

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 20, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0542, a.k.a. PB20-0392 - 200 S Pointe Drive – Catch Restaurant**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment. Specifically, the applicant is requesting modifications to the ownership/operator, to expand the hours of operations and introduce recorded background music played at a level that does not interfere with normal conversation on the roof terrace per recently approved amendment to R-PS4 regulations. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND

November 18, 2020: The City Commission adopted Ordinance No. 2020-4379, which allowed for Neighborhood Impact Establishments (NIE) that do not contain entertainment to operate as an accessory use in the RPS-4 district under certain circumstances. This Ordinance provided that any outdoor restaurant seating above the ground floor cease by 8:00 PM.

November 17, 2021: The Planning Board approved a Conditional Use Permit for a new restaurant with an NIE at 200 South Point Drive (File Number PB20-0392), pursuant to the regulations set forth in Ordinance No. 2020-4379. This restaurant subsequently went out of businesses.

July 26, 2022: The Planning Board discussed and transmitted an Ordinance amending the regulations for Neighborhood Impact Establishments (NIE) in the R-PS4 district to the City Commission with a favorable recommendation. The proposed Ordinance is scheduled to be considered by the City Commission at First Reading on September 14, 2022. Staff will update the board as to the actions of the City Commission.

ZONING/SITE DATA

Legal Description: See exhibit "A"

Zoning District: R-PS4 (Residential Performance Standard, High Density)

Future Land Use Designation: R-PS4 (High Density Residential Performance Standard)

Surrounding Uses:	North:	Mixed-use Commercial Establishments
	South:	Park
	West:	Residential Multifamily
	East:	Mixed-use Commercial Establishments

THE PROJECT

The applicant, 200 S. Pointe Hospitality LLC, has submitted plans entitled “Catch Restaurant”. The proposal is for a restaurant, with alcohol service, to occupy the existing two-story commercial building at 200 S. Pointe Drive where a previously approved restaurant is no longer operating. Based upon the plans and exhibits provided with the application, the total occupancy load is projected to be 596 persons. An occupant content of more than 299 person without entertainment 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 Density Residential Performance Standard Category (R-PS4) 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 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 –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.**

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.**

Partially Consistent – There are no parking spaces on site and the applicant will utilize valet parking services. Additionally, there are public parking facilities and street parking adjacent to the site. See the detailed traffic study prepared by Alfka, LLC.

Any deficiencies with the parking requirement will have to be addressed with a fee in lieu at the time of permit and BTR issuance.

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 neighborhood.

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.

Partially Consistent – There are other restaurants within the vicinity, neighborhood impact establishments are permitted in the R-PS4 Zoning District as a conditional use. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

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.

The operational plan was submitted with the application including details of hours for deliveries, hours of operation, number of employees, 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.

There are no parking spaces on site and the applicant will utilize valet parking services. Additionally, there are adequate public parking facilities and street parking adjacent to the site. See the detailed traffic study prepared by Alfka, LLC.

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.

A crowd control plan was included with the application. Staff is proposing conditions to mitigate any potential issues with crowd control and queuing in the outdoor areas and sidewalk.

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

The applicant has indicated that there will be cameras to monitor the facility and alcohol patronage age restrictions will be performed by reception and wait staff.

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.

A traffic study was provided.

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

Staff has included recommended conditions to mitigate any potential issues related sanitation operations.

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

A sound study was submitted.

8. Proximity of proposed establishment to residential uses.

The project is surrounded by commercial and residential uses. The Continuum the Portofino and the South Pointe Tower are the closest buildings with residential uses.

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

There are other restaurants within the vicinity in this district. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development 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.

Satisfied. The applicant shall provide a recycling or salvage plan as part of any building permit.

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

Satisfied. Windows are hurricane impact windows.

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

Not applicable. Existing Building

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

Satisfied. Per letter of intent, the applicant will preserve the Florida friendly plants.

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.

Satisfied.

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.

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

Satisfied. All critical mechanical and electrical systems will be located above BFE.

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

Satisfied. The existing building was constructed above BFE.

