# MIAMI BEACH
## PLANNING DEPARTMENT

## Staff Report & Recommendation — PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 25, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

DS for TRM

SUBJECT: **PB21-0435 – 723 N Lincoln Lane MCUP – Lincoln Eatery – Progress Report and Revocation/Modification Hearing.**

**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.

*May 24, 2022:* The Planning Board discussed the progress report and suspended future progress reports.

*February 7, 2023* A cure letter was sent to the operator requesting that the applicant appear before the Planning Board for a progress report.

*February 28, 2023* The Planning Board discussed the Progress Report and scheduled a revocation modification hearing for the April 25, 2023 meeting.

*April 25, 2023* The Planning Board suspended outdoor entertainment on the rooftop terrace and continued the Revocation/Modification hearing to the July 25, 2023 meeting.

*July 25, 2023* The Planning Board continued the Revocation/Modification hearing to the September 26, 2023 meeting.

*September 26, 2023* The Planning Board continued the Revocation/Modification hearing to the December 19, 2023 meeting.

*December 19, 2023* The December 19, 2023 meeting was cancelled due to a lack of quorum and the item was therefore continued to the January 30, 2024 meeting.

*January 30, 2024* The Planning Board discussed the item and continued the Revocation/Modification hearing to the February 27, 2024 meeting.

*February 27, 2024* The Planning Board discussed the item and continued the Revocation/Modification hearing to the February 27, 2024 meeting.

*March 26, 2024* The Planning Board re-instated the outdoor entertainment on the rooftop, with the requirement that speakers shall be re-located to be below the rooftop parapet, and continued the revocation/modification hearing to the June 25, 2024 meeting.

**PROGRESS REPORT / VIOLATION HISTORY**

On February 7, 2023, a 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 following warnings and citations were issued to the property since the Planning Board approved the last requested modification on October 26, 2021. Below is a summary of the violations issued to the property, as recorded in the City's code case management system.

- 3/22/2023 – **CUP2023-00062:** CUP Condition Violation – Notice of Violation

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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.
  Music and bass loud and excessive heard from 1600 Block Jefferson Ave, at Lincoln and Meridian Ave Intersection and 1680 Meridian Ave Parking Lot 5th Offense CCO Russell755, CCO Marti750 & CCA Jefferson747 BWC.

- 3/22/2023 – **NC2023-25958:** Noise Complaint – Notice of Violation

  **Notes indicate:**
  LOUD MUSIC. Arrival Time: 9:19 PM. Departure Time: 11:30 PM.
  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.
RE: Music and bass loud and excessive heard from 1600 Block Jefferson Ave, at Lincoln Rd and Meridian Ave Intersection and 1680 Meridian Ave Parking Lot. 5th Offense. Fine: $5,000.00. CCO Russell755, CCO Marti750 & CCA Jefferson747. BWC

- 2/5/2023 – **CUP2023-00061:** CUP Condition Violation – Notice of Violation – 03/24/2023 Appeal denied. Adjudication guilty. No fines.

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25600) 4th Offense (Repeat) Violation CCO E. Marti #750 BWC used

- 2/4/2023 – **NC2023-25600:** Noise Complaint – Notice of Violation - Appealed 03/24/2023 Adjudicated Fine of $4000 must be paid by April 24, 2023.

  **Notes indicate:**
  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: LOUD MUSIC COMING FROM ROOF TOP 723 LINC LN N. Notice of Violation was issued. 4th offense, $4,000 fine. BWC was used. E. Marti #750 Arrival: 10:55 PM Departure: 2:40 AM

- 1/21/2023 – **CUP2023-00060:** CUP Condition Violation – Notice of Violation - 03/24/2023 Appeal denied. Adjudication guilty. No fines.

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25474) 3rd Offense (Repeat) Violation CCO R Santana 705 BWC used

- 1/21/2023 – **NC2023-25474:** Noise Complaint – Notice of Violation - Appealed 03/24/2023 Adjudicated Fine of $3000 must be paid by April 24, 2023.

