

RESOLUTION:_____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A CONCESSION AGREEMENT, ATTACHED AS AN EXHIBIT TO THE COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND 1 WASHINGTON AVENUE CORP. D/B/A SMITH & WOLLENSKY RESTAURANT ("CONCESSIONAIRE") FOR THE MANAGEMENT AND OPERATION OF AN OUTDOOR FOOD AND BEVERAGE CONCESSION IN CONNECTION WITH CONCESSIONAIRE'S SMITH & WOLLENSKY RESTAURANT OPERATION LOCATED AT 1 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, WHICH CONCESSION AGREEMENT INCLUDES (1) A COMBINED OUTDOOR CONCESSION AREA OF 1,450 SQUARE FEET; (2) A TERM OF NINE YEARS COMMENCING ON JANUARY 1, 2022; AND (3) A CONCESSIONAIRE PAYMENT TO THE CITY CONSISTING OF THE GREATER OF A \$400,000 MINIMUM GUARANTEE OR 10% OF GROSS REVENUES DERIVED FROM THE OPERATION OF THE CONCESSION AREA; AND FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT OF SECTION 2-367(e) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

WHEREAS, Smith & Wollensky is a renowned steakhouse with locations in New York, Boston, Chicago, Columbus, Houston, Miami Beach, Las Vegas, London, and most recently, Taipei, and the restaurant has been a destination and staple in Miami Beach for several decades; and

WHEREAS, in 1980, the United States Department of the Interior conveyed to the City the property now known and referred to as "South Pointe Park", and the deed conveyed the property to the City for public park or recreational purposes, except with respect to a restaurant facility, as the deed expressly provides that a portion of the property may be leased by the City "for the development, construction, and operation of a restaurant"; and

WHEREAS, on February 8, 1985, the City entered into a lease with Specialty Restaurant Corporation for the operation of a restaurant at 1 Washington Avenue, Miami Beach, Florida (the "Existing Lease"); and

WHEREAS, on September 22, 1993, the Mayor and City Commission adopted Resolution No. 93-20899, approving an assignment of the Existing Lease to One Washington Avenue Corporation, as assignee; and

WHEREAS, thereafter, in 1996, the Existing Lease was assigned to New York Restaurant Group, LLC, which had acquired assets and interests of the One Washington Corporation, including the South Pointe Seafood House Restaurant building and interest in the leasehold, for the purpose of opening a restaurant to be known as Smith & Wollensky; and

WHEREAS, on April 16, 1997, the Mayor and City Commission adopted Resolution No. 97-22359, approving an addendum to the Existing Lease, designating New York Restaurant Group, LLC as successor in the interest, which was later renamed 1 Washington Avenue Corp. ("Smith & Wollensky" or "Concessionaire"); and

WHEREAS, Concessionaire has been the long-term operator of the Smith & Wollensky restaurant property located at 1 Washington Avenue, Miami Beach, Florida (the "Premises"); and

WHEREAS, the Premises consists of a two-story building, constructed in 1987, and renovated in 1997 and 2017, measuring approximately 24,010 square feet on a 0.56-acre waterfront site overlooking the Park bay walk, Government Cut, and ocean access inlet that connects Biscayne Bay to the Atlantic Ocean; and

WHEREAS, the Existing Lease has an initial 20-year term and provides for two (2) 10-year renewal options: the first renewal term commenced on November 7, 2005 and expired on November 6, 2015, and subsequently, Smith & Wollensky exercised the second and final renewal term, commencing on November 7, 2015 that expires over four years from now, on November 6, 2025; and

WHEREAS, since the last Existing Lease addendum in 1997, the City has made a significant investment in the surrounding South Pointe Park, creating a 22-acre world class destination park designed by internationally recognized Hargreaves Associates; and

WHEREAS, in addition to the Existing Lease, Smith & Wollensky has an existing concession agreement with the City, which allows a food and beverage concession area located south of the Premises along the cutwalk ("Existing Concession Agreement"), that is intended to run concurrently with the Existing Lease, and the concession area is approximately 581 square feet ("Existing Concession Area"); and

WHEREAS, the Mayor and City Commission approved the Existing Concession Agreement on September, 9, 2009, via Resolution No. 2009-27177, which commenced on October 1, 2009, and is scheduled to terminate on November 6, 2025; and

WHEREAS, the Existing Concession Agreement is intended to compliment the Premises, allowing Smith & Wollensky to utilize additional outdoor dining space; and

WHEREAS, the City currently receives a guaranteed minimum and percentage rent under the Existing Lease and the Existing Concession Agreement, as set forth below:

Existing Lease:

- Minimum guarantee of \$95,000, annually, plus
- 2.5% of gross revenues up to \$2.5 million
- 3.0% of gross revenues up to \$3 million
- 3.5% of gross revenues over \$3 million

Existing Concession Agreement:

- \$120,000 minimum guarantee (increasing to \$140,000 in 2024)
- 10% of gross revenue in excess of minimum guarantee gross receipts; and

WHEREAS, a historical review of Smith & Wollensky's performance in the Leased Premises and the Concession Area has indicated that the gross revenues achieved by Smith & Wollensky have significantly outpaced the minimum guarantees contained in the Existing Lease and Existing Concession Agreement; and