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.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

ANALYSIS

The applicant is requesting a modification to the existing Conditional Use Permit (CUP) to change the ownership/operator. Should this request be approved, Condition 1 would be amended as follows:

1. This Conditional Use Permit is issued to ~~Oche Miami, LLC~~, 200 S. Pointe Hospitality Group, LLC, as ~~owner~~/operator of the subject Neighborhood Impact Establishment, with an occupancy load exceeding 199 and including indoor 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. A progress report shall be scheduled within 60 days followed by the submission and acceptance of the affidavit.

This proposed new condition has been incorporated into a revised MCUP (see attached).

Project Description and Operations

The proposal is for the renovation of an existing restaurant space formerly occupied by Oche. The applicant is proposing to operate a restaurant serving alcoholic beverages.

- Page A3.00 of the plans, prepared by Kobi Karp Architects, provides the proposed ground floor plan with a restaurant area, including 197 interior seats and an occupancy load of 338 persons.
- Page A3.01 of the plans provides the proposed terrace floor plan with 194 outdoor seats and an occupancy load of 248 persons. The kitchen, preparation and back of house areas are located on the ground floor. Per the chart provided, there is a mezzanine level with an occupancy load of 10 persons.

Based upon the exhibits provided in the application, the total projected occupancy load is 596 persons with alcohol service. As per the plans, letter of intent, operational plan and pending code amendment, the following is a breakdown of the areas, the occupancy, and the proposed hours:

Ground floor:

Interior seats:	197
Occupancy load:	338
Proposed Hours:	Monday-Sunday: 11:00 a.m. to 2:00 a.m. Outdoor seating: 5:00 p.m. to 12:00 pm.*

Roof top:

Outdoor seats:	194
Occupancy load:	248
Proposed Hours:	Sunday - Wednesday: 5:00 p.m. to 11:00 p.m. (+ 30 minutes for closing) Thursday – Saturday: 5:00 p.m. to 12:00 a.m. (+30 minutes for closing)

Total occupancy load, including 10 persons at the mezzanine level, is: 596 persons

*Note: The applicant's letter of intent mentions a ground floor outdoor seating schedule, but no seats are shown on the plans. Staff does not have an objection to the proposed outdoor seating or hours of operation. However, a revised floor plan showing the number of seats and proposed occupancy load, which is consistent with the conditions of the approved CUP, will need to be submitted as part of the permit process, and will be subject to the review and approval of the Planning Department.

The applicant is proposing recorded background music, played at a level that does not interfere with normal conversation on the roof top. Such recorded background music would only be permitted if the proposed Ordinance amendment pending before the City Commission is adopted, and provided that the sound system contain directional speakers and a digital tamper-resistant sound level limiter to minimize impacts to adjacent properties. The proposed hours of operation

and entertainment are consistent with the proposed code amendment (see attached ordinance).

Deliveries and Sanitation

The operations plan indicates that all deliveries will be made from the existing loading area at the rear of the property for trucks less than five (5) tons. For trucks larger than five (5) tons the delivery will be from the existing loading space along South Pointe Drive and will occur between 8 a.m. and 12 p.m.

Refuse collection will be made from the terminus of the service road on the southside of the Portofino and South Pointe Tower. The only time indicated on the operational plan is that weekend collections will not occur before 9:00 a.m. to prevent neighborhood disturbance.

Staff has recommended conditions in the attached draft order to ensure that the impacts of the operations are minimized.

Valet Parking and Access

Patrons arriving as passengers in automobiles or for valet drop off will use the valet station located on South Pointe Drive. Access to the property for all costumers is from the main entrance located on the north side of the building on South Pointe Drive.

