

TERM SHEET – SMITH & WOLLENSKY NEW LEASE AND CONCESSION AGREEMENT

TENANT: 1 WASHINGTON AVENUE CORP. D/B/A SMITH & WOLLENSKY RESTAURANT (“TENANT”)

LANDLORD: CITY OF MIAMI BEACH (“CITY”)

LEASED PREMISES: Building and improvements located at 1 Washington Ave, Miami Beach, FL 33139, currently subject to the Lease Agreement between the City and Specialty Restaurant Corp., dated Feb. 8, 1985, as amended and assigned to 1 Washington Avenue Corp., pursuant to the Consent of Assignment dated October 4, 1993 (the “Existing Lease”) (“Leased Premises”).

CONCESSION AREA: Same 581 sq. ft. area as described in existing Concession Agreement between City and 1 Washington Avenue Corp., dated October 1, 2009, plus additional 475 sq. ft. area located to the west of existing concession area, and 360 sq. ft. area located east of the restaurant building, for total concession area of approximately 1,416 sq. ft. (the “Concession Area”).

A. NEW LEASE TERMS

Description of Leased Premises:	Same building and improvements as set forth in the Existing Lease, as described in Exhibit “A” hereto.
Commencement of new lease (“Commencement Date”):	The new lease shall commence upon the date that the Mayor and City Commission adopt a resolution accepting the certification of the official results of the November 2, 2021 City referendum approving the new lease, in accordance with Section 1.03(b)(1) of the City Charter. ¹
Length of term of new lease:	The initial term of the new lease shall begin on the Commencement Date and shall continue thereafter until November 7, 2045 (20 years following the expiration of the Existing Lease, which is currently Nov. 7, 2025) (“Initial Term”). The new lease may be extended for two (2) consecutive periods of ten (10) years each (each, a “Renewal Term”), provided

¹ Although the Smith & Wollensky leased premises and associated parking (collectively, the “Restaurant Space”) are commonly referred to as being in “South Pointe Park” (the “Park”), the Restaurant Space is not subject to the referendum requirements of Article VII of the Miami-Dade County Charter. As set forth more fully in the Memorandum accompanying this Term Sheet, the deed from the federal government conveying the Park to the City for public park and recreational purposes expressly *excludes* the Restaurant Space from the park covenants, and specifically permits the continued operation of the Restaurant Space. Consistent with the deed restrictions, the Restaurant Space is not a park, and has never been used as a park.

the Tenant is not in default of the lease and otherwise in good standing with the City, and provided further that the Tenant must exercise each Renewal Term option by notifying the City Manager, in writing, of Tenant's election at least one (1) year prior to the expiration of the Initial Term or Renewal Term, as applicable.

Annual Rent to the City:

As of the Commencement Date for the new lease, the Tenant shall pay rent to the City consisting of the **GREATER** of

- (i) \$50 sq. ft. or \$1,042,550 ("Lease Minimum Guarantee") OR
- (ii) the sum of 9% of gross revenues for the operation of the Leased Premises (the "Annual Rent").

The Lease Minimum Guarantee shall be subject to a 2.5% annual escalator. Notwithstanding the foregoing, the Annual Rent in the first four years following the Commencement Date shall be phased in, and subject to the maximum amounts set forth below.

Maximum Rent Prior to November 7, 2025:

The Annual Rent in the first four lease years of the new lease shall be subject to the following maximum not-to-exceed amounts, to permit Tenant to pay the City additional rent immediately (and prior to the expiration of the Existing Lease on November 7, 2025), while gradually phasing in the Tenant's increased rent obligations. Accordingly, in the first four lease years, the total payment by the Tenant for Annual Rent under the new lease and the concession payment, in the aggregate, shall be capped as follows:

\$1,250,000 lease year 2022,
\$1,500,000 lease year 2023,
\$1,750,000 lease year 2024, and
\$2,000,000 lease year 2025.

Security deposit:

The City will continue to hold the security deposit provided under the Existing Lease.

Use:

Tenant shall retain the same uses as in the Existing Lease, which uses shall be limited for the sole purpose of

constructing improvements, equipping, furnishing, and operating a dining facility, cocktail lounge, and/or banquet facility, and for purposes incidental thereto (subject to the written approval of the City Manager), and for no other purpose whatsoever.

