated April 13, 2022 to support the request to background level music on the rooftop. Based on that analysis, the Applicant proposes to use an intelligent sound system with directional speakers and install a digital tamper-resistant sound level limited that is calibrated at 65-70 dB's, which is consistent with the measured ambient background level noise in the vicinity of the Property. Further, only upper level management will have access to the limiter to ensure music levels are kept at ambient levels. In addition, the Applicant proposes to use an intelligent sound system with directional speakers, as well as landscaping and noise mitigation best practices to ensure there are no noise impacts to surrounding properties.

Satisfaction of CUP Criteria. The Applicant's request satisfies the CUP Standards in Section 118-192(a)(1)-(7) of the Code of the City of Miami Beach (the "Code") as follows:

(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-PS-4 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 is an accessory use to the Continuum on South Beach subject to review and approval 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 – The proposed CUP modification does not result in an impact that will exceed the thresholds for the levels of service required by the Comprehensive Plan. Indeed, according to the Applicant's submitted traffic analysis, the proposed modification results a negligible change in peak hour trips. Further, the occupancies and hours and proposed by the modification do not differ significantly from what has historically operated at the Property.

(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 proposed CUP modification is was developed as part of the Continuum on South Beach project and is fully compliant with the City's Land Development Regulations.

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

CONSISTENT – The Applicant's proposed modification of the CUP does not adversely affect the public health, safety morals, or general welfare. The uses, hours of operation, and operational characteristics proposed are

generally consistent with the uses, hours of operation, and characteristics of other similar restaurant venues in the City. The Applicant has a proven track record of successfully operating outdoor/rooftop venues in sensitive residential areas, such as its location on Melrose Avenue in Los Angeles. Consequently, the Applicant will be able to operate without adversely impacting the public.

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

CONSISTENT – The Property does not provide off-street parking and will continue to use a valet parking vendor. There are 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. Further, the Applicant has conducted a traffic study and valet analysis to ensure that its valet facilities are adequately staffed and implementing best practices for safe and efficient valet operations.

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

CONSISTENT – The Existing CUP contains safeguards for protection of the surrounding property, persons, and neighborhood values that are being retained, such as limitations on hours of operation, occupancy of the rooftop, noise levels, and prohibitions on special events and outdoor bar counters.

(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 modification will merely continue a use that has already existed, the concentration of similar types of uses will not increase.

Review Criteria for Neighborhood Impact Establishments and Outdoor Entertainment Establishments. The proposed modification complies with the review criteria under Section 142-1362(a)(1)-(9) as follows:

- (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.**

The Applicant has submitted a modified operations plan that addresses hours of operation, staffing levels, goals of the new operator, and other pertinent operational characteristics of the proposed use.

- (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.**

The Applicant's proposed modified operations plan and submitted traffic study demonstrates how valet operations will be conducted and managed.

- (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.**

The Applicant's proposed modified operations plan addresses crowd control.

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

The Applicant's proposed modified operations plan provides for security and patron-age restriction enforcement.

- (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.**

The Applicant has submitted a detailed traffic and valet operations analysis based on recent data collection. The analysis provides that the proposed modification is expected to result in a negligible change in peak hour trips. Thus, impacts will not increase as a result of this application. Further, the Applicant has committed to implement best practices with its valet operations to ensure minimal impacts, as well as other traffic mitigation strategies. These include providing transit information within the Property, and potentially subsidizing transit passes for employees to further reduce

the number of vehicle trips coming to and from the Property, and using a mobile app for more efficient valet operations.

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

The proposed modified operations plan addresses sanitation, such as trash pick up procedures, as well as daily sanitation and cleaning practices.

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

The Applicant has submitted a sound study. Based on these sound studies, the Applicant will implement policies to ensure that noise is controlled and in compliance with the noise ordinance. In addition, the hours where music is permitted have been carefully selected to avoid negative impacts to neighboring properties and ensure compliance with the noise ordinance.