Security and Crowd Control

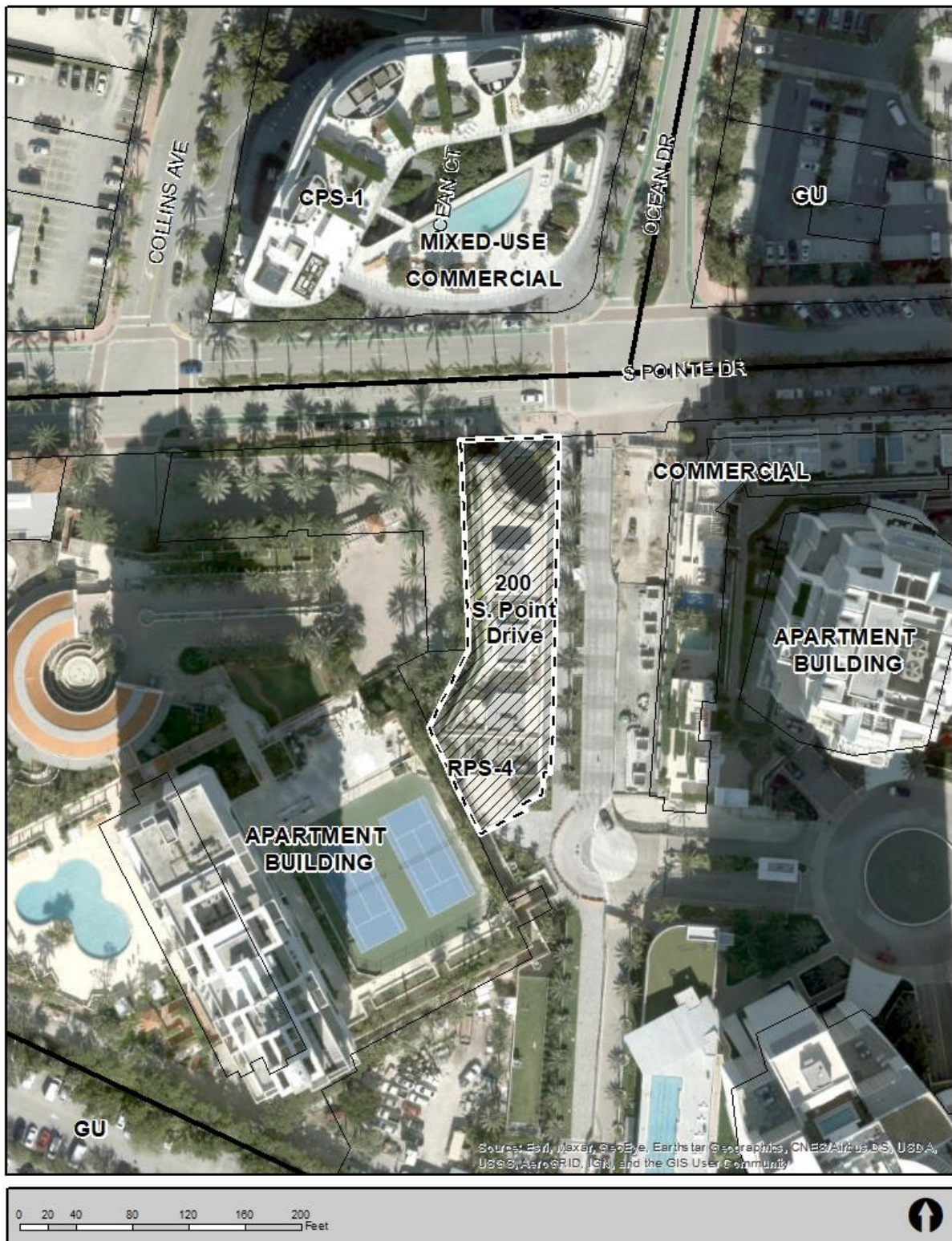
The applicant is proposing to have a host desk at the front of the property, and no security personnel is proposed during operating hours. There will be cameras to monitor the facilities. Access to the rooftop will be limited to guests utilizing dining seats to ensure no congregation of standing patrons occur and to comply with the recently approved code amendment.

The operational plan is silent on patron age limitations, queueing and crowd control on the ground floor. Staff has recommended conditions in the attached draft order to address this.

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



EXHIBIT“ A”