  **Notes indicate:**
  Arrival Time: 12:30 AM Departure Time: 2:00 AM 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. RE: Techno Music heard over 100ft away from property Complainant did not want to meet. Notice of Violation 3rd Offense Fine: $3,00.00 3rd Offense (CUP2023-00060) CCO R Santana 705 BWC Used

- 1/14/2023 – **CUP2023-00058:** CUP Condition Violation – Written Warning Notice 03/24/2023 Appeal granted. Case dismissed.

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25394) 2nd Offense (Repeat) Violation CCO Russell755 & CCO Marti750 BWC

- 1/14/2023 – **NC2023-25394:** Noise Complaint – Written Warning Notice

  **Notes indicate:**
  LOUD MUSIC - Arrival Time: 12:45 AM Departure Time: 2:30 AM 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. RE: Techno Music heard over 100ft away from property Complainant did not want to meet. Written Warning (NC2023-25394) Fine: $1,500.00 2nd Offense (CUP2023-00058) CCO Russell755 & CCO Marti750 BWC

As noted above and discussed at the previous Planning Board hearings, the former operator received several violations for noise. In addition to the items listed above, there were six (6) other noise complaints made between June 10, 2022, and January 1, 2023, though they did not result in violations being issued.

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.

This was the second time that a cure letter has been sent to this operator regarding non-compliance with the CUP. Additionally, even after the board scheduled a revocation/modification hearing, the former operator still did not comply with the requirements of the CUP.

**MARCH 26, 2024 UPDATE**

Code Enforcement provided the following updates on the aforementioned violations:

- CUP2023-00062/ SMA2023-03705- The city clerk has not scheduled a hearing for this violation.

- CUP2023-00061/ SMA2023-03552- The violation was adjudication guilty.
  - Petitioner's request to appeal is DENIED. Adjudication of noncompliance.
  - This is Petitioner's first offense; no fines shall be imposed for this case.
  - The administrative court cost of $116.00 shall not be returned to Petitioner.
  - The case was closed.

- CUP2021-00046/ SMA2021-02941 Violators' Attorney withdrew appeal.

- NC2023-25958 owes $5000.00 Violation was not appealed.

- NC2023-25474/ SMN2023-00179 Owes $3000.00
  - Petitioner's request to appeal is DENIED. Adjudication of noncompliance.
  - This is Petitioner's third offense which carries a fine of $3,000.00 which shall be paid with the Code Compliance Department by April 24, 2023.
  - The administrative court cost of $116.00 shall NOT be returned to Petitioner.

- NC2023-25600 / SMN2023-00181
  - Petitioner's request to appeal is DENIED. Adjudication of noncompliance.
  - This is Petitioner's fourth offense which carries a fine of $4,000.00 which shall be paid with the Code Compliance Department by April 24, 2023.

- NC2022-22782/ SMN2022-00156 Paid $250.00.

- NC2022-23341 Not appealed.

Additionally, staff was informed that the rooftop concession operator was removed from the premises by law enforcement officers in December. Staff has had discussions with the applicant and the new rooftop concession operator for the establishment regarding how it could operate and not negatively impact the quality of life of nearby residents and ensure compliance with the original conditions of approval.

**JUNE 25, 2024 UPDATE**

On March 26, 2024, the new operator addressed the Board and responded to questions and comments. The Board reinstated the outdoor entertainment on the rooftop, with the requirement

that speakers shall be re-located to be below the rooftop parapet and continued the revocation/modification hearing to June 25, 2024.

Since the new operator has taken over the operation of the facility, no new complaints or violations have issued regarding the operation of the venue since the March 26, 2024 meeting. As such, staff recommends that the Board suspend further progress reports at this time.

**STAFF RECOMMENDATION**

Staff recommends that the Planning Board discuss the item and suspend further progress reports at this time.

MIAMIBEACH

**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

February 7, 2023

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

PPF 723 Lincoln Lane, LLC
723 North Lincoln Lane
Miami Beach, FL 33139

Re: Cure Letter - Planning Board File No. PB21-0435 (AKA PB 19-0310 and PB 18-0239).

