

RESOLUTION: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING, PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, AN AMENDED AND RESTATED LEASE AGREEMENT ("LEASE AMENDMENT"), ATTACHED 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 (THE "TENANT"), THE CURRENT LONG-TERM RESTAURANT OPERATOR OF THE CITY-OWNED PROPERTY LOCATED AT 1 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, AS DESCRIBED MORE PARTICULARLY IN THE LEASE AMENDMENT (THE "PREMISES"), FOR THE CONTINUED OPERATION OF THE SMITH & WOLLENSKY RESTAURANT, WHICH LEASE AMENDMENT SHALL PROVIDE FOR: (1) AN EXTENSION TO THE TERM OF THE EXISTING LEASE, THROUGH DECEMBER 31, 2045, WITH TWO (2) 10-YEAR RENEWAL TERM OPTIONS; (2) INCREASED RENT DUE TO THE CITY FOR THE PREMISES, WHICH SHALL BE THE GREATER OF \$1,042,550 ANNUALLY, SUBJECT TO A 2.5% ANNUAL ESCALATOR, OR 9% OF THE TENANT'S GROSS REVENUES; (3) TENANT IMPROVEMENTS TO THE PREMISES, INCLUDING UPGRADES AND COMPLETION OF THE 40-YEAR RECERTIFICATION FOR THE PREMISES; AND (4) COMMUNITY BENEFITS, INCLUDING, THE REIMBURSEMENT OF THE CITY'S COSTS, IN AN AMOUNT NOT TO EXCEED \$60,000, FOR THE CITY'S INSTALLATION OF A SECURITY GATE FOR THE ENTRANCE TO THE SOUTH POINTE PARK PARKING LOT, AND FREE RESTAURANT MENTORSHIP SEMINARS, AT TENANT'S SOLE EXPENSE; FURTHER, PROVIDING THAT THE LEASE AMENDMENT SHALL BE SUBJECT TO AND CONTINGENT UPON APPROVAL BY A MAJORITY OF THE VOTERS VOTING IN A CITY-WIDE REFERENDUM PURSUANT TO SECTION 1.03(b)(1) OF THE CITY CHARTER; FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT OF SECTION 82-39(A) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION.

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. ("Tenant"); and

WHEREAS, Tenant has been the long-term operator for 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, Tenant 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 Lease, the Tenant 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 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 the Tenant's performance has indicated that the gross revenues achieved by the Tenant have significantly outpaced the minimum guarantees contained in the Existing Lease and Existing Concession Agreement; and

WHEREAS, the Tenant 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 Lease Amendment is attached to the Commission Memorandum accompanying this Resolution; and

WHEREAS, additionally, the Tenant 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 New Concession Agreement 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

WHEREAS, the New Concession Agreement 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 with Tenant, and the Tenant 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, initially, the Tenant proposed the mid-point of the 2 appraisals to be used for base rent for the restaurant Lease Amendment (which varied between \$40 and \$43.88 per square ft. based on Tenant versus City calculations) and 6 percent of gross revenues; and

WHEREAS, given the high success of this particular Smith and Wollensky location, the Administration believed strongly that the percentage rent should be closer to the higher percent range recommended by CBRE, rather than 6 percent as proposed by Smith and Wollensky; and

WHEREAS, accordingly, based on negotiations between the Administration and the Tenant, the Tenant has agreed to the following price proposal for the restaurant Lease Amendment: the greater of \$50 per square foot base rent (\$1,042,550) (the "Minimum Guarantee") or 9 percent of gross revenues from the Premises, to be phased in between 2022

and 2025, with a 2.5 percent annual escalator on the Minimum Guarantee for each year of the term; and

WHEREAS, considering the significant capital investment required for the proposed Tenant improvements to the Premises, and the significant increase in rent, the total payment by the Tenant 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 initial rent “ramp up” period discussed above, the City will immediately realize the benefits of increased rent from Tenant; and

WHEREAS, the proposed commencement date for the Lease Amendment is January 1, 2022, 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 new Lease Amendment, in accordance with the City Charter Section 1.03(b)(1) (the “Commencement Date”); and

WHEREAS, the initial term of the Lease Amendment shall run from the Commencement Date until December 31, 2045; and

WHEREAS, the Lease Amendment shall have two (2) 10-year renewal term options, at Tenant's option, provided that the Tenant provide written notice to the City of its election to renew in accordance with Lease Amendment, and provided further that the Tenant is not in default; and

WHEREAS, the Tenant will also complete a series of improvements to the Premises, including (1) improvements required to achieve the 40-year certification for the building; (2) improvements proposed by Tenant, as described in an attachment to the Commission Memorandum accompanying this Resolution; and (3) improvements proposed by the City, (“Tenant Improvements”); and

WHEREAS, Tenant has also agreed to complete the Tenant improvements within five (5) years following the Commencement Date of the Lease Amendment; and

WHEREAS, the Planning Department's analysis, as required pursuant to Section and 82-38 of the City Code, is attached to the Commission Memorandum accompanying this Resolution; and

WHEREAS, at the June 23, 2021 Commission Meeting, the Mayor and City Commission approved the Lease Amendment on First Reading.

WHEREAS, pursuant to Section 1.03(b)(1) of the City Charter, as the restaurant is waterfront property, the Lease Amendment shall require approval by a majority of the voters voting in a City-wide referendum; and

WHEREAS, additionally, the Lease Amendment shall require a waiver of competitive bidding by a 5/7th vote of the City Commission, pursuant to Section 82-39 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 the Smith & Wollensky

brand as a long-term partner, and the Tenant's strong track record as a good neighbor and a stable operator; and

WHEREAS, Tenant 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 S&W lease renewal, including the waiver, 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 Lease Amendment following second reading and public hearing of this Resolution.

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, following second reading/public hearing, pursuant to Section 82-37(A)(2) of the City Code, an amended and restated lease agreement ("Lease Amendment"), attached 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 (the "Tenant"), the current long-term restaurant operator of the City-owned property located at 1 Washington Avenue, Miami Beach, Florida, as described more particularly in the Lease Amendment (the "Leased Premises"), for the continued operation of the Smith & Wollensky restaurant, which Lease Amendment shall provide for: (1) an extension to the term of the existing lease through December 31, 2045, with two (2) 10-year renewal term options; (2) increased rent due to the City for the Leased Premises, which shall be the greater of \$1,042,550 annually, subject to a 2.5% annual escalator, or 9% of the Tenant's gross revenues; (3) Tenant improvements to the Leased Premises, including upgrades and completion of the 40-year recertification for the leased premises; (4) community benefits, including, the reimbursement of the City's costs, in the amount not to exceed \$60,000, for the installation of a security gate for the entrance of South Pointe Parking lot, and free restaurant seminars, at Tenant's sole expense; further, providing that the Lease Amendment shall be subject to and contingent upon approval by a majority of voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter; further, waiving, by 5/7th vote, the competitive bidding requirement of Section 82-39(A) of the City Code, finding that the public interest would be served by waiving such condition.

PASSED AND ADOPTED this ____ day of July, 2021.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

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

City Attorney

ff 7-20-21
Date