Legal Description

Commence (P.O.C.) at the Southeasterly corner of Biscayne Street (formerly Biscayne Avenue) and Washington Avenue, as said Street and Avenue are shown on the SOUTH BEACH PARK SUBDIVISION, recorded in Plat Book 6, Page 77, of the Public Records of Miami - Dade County, Florida, and run South 10° 47' 35" West, along the Easterly line of said Washington Avenue, a distance of 6.16 feet to a point on the Southerly line of a 6.00 foot Roadway Dedication, said Dedication recorded in Official Records Book 12566, Page 2914, of the Public Records of Miami - Dade County, Florida; thence run North 87° 38' 57" East, along the Southerly line of said 6.00 foot Dedication, along the existing Southerly line of Biscayne Street, as expanded by said 6.00 foot Dedication, a distance of 566.28 feet to the Point of Beginning of the following described parcel of land; thence continue North 87° 38' 57" East, along the last described course, for a distance of 69.34 feet to a point; thence run South 01° 10' 37" West for a distance of 212.06 feet to a point; thence run South 04° 09' 08" West for a distance of 25.56 feet to a point; thence run North 85° 50' 52" West for a distance of 4.33 feet to a point; thence run South 04° 09' 08" West for a distance of 15.63 feet to a point; thence run South 62° 18' 04" West for a distance of 15.52 feet to a point; thence run South 27° 41' 56" East for a distance of 4.33 feet to a point; thence run South 62° 18' 04" West for a distance of 36.38 feet to a point; thence run North 27° 41' 56" East for a distance of 68.49 feet to a point; thence run North 62° 18' 04" East for a distance of 2.00 feet to a point; thence run North 27° 41' 56" West for a distance of 8.33 feet to a point; thence run North 26° 10' 10" East for a distance of 60.35 feet to a point; thence run North 02° 21' 03" West for a distance of 154.92 feet to the Point of Beginning.

Said lands lying and being in Section 10, Township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.

EXHIBIT “ B”

R-PS4 Amendment For Accessory Uses

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” BY AMENDING CHAPTER 142 OF THE CITY CODE ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE II, ENTITLED “DISTRICT REGULATIONS,” DIVISION 18, ENTITLED “PS PERFORMANCE STANDARD DISTRICT,” BY AMENDING SECTION 142-693, ENTITLED “PERMITTED USES,” TO MODIFY RESTRICTIONS APPLICABLE TO NEIGHBORHOOD IMPACT ESTABLISHMENTS INTENDED TO PREVENT IMPACTS ON NEIGHBORING RESIDENTIAL COMMUNITIES, AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the “City”) has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City seeks to encourage investment in restaurants and social dining; and

WHEREAS, the current R-PS4 regulations permit neighborhood impact establishments in a limited way; and

WHEREAS, the current R-PS4 Zoning District regulations require outdoor seating areas above the ground floor to close by 8:00 PM ; and

WHEREAS, the current R-PS4 Zoning District regulations prohibit ambient level background music in outdoor areas above the ground floor; and

WHEREAS, certain restaurant operators (“Operators”) seek to open within the R-PS4 district;

WHEREAS, these Operators seek to utilize existing outdoor rooftop terraces until 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

WHEREAS, these Operators seek to play ambient background level music on these existing outdoor rooftop terraces to improve the dining experience for their patrons while adhering to safeguards intended to prevent impacts on adjacent properties, including restricting sound levels to ambient background level music, utilizing a digital tamper-resistant sound level limiter, utilizing directional speakers, and other sound attenuation techniques; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 142, "Zoning Districts and Regulations," at Article II, entitled "District Regulations," at Division 18, entitled "PS Performance Standard Districts" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-693. - Permitted uses.

(a) The following uses are permitted in the performance standard districts:

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment hotel pursuant to section 142-1105 of this chapter	P	P	P	P Apartment hotel not permitted
Hotel and suite hotels pursuant to section 142-1105 of this chapter	N	P	P	N
Hostel, pursuant to section 142-1105 of this chapter	N	N	Not permitted in C-PS1, C-PS2; Permitted in C-PS3 and C-PS4	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of floor area
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and	N	N	P* North of 5th Street only.	N

8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.				
Entertainment establishments, outdoor entertainment establishments, and open air entertainment establishments	N	N	N	N
Neighborhood impact establishments	N	<p>N</p> <p>However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a conditional use. Access to the establishment entrance shall be only from the interior lobby of the hotel and not from the street. In addition, in the R-PS-4 district this use is also permitted as an accessory use to an oceanfront apartment building with more than 300 units that is adjacent to a park, as a conditional use, provided that the accessory use is located in a separate building from the</p>	C	N

		primary use with a minimum square footage of 8,000 square feet.		
Accessory	P* Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 are prohibited in the RPS-1 district, unless otherwise specified.	P*	P*	P*

P—Main permitted use C—Conditional use N—Not permitted

* — Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

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- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.
 - (c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street.
 - (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the planning director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of 20 units or more, but less than 32 units, the restaurant or bar may have a maximum of 40 seats in the aggregate on the site. The number of units shall be those that result after any renovation.
 - (e) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
 - (f) Video game arcades shall be considered as a conditional use in the C-PS1, C- PS2, C-PS3, and C-PS4 districts.
 - (g) New construction of structures 50,000 square feet and over in the C-PS1, 2 3, and 4 districts (even when divided by a district boundary line) shall be considered as a conditional use,

which review shall be the first step in the process before the review by any of the other land development boards.