(8) Proximity of proposed establishment to residential uses.

The Applicant has carefully considered its residential neighbors at the Continuum on South Beach, Portofino Tower, and South Pointe Tower.

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

The Property has operated as a fine dining restaurant since 2014. Modification of the Existing CUP will not create a cumulative impact with adjacent pre-existing uses.

Sea Level Rise and Resiliency Criteria. The new home advances the sea level rise and resiliency criteria in Section 133-50(a) of the Code, as follows:

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

To the extent required, a recycling or salvage plan shall be provided.

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

To the extent new windows are proposed, new windows will be hurricane proof impact windows.

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

The Applicant will provide, where feasible, passive cooling systems.

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

All landscaping will be Florida friendly and resilient.

- 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.**

Sea level rise projections were considered and informed design decisions to increase permeable open space and improve stormwater drainage.

- 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.**

Any new ground floor driveways or ramping shall be adaptable to the raising of public rights of way and adjacent land.

- 7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.**

To the extent possible, all mechanical and electrical systems will be located above base flood elevation.

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

The existing building is elevated to 10.7' NGVD, which is 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.

Habitable spaces below base flood elevation plus freeboard will use flood proofing system in accordance with the Code.

10. Where feasible and appropriate, water retention systems shall be provided.

Where feasible, water retention systems will be provided.

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

Cool pavement materials or porous pavement materials will be utilized where possible.

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

The proposed design provides a number of shaded open spaces and non-air-conditioned shaded living spaces to strategically minimize the potential for heat island effects on site. The Applicant is also providing significant plantings on the site to provide shade and reduce heat island effects.

Conclusion. Overall, the proposed modifications to the Existing CUP are consistent with the Code and do not cause adverse impacts. Accordingly, we look forward to your favorable review of the application. If you have any questions or comments in the interim, you may reach me at 305-377-6236.

Sincerely,



Michael Larkin

cc: Eugene Remm
Don Adams
Nicholas Rodriguez, Esq.

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
Miami Beach, Florida 33139-1819

TRADE NAME: CIBO WINE BAR MIAMI, LLC DBA CIBO WINE BAR
DBA: CIBO WINE BAR

LICENSE NUMBER: RL-10007622
Beginning: 09/29/2018

IN CARE OF:
ADDRESS: 200 S Pointe Dr
MIAMI BEACH, FL 33139-7349

Expires: 09/30/2019
Parcel No: 0242100000131

TRADE ADDRESS: 200 S Pointe Dr

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Additional Information

Storage Locations

Code	Business Type
95016400	RESTAURANT / BARS
95000701	ALCOHOL BEV. (NO LATER THAN 5AM)

Restaurants/Bars: #Chairs	400
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FROM: CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139-1819


PRESORTED FIRST CLASS U.S. POSTAGE PAID MIAMI BEACH, FL PERMIT No 1525

CIBO WINE BAR MIAMI, LLC DBA CIBO WINE BAR
200 S Pointe Dr
MIAMI BEACH, FL 33139-7349

sound levels exceed 65-70 dBs. Catch also proposes to use lush landscaping, vinyl-lined umbrellas, and other noise mitigation techniques to ensure that operations do not impact the surrounding neighbors. As outlined in **Exhibit A**, attached hereto and made a part hereof, Catch will be subject to existing Code limitations that require a Conditional Use Permit from the Planning Board, prohibit special events, and limit rooftop occupancy to 250 persons, among other neighborhood-friendly limitations. Catch presented their vision for a beautiful fine dining restaurant at 200 South Pointe Drive to the SOFNA Board of Directors and general SOFNA membership. Based on Catch's track record of operating rooftops at existing locations in New York, Los Angeles, and Aspen, Catch's vision is consistent with SOFNA's vision for our neighborhood.

We fully support the proposed amendment to the RPS-4 regulations governing accessory neighborhood impact establishments and urge you to refer this legislation to the Land Use and Sustainability Committee and Planning Board.