Dear Sir/Madam:

A Conditional Use Permit (CUP) for a Neighborhood Impact Establishment (NIE) with indoor entertainment was issued to PPF 723 Lincoln Lane, LLC, on January 22, 2019. On September 24, 2019 the Planning Board approved a modification to the approved CUP to expand the occupant content to include the rooftop. On October 26, 2021, the Planning Board Approved a modification to include entertainment on the rooftop (see attached).

It has come to the Planning Department's attention that written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue. These violations include, but are not limited to, the following, which are still pending as of the date of this letter:

- 2/5/2023 – **CUP2023-00061:** CUP Condition Violation – Notice of Violation

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25600) 4th Offense (Repeat) Violation CCO E. Marti #750 BWC used

- 2/4/2023 – **NC2023-25600:** Noise Complaint – Notice of Violation

  **Notes indicate:**
  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: LOUD MUSIC

COMING FROM ROOF TOP 723 LINC LN N. Notice of Violation was issued. 4th offense, $4,000 fine. BWC was used. E. Marti #750 Arrival: 10:55 PM Departure: 2:40 AM

- 1/21/2023 – **CUP2023-00060:** CUP Condition Violation – Notice of Violation

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25474) 3rd Offense (Repeat) Violation CCO R Santana 705 BWC used

- 1/21/2023 – **NC2023-25474:** Noise Complaint – Notice of Violation

  **Notes indicate:**
  Arrival Time: 12:30 AM Departure Time: 2:00 AM 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. RE: Techno Music heard over 100ft away from property Complainant did not want to meet. Notice of Violation 3rd Offense Fine: $3,00.00 3rd Offense (CUP2023-00060) CCO R Santana 705 BWC Used

- 1/14/2023 – **CUP2023-00058:** CUP Condition Violation – Written Warning Notice

  **Notes indicate:**
  Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. RE: 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. Techno music heard over 100ft away from property (NC2023-25394) 2nd Offense (Repeat) Violation CCO Russell755 & CCO Marti750 BWC

- 1/14/2023 – **NC2023-25394:** Noise Complaint – Written Warning Notice

  **Notes indicate:**
  LOUD MUSIC - Arrival Time: 12:45 AM Departure Time: 2:30 AM 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. RE: Techno Music heard over 100ft away from property Complainant did not want to meet. Written Warning

(NC2023-25394) Fine: $1,500.00 2nd Offense (CUP2023-00058) CCO Russell755 & CCO Marti750 BWC

In addition to the items listed above, there were six (6) other noise complaints made between June 10, 2022 and January 1, 2023.

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

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

2. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

    a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 443 seat restaurant with the criteria listed below:

        **i.** The indoor and outdoor areas may operate until 2 AM daily.

        **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.

In addition to the aforementioned violations, staff would note that a Cure Letter was previously sent on February 25, 2022 for similar issues, resulting in progress reports discussed at the March 22, 2022, April 26, 2022, and May 24, 2022 Planning Board meetings. At these meetings the operator testified that there would be no further sound or noise issues, and that the venue would comply with all conditions of the CUP inclusive of all sound limitations.

These violations and noise complaints identified herein illustrate repeated and intermittent noncompliance with the conditions of this CUP and underscore a serious concern about further repeated and intermittent noncompliance with the conditions of the CUP. 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 February 28, 2023 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 noticed and placed on the April 25, 2023 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,



Thomas R. Mooney, AICP
Planning Director

TRM\RAM

DocuSign Envelope ID: FA37B7D5-05D8-4F81-891D-891AD2E14A6F

CFN: 20210859417 BOOK 32852 PAGE 3596
DATE:11/16/2021 02:10:08 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

# PLANNING BOARD
# CITY OF MIAMI BEACH, FLORIDA

**PROPERTY**: 723 North Lincoln Lane

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

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

**LEGAL DESCRIPTION:** Parcel C:

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

And

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

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

## MODIFIED CONDITIONAL USE PERMIT

The applicant, PPF 723 Lincoln Lane, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content in excess of 200 persons with entertainment, pursuant to Section 142, Article V. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

DS
RM

DocuSign Envelope ID: FA37B7D5-05D8-4F81-891D-891AD2E14A6F



The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the CD-3, Commercial High Intensity District zoning district; and

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

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

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

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

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

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions: Underlining = new language; ~~Strikethrough = deleted language.~~

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

2. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

    a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the operation of the proposed 443 seat restaurant subject to the criteria listed below:

        i. The indoor and outdoor areas may operate until 2:00 AM daily.