- (h) Religious institutions in R-PS1-4 and C-PS1-4 districts shall be permitted as a matter of right up to 199 occupancy, and over that occupancy shall be a conditional use.
- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
 - (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
 - (i) Operations shall cease no later than 2:00 a.m., except as otherwise provided herein.
 - (ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.
 - (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.
 - (iv) Outdoor bar counters shall be prohibited.
 - (v) No special events permits shall be issued.
 - (vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired prior to June 28, 2016.
 - A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.
 - B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.
 - (2) Notwithstanding the uses permitted in (a) and (d) above, in all districts except GU, Government Use District, no alcoholic beverage establishment, or restaurant, may be licensed or operated as a main permitted, conditional, or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, Except that:
 - (i) Outdoor restaurant seating above the ground floor, not exceeding 40 seats, associated with indoor venues (except as provided under (iii) below) may be permitted until 8:00 p.m.
 - (ii) Outdoor music, whether amplified or nonamplified, and television sets shall be prohibited.

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- (iii) Oceanfront hotels in the R-PS4 district. For purposes of this subsection (iii), eastward-facing oceanfront portions of an open-air seating area shall be limited to the open area 50 feet west of the eastern boundary of the above-ground structure.
- A. Oceanfront hotels in the R-PS4 district with at least 200 hotel units may have no more than 100 outdoor restaurant seats in open-air seating areas on one level that are located above the ground floor, of which at least half shall be located on eastward-facing oceanfront portions of an open-air seating area, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Patrons shall not be seated in the remainder of any open-air seating areas in a particular hotel later than 11:00 p.m., and such seating areas shall be closed to the public no later than 12:00 a.m. Seating on the main roof shall not be permitted under any circumstances.
- B. Oceanfront hotels in the R-PS4 district with at least 100 hotel units, but less than 200 hotel units, may have no more than 50 outdoor restaurant seats in eastward-facing oceanfront portions of open-air seating areas that are located on one level above the ground floor, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Seating on the main roof shall not be permitted under any circumstances.
- (iv) Oceanfront apartment buildings in the R-PS-4 district. Accessory uses approved as a conditional use to oceanfront apartment buildings with more than 300 units, located adjacent to a park and in a separate building from the primary use with a minimum square footage of 8,000 square feet shall be permitted subject to the following restrictions:
- a. A maximum patron-occupant load of no more than 250 individuals may be permitted on an open level above the ground floor. The patron-occupant load shall be determined by the Fire Marshall.
- b. The hours of operation for the open level above the ground floor shall be 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday, with an additional 30 minutes for cessation of operations permitted each night. The additional 30 minutes for cessation of operations shall only be utilized for staff closing and clean-up. No patrons shall be served past 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday. ~~not be occupied past 8:00 PM;~~
- c. Outdoor music and television sets, whether amplified or nonamplified, shall be prohibited in open levels above the ground floor. Notwithstanding the foregoing, 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. Nothing in this subparagraph shall be construed to exempt or otherwise limit the applicability of Section 46-152 to the accessory uses permitted by this subsection.
- d. Outdoor bar counters shall be prohibited.