WHEREAS, Smith & Wollensky has proposed a lease amendment to extend the term of the Existing Lease; upgrade and improve the restaurant facility (including any improvements required to obtain the 40-year certification of the facility); update the financial terms of the Existing Lease, including increasing the base rent and percentage rent, based on appraised fair market value; and negotiate other

public benefits to the City (the "Lease Amendment"), which is attached to the Commission Memorandum accompanying this Resolution; and

WHEREAS, additionally, Smith & Wollensky has proposed a new concession agreement to extend the term of the concession for an additional nine (9) years, commencing on January 1, 2022; and increase the base rent for the concession area (the "New Concession Agreement"), which is attached to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the New Concession Agreement will contemplate the use of 1,450 sq. ft. outdoor space, as more particularly described in the New Concession Agreement, and is intended to replace and supersede the Existing Concession Agreement; and

WHEREAS, the Lease Amendment is being presented to the Mayor and Commission for approval concurrently with the second reading/public hearing of the Lease Amendment; and

WHEREAS, on October 28, 2020, the Mayor and City Commission referred a discussion item to the Finance and Economic Resiliency Committee ("FERC") for the proposed Lease Amendment and New Concession Agreement with Smith & Wollensky, and Smith & Wollensky agreed to reimburse the City for the costs associated with conducting two (2) independent third-party appraisals of the Lease rent and concession payments; and

WHEREAS, in January, 2021, the City received two (2) independent, third-party appraisals for the Premises from Cushman and Wakefield and CBRE, attached to the Memorandum accompanying this Resolution, and the appraisals provided estimates of the fee simple market rents including and excluding the Concession Area; and

WHEREAS, a detailed review of the independent appraisals is contained in the Commission Memorandum accompanying this Resolution; and

WHEREAS, accordingly, based on negotiations between the Administration and Smith & Wollensky, the Concessionaire has agreed to the following price proposal for the restaurant New Concession Agreement: the greater of \$400,000 ("Minimum Guarantee") or 10 percent of gross revenues from the Concession Area, to be phased in between 2022 and 2025, with a 2.5 percent annual escalator on the Minimum Guarantee; and

WHEREAS, considering the significant capital investment required for the proposed Smith & Wollensky improvements to the Premises, and the significant increase in rent, the total payment by Smith & Wollensky for Annual Rent under the Lease Amendment and the New Concession Agreement, 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, provided that the annual cap during this initial rent "ramp up" period shall not impact the Minimum Guarantee under the Lease Amendment, and shall only be credited against the New Concession Agreement; and

WHEREAS, notwithstanding the phased "ramp up" period discussed above, the City will immediately realize the benefits of increased payment from Smith & Wollensky as of the date of the Commencement Date; and

WHEREAS, the proposed commencement date for the Concession Agreement is January 1, 2022 ("Commencement Date"), which shall be subject to and conditioned upon the Mayor and City Commission adoption of a resolution accepting the official results of the required City referendum approving the Lease Amendment; and

WHEREAS, the term of the New Concession Agreement shall run from the Commencement Date until December 31, 2030, for a nine (9) year term; and

WHEREAS, the Planning Department's analysis is attached to the Memorandum accompanying this Resolution; and

WHEREAS, additionally, the Concession Agreement shall require a waiver of competitive bidding by a 5/7th vote of the City Commission, pursuant to Section 2-367(e) of the City Code, and in this regard, the Administration recommends the waiver as being in the best interest of the City, given the extremely competitive market rate lease terms, the strength of Smith & Wollensky brand as a long-term partner, and Smith & Wollensky's strong track record as a good neighbor and a stable operator; and

WHEREAS, Smith & Wollensky has received endorsements from the South of 5th Neighborhood Association (SOFNA), the Miami Beach Chamber of Commerce, the Continuum on South Beach Master Association, Portofino/South Pointe Master Association, Portofino Towers Condominium Association, the Courts at South Beach, and South Pointe Tower supporting the Smith & Wollensky lease renewal, including the waiver, which are attached to the Commission Memorandum accompanying this Resolution; and

WHEREAS, for the reasons outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the New Concession Agreement.

NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve a Concession Agreement, attached as an exhibit to the Commission Memorandum accompanying this Resolution, between the City of Miami Beach ("City") and 1 Washington Avenue Corp. D/B/A Smith & Wollensky Restaurant ("Concessionaire") for the management and operation of an outdoor food and beverage concession in connection with Concessionaire's Smith & Wollensky restaurant operation located at 1 Washington Avenue, Miami Beach, Florida, which Concession Agreement includes (1) a combined outdoor concession area of 1,450 square feet; (2) a term of nine years commencing on January 1, 2022; and (3) a Concessionaire payment to the City consisting of the greater of a \$400,000 minimum guarantee or 10% of gross revenues derived from the operation of the Concession Area; and further, waiving, by 5/7th vote, the competitive bidding requirement of Section 2-367(e) of the City Code, finding such waiver to be in the best interest of the City.

PASSED AND ADOPTED this ____ day of July, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

City Attorney

ff 7-20-21

Date