Repairs and maintenance:

During the Initial Term and Renewal Terms (if any), Tenant, at Tenant's expense, shall, to the satisfaction of the City, keep and maintain the Premises and all improvements thereon in good and sanitary order, condition, and repair, consistent with the operation of a first-class quality restaurant in the City of Miami Beach. During the term of the lease, Tenant shall comply with maintenance standards for building systems and structures to be included as an exhibit to the new lease. Upon expiration or termination, Tenant shall surrender and deliver up to City the premises and all permanent improvements thereon in good and usable condition, ordinary wear and tear excepted. City shall maintain the parking area used by Tenant.

Utilities:

Tenant shall promptly pay for charges for water, gas sewer, electricity, stormwater, telephone and all other charges for utilities which may be furnished to the Premises during the term.

Repairs and replacements required by 40-Year Recertification:

The Tenant shall be required to obtain the 40 Year Recertification, at its sole cost and expense, including all repairs and replacements required for the 40 Year Recertification.

Property taxes:

During the term hereof, Tenant shall pay all taxes of whatever nature lawfully levied upon or assessed against the Premises and improvements, property, sales, rentals or operations thereon, including but not limited to, ad valorem sales and use taxes.

Insurance:

Tenant shall, at its sole expense, maintain any insurance which may be required by the City including, without

limitation, General Liability, Property All Risk Coverage, Workers' Compensation required by Florida law; Automobile Liability Insurance; Liquor Liability Coverage.

Parking:

In connection with the required parking associated with the operation of the restaurant facility, the City shall provide the Tenant with the exclusive use of 105 parking spaces (same as in the Existing Lease), provided however, that as of the Commencement Date, the City may designate up to 50 of the 105 spaces for general public parking during Off-Peak Hours (Monday-Thursday, 8:00AM to 4:00PM, excluding holidays ("Off-Peak")), unless Tenant advises City in writing 5 days in advance that it anticipates needing the spaces due to an event or similar reason. The City shall be responsible for placing signage on the designated Off-Peak parking spots, to identify the availability of those spaces for general public parking during Off-Peak times, and for the enforcement thereof.

Improvements to leased premises to be made by Tenant during extension term:

Tenant shall, at its sole cost and expense, cause the construction and installation of the improvements, alterations and/or repairs as set forth in **Exhibit "B"** hereto ("Tenant Improvements"). The Tenant Improvements shall be subject to the City Manager's review and approval, not to be unreasonably withheld. Tenant shall complete the Tenant Improvements within 5 years after the Commencement Date. Tenant's failure to complete the Tenant Improvements within 5 years, subject to excusable delays and force majeure events, shall be a default of the Lease.

Ownership of Improvements:

All improvements (including the Tenant Improvements above), furnishings, and equipment constructed or installed on the Premises by the Tenant, shall be personal property and Tenant shall have legal title thereto during the term of this lease. Upon the expiration or termination

of the lease, title to all permanent improvements constructed on the Premises shall vest in the City. Title to all supplies, furnishings, inventories, and removable equipment and other personal property shall remain in Tenant, and Tenant shall have the right to remove such items, excepting licenses, from the Premises without damaging the Premises unless Tenant is in default under the Lease.

Seat count (aggregate inside and outside):

600 seats (same as existing and as in BTR).

Default:

Tenant shall be in default of the lease if (1) Tenant abandons or vacates the Premises prior to the expiration of the term; (2) Tenant fails to make the rent payments as set forth in the lease and said payment is not made within 15 days after written notice to tenant; (3) Tenant's failure to finish Tenant Improvements within 5 years from the commencement date, subject to excusable delays or force majeure events; or (4) Tenant fails to perform in accordance with any of the other terms and conditions of the lease, and such default is not cured within thirty (30) days after written notice to Tenant. City may terminate the agreement for cause upon an uncured Default by Tenant.

Community benefit proffers by Tenant:

Installation of electric gates at entry to park parking lot at a cost not to exceed \$60,000; annual funding for increased police presence at the park in a cost-share with city TBD; monthly free lunch for Rebecca Towers residents; monthly mentorship program for Miami Beach start-up restaurants and bars.

Minimum required days/hours of operation of restaurant:

Tenant shall cause the restaurant to be open 7 days per week; 11:00 A.M. – 10:00 P.M.

Maximum permitted closing time:

1:00 A.M. interior and 12:00 midnight exterior.