- e. Special event permits are prohibited.
 - f. Notwithstanding the prohibition set forth in 142-693(i)(2), alcoholic beverages are permitted in this open level above the ground floor during the hours of operations permitted by this subsection. ~~until 8:00 PM; and~~
 - g. Any open area above the ground floor shall only be open when the restaurant is open serving full meals.
 - h. With regard to ground floor outdoor areas the following restrictions shall apply:
 - i. Outdoor bar counters shall be prohibited;
 - ii. There shall be no issuance of any special event permit for this area;
 - iii. This area shall not be occupied past 12:00 AM midnight.
 - i. With regard to the interior area of this separate accessory use building, as defined herein, the following restrictions shall apply:
 - i. The area shall not be occupied past 2:00 AM;
 - ii. There shall be no issuance of any special event permit for this area.
- (v) Other than as permitted in subsection (i)(2)(iii) and (i)(2)(iv), no commercial activity may be permitted on areas as described in this subsection (i)(2) between the hours of 8:00 p.m. and 10:00 a.m.
- (vi) Nothing herein shall prohibit residents of a multifamily (apartment or condominium) building, or hotel guests and their invitees to use these areas as described in this subsection (i)(2), which may include a pool or other recreational amenities, for their individual, personal use.
- (3) Any increase to an alcoholic beverage establishment's approved hours of operation shall meet the requirements of this section.
- (4) Variances from this subsection (i) shall not be permitted. Special events shall not be permitted.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____ 2022.

PASSED and **ADOPTED** this _____ day of _____, 2022.

Dan Gelber
Mayor

ATTEST:

Rafael E. Granado
City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney Date

First Reading: September 14, 2022
Second Reading: October 26, 2022

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 200 S Pointe Drive – Catch restaurant

FILE NO. PB22-0542, a.k.a. PB20-0392

IN RE: modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment. Specifically, the applicant is requesting modifications to the ownership/operator, to expand the hours of operations and introduce recorded background music played at a level that does not interfere with normal conversation on the roof terrace per recently approved amendment to R-PS4 regulations. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code..

**LEGAL
DESCRIPTION:** See Exhibit “A”

MEETING DATE: September 20, 2022 ~~November 17, 2020~~

CONDITIONAL USE PERMIT

The applicant, ~~Oche Miami, LLC~~, 200 S. Pointe Hospitality Group, 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 R-PS4, residential performance standard, high density 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:

1. This Conditional Use Permit is issued to ~~Oche Miami, LLC~~, 200 S. Pointe Hospitality Group, LLC, as ~~owner~~/operator of the subject Neighborhood Impact Establishment, with an occupancy load exceeding 199 and including indoor 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. A progress report shall be scheduled within 60 days followed by the submission and acceptance of the affidavit.
2. The Board hereby imposes and the Applicant agrees to the following operational conditions for all permitted and accessory uses, and the applicant 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. The project authorized by this Conditional Use Permit includes the development and operation of the proposed restaurant, subject to the criteria listed below:
 - i. The hours of operation noted herein shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage establishments.
 - ii. The ground floor shall be limited to the following hours of operation:
 - a. Monday – Sunday: 11:00 AM to 2:00 AM (indoors)
5:00 PM. to 12:00 AM (outdoor)The ground floor outdoor area shall close no later than 12:00 AM each night.
 - iii. The rooftop shall be limited to the following hours of operation:
 - a. ~~Monday – Sunday: 11:00 AM to 8:00 PM~~
 - a. Sunday - Wednesday: 5:00 p.m. to 11:00 p.m. (with an additional 30 minutes for cessation of operations)
Thursday – Saturday: 5:00 p.m. to 12:00 a.m. (with an additional 30 minutes for cessation of operations)

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- iv. The maximum occupancy load for the ground floor shall not exceed 450, or such lesser number as approved by the Fire Marshall.
 - v. The maximum occupancy load for the roof top shall not exceed 250, or such lesser number as approved by the Fire Marshall.
 - vi. Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all indoor and outdoor areas. 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.
 - vii. Televisions and projectors shall not be located anywhere in the exterior areas of the property.
 - viii. 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 the establishment's closing time and 8:00 AM.
 - ix. Special event permits shall be prohibited.
- b. The maximum patron-occupant load for the open level above the ground floor shall not exceed 250 individuals. The patron-occupant load shall be determined by the Fire Marshall.
 - c. The roof top plan shall be revised and approved by the Fire Marshall to comply with the maximum patron occupant load of 250. All charts, plans, and zoning data shall be updated prior to the issuance of a BTR.
 - d. Deliveries may only occur between 8:00 AM and 12:00 PM each day.
 - e. Delivery trucks shall only be permitted to load and unload within the designated freight loading zones.
 - f. Delivery trucks shall not be allowed to idle in loading zones, including the service road.
 - g. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - h. Trash collections may occur during the following hours only:
 - Monday – Friday: 8:00 AM to 12:00 PM
 - Saturday – Sunday: 9:00 AM to 12:00 PM
 - i. The building permit plans shall indicate that adequate trash room space, air conditioned and noise baffled, is provided on site, 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.