Sincerely,


[alyson herman](#) (Jun 6, 2022 16:22 EDT)

Alyson Herman, President
South of Fifth Neighborhood Association Inc.

cc: Alina T. Hudak, City Manger
Thomas Mooney, Planning Director

BOARD RESOLUTION

CONTINUUM ON SOUTH BEACH MASTER ASSOCIATION, INC.

WHEREAS, the Board of Directors of Continuum on South Beach Master Association, Inc. (the “Master Association”) has a fiduciary duty to its constituents to act in the best interests of the Continuum on South Beach community; and

WHEREAS, the Board of Directors has determined it to be necessary to take this action in the best interests of the persons and property located within the Continuum on South Beach community; and

WHEREAS, the Board of Directors has met to address the City of Miami Beach’s Amendment to Restore Previous Hours of Operations and Permit Ambient Background Level Music [RPS-4].

NOW THEREFORE, on behalf of the 527 families which reside in this community, the Board hereby resolves as follows:

We support the amendment to the RPS-4 District regulations, which:

1. Restores the hours of operation permitted for the former tenant, Cibo Wine Bar, for existing rooftop terraces associated with accessory neighborhood impact establishments in the RPS-4 District, which were 11:00 PM on weekdays (Sunday – Wednesday) and 12:00 AM on weekends (Thursday – Saturday), with 30 additional minutes for cessation of operations each night; and

Permits ambient background level music on existing rooftop terraces associated with accessory neighborhood impact establishments in the RPS-4 District.

2. The building at 200 South Pointe Drive was developed as an accessory use to the Continuum development and was intended to provide a high-quality dining establishment for South of Fifth residents to enjoy. While the former tenants did not always meet our expectations, we are excited at the prospect of bringing the renowned Catch Hospitality Group (“Catch”) to our neighborhood. In order for Catch to deliver on its promise of great vibe, great food, and great service, Catch requires hours of operation of the existing rooftop terrace to match what was permitted for the former tenant, Cibo Wine Bar, as well as the ability to play ambient background level music on the existing rooftop terrace.
3. To support this request, Catch commissioned a sound study to determine noise levels that would not disrupt the neighboring residents at the Continuum on South Beach, Portofino, and South Pointe Tower. That sound study found that playing pre-recorded music at 65-70 dBs would not impact neighboring properties. As a

result, Catch has promised to install a sound system with directional speakers and an automatic noise limiter that automatically reduces music volume if sound levels exceed 65-70 dBs. Catch also proposes to use lush landscaping, vinyl-lined umbrellas, and other noise mitigation techniques to ensure that operations do not impact the surrounding neighbors. Catch will be subject to existing Code limitations that require a Conditional Use Permit from the Planning Board, prohibit special events, and limit rooftop occupancy to 250 persons, among other neighborhood-friendly limitations. Based on Catch's track record of operating rooftops at existing locations in New York, Los Angeles, and Aspen, Catch's vision is consistent with the Master Association's vision for our neighborhood.

4. We fully support the proposed amendment to the RPS-4 regulations governing accessory neighborhood impact establishments and urge you to refer this legislation to the Land Use and Sustainability Committee and Planning Board.

This Resolution was adopted by the Board of Directors on the 26th day of May, 2022 and is effective upon adoption.

There are a total of five (5) Board members. ⁴ ___ Board members voted in favor of this Resolution; ⁰ ___ Board members voted against. The vote of each Director is reflected in the minutes of the meeting at which this Resolution was adopted.

**CONTINUUM ON SOUTH BEACH
MASTER ASSOCIATION, INC.**

BY:  20238C75D5D94C3...

Keith Marks, President

5/27/2022

Date: _____


SOFNA Letter of Support - 5.26.22


Final Audit Report


2022-06-06


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By:	Cosmina Dusan (officemanager@portofino-towers.com)
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"SOFNA Letter of Support - 5.26.22" History

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