Exclusivity:

The parties agree that in consideration of the new lease, the only additional food and beverage establishment in the vicinity of South Pointe Park shall be a

food and beverage concession with counter service only, and located approximately in the area shown in **Exhibit “C”** attached hereto.

Intellectual property rights of Tenant:

Tenant shall retain exclusive intellectual property rights of Smith and Wollensky.

Service area/loading area:

To be enhanced per discussions with City Staff.

B. CONCESSION AGREEMENT TERMS

Description of property:

Same 581 sq. ft. area as in existing Concession Agreement, plus 475 sq. ft. area located to the west of existing concession area, and 360 sq. ft. area located east of the restaurant building, for total concession area of approximately 1,416 sq. ft., as shown in **Exhibit “D”** hereto (the “Concession Area”).

Length of term of agreement:

The Existing Concession Agreement expires on Nov. 6, 2025. The term for the new concession agreement will begin on November 7, 2025, and shall continue thereafter for a period of nine (9) years, expiring on Nov. 6, 2034.

Rent:

Tenant shall pay to City the **GREATER OF** \$400,000 minimum guarantee or 10% of gross revenue derived from the operation of the Concession Area.

Use:

Tables and chairs for outdoor seating as an accessory to restaurant use under Lease.

Repairs and maintenance:

Tenant to provide tables and chairs and keep dining area, adjacent cutwalk and surrounding 25-foot adjacent areas in a clean and sanitary manner and consistent with maintenance standards for the cutwalk; City responsible for all improvements and repairs required to maintain the area in its original condition or better.

Maximum permitted hours of operation:

Same as new lease.

Seat count (aggregate inside and outside):

Approx 75 (included in 600 total seat count).

EXHIBIT "A"

Legal Description of the Property

Restaurant Site being a part of South Pointe Park described hereon:

Commence at the above mentioned Monument "C" and run South 65°36'16" East, along the Northerly line of South Pointe Park, for a distance of 697.058 feet to a point of intersection with the State of Florida Coastal Construction Control line; thence run South 10°23'21" West, along the Coastal Construction Control Line for a distance of 382.005 feet to an intersection with the Northerly line of a 50.00 feet maintenance easement of Government Cut; thence run North 65°35'19" West, along the Northerly line of said maintenance easement for a distance of 52.74 feet to the POINT OF BEGINNING (P.O.B.); thence continue North 65°35'19" West for a distance of 171.60 feet to a point; thence run North 24°24'41" East for a distance of 140.00 feet to a point; thence run South 65°35'19" East for a distance of 171.50 feet to a point; thence South 24°24'41" West for a distance of 140.00 feet to the POINT OF BEGINNING.

Said lands located, lying and being in the City of Miami Beach, Florida.

EXHIBIT "B"

List of Improvements and Estimated Costs

PROPOSED IMPROVEMENTS AND ESTIMATE OF COSTS	
Category	Estimate
Construction Hard Costs*	\$ 1,884,070
Food Service Equipment	\$ 632,400
Technology Costs	\$ 127,000
FF&E Costs	\$ 202,500
Consultants	\$ 260,000
Contingency	\$ 200,000
TOTAL	\$ 3,305,970
*See itemization on following page	
Cost estimates are preliminary and subject to adjustment	

EXHIBIT "B"
(CONTINUED)

ITEMIZATION OF CONSTRUCTION HARD COSTS ESTIMATE	
Category	Estimate
General Conditions	\$ 149,000
Concrete	\$ 184,000
Metals	\$ 359,000
Roof	\$ 275,000
Woodwork	\$ 161,000
Waterproofing	\$ 29,000
Mechanical	\$ 149,000
Electrical	\$ 98,000
Overhead Profit	\$ 130,000
Misc & Contingency	\$ 350,000
TOTAL	\$ 1,884,000
Estimates are preliminary and subject to adjustment	

The above is in addition to investments we will make to the building during the course of the lease, as conditions warrant, to ensure that the City of Miami Beach's property is maintained to the highest of standards.

EXHIBIT "C"

**Exclusivity Aerial
(Outlined in Blue)**



**New Outdoor Seating on East
(Outlined in Blue)**



EXHIBIT "D"

**Sidewalk Café Permit Area
(Existing Concession Area Outlined in Red; Proposed Expansion Outlined in Blue)**