DS
RM

**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 DJs, live performances, and televisions; however, live music shall be prohibited, as proposed by the applicant.

(3) The entertainment may operate from 10:00 AM to 11:00 PM, Sunday through Thursday, and 10:00 AM to 2:00 AM, Friday through Saturday and on 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, DJs, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJs 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

DS
RM

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 applicant and Planning staff shall be required to verify the sound system operations.

(10) A progress report regarding the outdoor entertainment shall be scheduled 6 months from the issuance of a business tax receipt (BTR) for outdoor entertainment.

**vii.** A DJ, ~~or~~ live performance, live music and televisions may perform or play music in the indoor portions of the restaurant ~~only~~. ~~The~~ Indoor music may ~~start at~~ commence no earlier than 10:00 AM and shall ~~not operate past~~ terminate by 11:00 PM on Sunday through Wednesday, and ~~10:00 AM to~~ by 2:00 AM, Thursday through Saturdays and on legal holidays.

**viii.** Full meals shall be available during all hours that entertainment is present.

**ix.** Speakers may not be installed within twenty (20) feet of the main entrance, within the interior.

**x.** The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicant's sound engineer and Planning staff shall verify that the volume limits on the sound system are set at a level that is not audible at the edges of the property that abut residential properties.

**xi.** All operable windows shall be closed at all times that there is entertainment.

**xii.** Televisions shall not be located anywhere in the ground-floor exterior areas of the property.

**xiii.** Televisions shall be permitted on the rooftop; however, no television shall be

DS
RM

DocuSign Envelope ID: FA37B7D5-05D8-4F81-891D-891AD2E14A6F



located closer than 6 feet from the rooftop parapet wall. Televisions shall be limited to a volume that does not interfere with normal conversation.

**xiv.** After normal operating hours the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between closing and 7:00 AM the next morning.

b. Deliveries may only occur between 7:00 AM and 5:00 PM, daily.

c. Delivery trucks shall only be permitted to park within the loading dock on Meridian Court.

d. Delivery trucks shall not be allowed to idle in the loading zone area.

e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.

f. Trash collections may occur daily between 7:00 AM and 5:00 PM.

g. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.

h. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.

i. Garbage dumpster covers shall be closed at all times except when in active use.

j. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by code, for the kitchens of any commercial restaurants on the premises that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the interior of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved or in the alternative any such exhaust system shall be located along the west side of the property not directly adjacent to the southernmost or northernmost property lines.

k. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.

l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

OS
RM

m. As proposed by the applicant, a security guard shall be onsite between 5:00 PM and 2:00 AM. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads.

n. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.

o. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.

3. The applicant shall coordinate with the Parking Department to designate a minimum of two (2) spaces for passenger loading.

4. The Applicant shall coordinate with the Parking Department to submit an updated comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a BTR for the expanded uses of the rooftop.

5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.

6. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.

7. The applicant shall address the following Concurrency and Parking requirements, as applicable:

a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.

b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.

c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.

d. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of

DS
RM

DocuSign Envelope ID: FA37B7D5-05D8-4F81-891D-891AD2E14A6F



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

8. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.

9. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR for the expanded use of the rooftop. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

10. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

11. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.

12. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

13. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

14. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.

15. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

16. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

DS
RM

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

Dated 11/5/2021 | 2:13 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
BY: Rogelio Madan
CB1FD35D154F4AE

Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

STATE OF FLORIDA
)

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 5th day of November, 2021, by Rogelio A. Madan, Chief of Community Planning and 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] GABRIELA C. FREITAS
MY COMMISSION # HH 173574
EXPIRES: September 8, 2025
Bonded Thru Notary Public Underwriters

Notary:
Print Name: Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: Sept. 8, 2025
Commission Number: HH 173574

Approved As To Form:
Legal Department DocuSigned by: 8D9CB88CCAB8460... ( 11/5/2021 | 1:24) PM EDT

Filed with the Clerk of the Planning Board on DocuSigned by: Jessica Gonzalez 10FC3F3E9D654A5... ( 11/5/2021 | 2:52 ) PM EDT

DS
RM

# PLANNING BOARD
# CITY OF MIAMI BEACH, FLORIDA

**PROPERTY**: 723 North Lincoln Lane

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

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

**LEGAL DESCRIPTION:** Parcel C:

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

And

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

**MEETING DATE:** September 24, 2019; October 26, 2021; April 25, 2023; and March 26, 2024

## MODIFIED CONDITIONAL USE PERMIT

The applicant, PPF 723 Lincoln Lane, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content in excess of 200 persons with entertainment, pursuant to Section 142, Article V. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the CD-3, Commercial High Intensity District zoning district; and

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

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan; and
That structures and uses associated with the request are consistent with the Land Development Regulations; and

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

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

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions: Underlining = new language; ~~Strikethrough = deleted language.~~

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

2. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

    a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 443 seat restaurant with the criteria listed below:

        **i.** The indoor and outdoor areas may operate until 2 AM daily.

**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 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. Speakers located on upper portions of walls shall be relocated to lower portions of walls, so as to be below the parapet wall on the perimeter of the venue.

(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 only. The indoor music may start at 10:00 AM and shall not operate past 11:00 PM, Sunday-Wednesday, and 10:00 AM to 2:00 AM, Thursday thru Saturdays and legal long weekends and legal holidays.

**viii.** Full meals shall be available during all hours that entertainment is present.

**ix.** Speakers may not be installed within twenty (20) feet of the main entrance, within the interior.

**x.** The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicants sound engineer and Planning staff shall verify that the volume limits on the sound system are set at a level that is not audible at the edges of the property that abut residential properties.

**xi.** All operable windows shall be closed at all times that there is entertainment.

**xii.** Televisions shall not be located anywhere in the ground exterior areas of the property.

**xiii.** Televisions shall be permitted on the rooftop; however, shall no be located

closer than 6 feet from the rooftop parapet wall. Televisions shall be limited to a volume that does not interfere with normal conversation.

**xiv.** After normal operating hours the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between closing and 7 am.

b. Deliveries may only occur between 7:00 AM and 5:00 PM, daily.

c. Delivery trucks shall only be permitted to park within the loading dock on Meridian Court.

d. Delivery trucks shall not be allowed to idle in the loading zone area.

e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.

f. Trash collections may occur daily between 7:00 AM and 5:00 PM.

g. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.

h. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.

i. Garbage dumpster covers shall be closed at all times except when in active use.

j. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by code, for the kitchens of any commercial restaurants on the premise that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the interior of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved or in the alternative any such exhaust system shall be located along the west side of the property not directly adjacent to the southernmost or northernmost property lines.

k. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.

l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

m. As proposed by the applicant, a security guard shall be onsite between 5 pm. and 2 am. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads.

n. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.

o. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.

3. The applicant shall coordinate with the Parking Department to designate a minimum of two (2) spaces for passenger loading.

4. The Applicant shall coordinate with the Parking Department to submit an updated comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a BTR for the expanded uses of the rooftop.

5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.

6. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.

7. The applicant shall address the following Concurrency and Parking requirements, as applicable:

a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.

b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.

c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.

d. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of

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

8. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.

9. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR for the expanded use of the rooftop. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

10. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

11. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.

12. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

13. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

14. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.

15. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

16. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

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

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

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

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

[NOTARIAL SEAL]

Approved As To Form:
Legal Department _____ ( )

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