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- j. 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.
 - k. Garbage dumpster covers shall be closed at all times except when in active use.
 - l. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Applicant agrees to install an exhaust system, if required by code, for the kitchens 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 footprint of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved.
 - m. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - n. Any host/hostess desk shall be located on private property.
 - o. Patrons shall not be allowed to queue on any public rights-of-way or on the exterior of the premises. Staff shall monitor any crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk.
 - p. Applicant / Operator(s) 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 and Transportation Department to submit a comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a Temporary Certificate of Occupancy.
 - 4. 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.
 - 5. The applicant shall comply with the following Transportation Demand Management requirements:
 - a. The applicant has provided a Transportation Demand Management (TDM) manager to coordinate TDM measures. An implementation plan for TDM strategies shall be presented at the time of Business Tax Receipt (BTR) application. Annual TDM progress reports shall be submitted to the City concurrently with the request for BTR renewal.
 - b. Transit Passes: The applicant shall participate in the Miami-Dade Transit Corporate Discount Program and offer a transit subsidy to interested employees.

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- c. **Bike-Share Passes:** The applicant shall coordinate with Citibike or any other City-sponsored bike-share vendor to provide bike-share passes to interested employees.
 - d. **Other Strategies:** The applicant shall coordinate with South Florida Commuter Services to identify other TDM strategies, including van-pool, car-pool, and incentive parking for inclusion in the TDM plan.
 - e. **The Developer shall conduct an updated valet utilization study incorporating the rideshare demand within 60 days after opening of the proposed development. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developer's Traffic Engineer shall coordinate with the Transportation and Mobility Department.**
 6. 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.
 7. 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.
 8. 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 first restaurant to obtain such. Details of the loading operations, including size and frequency of vehicles, as well as full utilization details of the valet operation, shall be submitted for review as part of this progress report. 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).

9. 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.
10. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, other than modification to the roof top plan required to comply with Condition 2(c), may require the applicant to return to the Board for approval.
11. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio Madan, AICP

Chief of Chief of Community Planning & Sustainability
FOR THE CHAIRMAN

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio Madan, Chief of Community Planning & Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department _____ ()

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

EXHIBIT“ A”**Legal Description**

Commence (P.O.C.) at the Southeasterly corner of Biscayne Street (formerly Biscayne Avenue) and Washington Avenue, as said Street and Avenue are shown on the SOUTH BEACH PARK SUBDIVISION, recorded in Plat Book 6, Page 77, of the Public Records of Miami - Dade County, Florida, and run South 10° 47' 35" West, along the Easterly line of said Washington Avenue, a distance of 6.16 feet to a point on the Southerly line of a 6.00 foot Roadway Dedication, said Dedication recorded in Official Records Book 12566, Page 2914, of the Public Records of Miami - Dade County, Florida; thence run North 87° 38' 57" East, along the Southerly line of said 6.00 foot Dedication, along the existing Southerly line of Biscayne Street, as expanded by said 6.00 foot Dedication, a distance of 566.28 feet to the Point of Beginning of the following described parcel of land; thence continue North 87° 38' 57" East, along the last described course, for a distance of 69.34 feet to a point; thence run South 01° 10' 37" West for a distance of 212.06 feet to a point; thence run South 04° 09' 08" West for a distance of 25.56 feet to a point; thence run North 85° 50' 52" West for a distance of 4.33 feet to a point; thence run South 04° 09' 08" West for a distance of 15.63 feet to a point; thence run South 62° 18' 04" West for a distance of 15.52 feet to a point; thence run South 27° 41' 56" East for a distance of 4.33 feet to a point; thence run South 62° 18' 04" West for a distance of 36.38 feet to a point; thence run North 27° 41' 56" East for a distance of 68.49 feet to a point; thence run North 62° 18' 04" East for a distance of 2.00 feet to a point; thence run North 27° 41' 56" West for a distance of 8.33 feet to a point; thence run North 26° 10' 10" East for a distance of 60.35 feet to a point; thence run North 02° 21' 03" West for a distance of 154.92 feet to the Point of Beginning.

Said lands lying and being in Section 10, Township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.