



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Alina T. Hudak, City Manager

DATE: June 23, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON FIRST READING, PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, AN AMENDED AND RESTATED LEASE AGREEMENT (“LEASE AMENDMENT”), 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 (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 INITIAL TERM OF TWENTY-FOUR (24) YEARS, 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 IMPROVMENTS TO THE LEASED PREMISES, INCLUDING UPGRADES AND COMPLETION OF THE 40-YEAR RECERTIFICATION FOR THE LEASED 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 TO THE ENTRANCE TO THE SOUTH POINTE PARK PARKING LOT; 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; AND FURTHER, SETTING THE PUBLIC HEARING FOR THE SECOND AND FINAL READING OF THE RESOLUTION.

BACKGROUND

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

On or about 1980, the United States Department of the Interior conveyed to the City the property now known and referred to as "South Pointe Park." The deed conveyed the property to the City for public park or recreational purposes, except with respect to the 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."

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

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").

The Tenant has been the long-term operator for the Smith & Wollensky restaurant property located at 1 Washington Avenue, Miami Beach, Florida (the "Premises"). The Premises consists of a two-story building, constructed in 1987, and renovated in 1997 and 2017, measuring approximately 21,000 square feet on a 0.55-acre waterfront site overlooking the Park bay walk, Government Cut, and ocean access inlet that connects Biscayne Bay to the Atlantic Ocean.

The Existing Lease contains an initial 10-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. 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.

Since the last Existing Lease amendment 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, that opened in 2009. As such, the Premises and restaurant concession have views of stunning panoramic views of South Pointe Park, South Beach shoreline, Port of Miami's cruise ships, Downtown Miami's skyline, and Fisher Island, as well as unparalleled pedestrian access from Miami Beach's cutwalk.

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. The Existing Concession Agreement dated October 1, 2009 ("Existing Concession Agreement"), was intended to run concurrently with the Lease. The concession area is approximately 581 square feet per the terms of the Concession Agreement ("Existing Concession Area").

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), and
- 10% of gross revenue in excess of minimum guarantee gross receipts

A historical overview of gross revenues, lease payments, and concession payments are provided below:

	Gross Revenues	Lease/ Concession Payments
Lease		
FY 2017	\$13,034,241	\$430,679
FY 2018	\$14,255,022	\$498,926
FY 2019	\$14,011,528	\$462,904
FY 2020	\$10,339,583	\$375,982
Concession		
FY 2017	\$3,301,945	\$330,195
FY 2018	\$4,087,829	\$408,783
FY 2019	\$4,364,924	\$436,492
FY 2020	\$2,758,407	\$275,840

As demonstrated above, the gross revenues achieved by the Tenant have significantly outpaced the minimum guarantees contained in the Existing Lease and Existing Concession Agreement, due to the consistent performance of the Tenant. Further, despite the impact of the COVID-19 pandemic, the Tenant has been able to operate the facility and consistently make the required payments as contemplated in the Existing Lease and Existing Concession Agreement.

ANALYSIS

The Tenant has proposed that the City negotiate 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 Lease, including increasing the base rent and percentage rent payable to the City, based on appraised fair market value; and negotiate other public benefits to the City (the "Lease Amendment"). The proposed Lease Amendment is attached as **Exhibit "A"** hereto. The summary of the Lease Amendment terms are as follows:

Premises (Section 1.1):

1 Washington Avenue
Miami Beach, Florida 33139

All of the land described on Exhibit "A" of the proposed Lease Amendment (the "Land"), together with all of the improvements, that is, a two-story restaurant structure and amenities, located thereon (the "Restaurant Space", together with the Land, the "Premises") all as shown on Exhibit "A-1" of the Lease Amendment.

Concession Space:

That certain concession area that is subject to that separate Concession Agreement is not included in Premises square footage. The Concession space shall not exceed 1416 sq. ft.

Gross Square Footage of Premises:

Premises consist of approximately 24,010 gross square feet as also shown in Exhibit "A-1" of the Lease Amendment.

Seat count:

Aggregate seat count (inside and outside, and including the Concession Agreement) shall not exceed 600 seats, which consists of the following seat counts: (i) 400 seats inside, (ii) 65 seats outside, and (iii) 135 seats in the concession area.

Permitted Use of Premises (Section 3.1):

The main/primary use of the Premises shall be for the operation of a first-class, high quality restaurant, dining facility and cocktail lounge comparable to the Smith & Wollensky existing as of the Lease Execution Date, and additional uses consistent with the primary use subject to the City's sole discretion. Tenant shall also be entitled to use the Premises for incidental retail sale of good and merchandise to patrons on the Premises all to be further subject to the prohibited uses described in Section 3.6 of the Lease Amendment.

Term of Lease (Section 1.1.2):

Subject to approval of the Lease by Landlord's electorate at a referendum, as set forth in Section 15.20 of the Lease Amendment, the Lease Amendment shall supersede and replace the Existing Lease as of January 1, 2022 ("Lease Commencement Date"). The initial term of this Lease Amendment shall be twenty-four (24) years, and shall commence on the Lease Commencement Date and shall expire on December 31, 2044 ("Lease Expiration Date"), which is approximately twenty (20) years from the date of the Existing Lease Current Expiration Date.

Renewal Term(s) (Section 1.1.3):

Tenant shall have, at its sole discretion, two (2) consecutive options of ten (10) years each to extend the term (each, a "Renewal Term"), provided that Tenant is not in default of the Lease

and is otherwise in good standing with Landlord, and provided further that Tenant must exercise each Renewal Term option by notifying Landlord's City Manager, in writing, of Tenant's election at least two (2) years prior to the date that such Term or Renewal Term, as applicable ("Expiration Date"), expires.

"Annual Rent" (Section 2.2):

Commencing on the Lease Commencement Date, and subject to the Annual Rent Cap below, the Annual Rent shall be the **GREATER** of: (i) the Lease Minimum Guarantee; and (ii) Percentage Rent.

"Annual Rent Cap":

Notwithstanding the foregoing, the Annual Rent in the first four (4) Lease Years shall be subject to the following maximum not-to-exceed amounts set forth below.

The total payment by the Tenant for Annual Rent under both the Lease and the payments made by Tenant under the separate 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.

"Lease Minimum Guarantee":

\$1,042,550 per year.

The Lease Minimum Guarantee shall be subject to a 2.5% annual escalator.

"Percentage Rent":

The sum of 9% of "gross sales" (Section 2.3)

Security Deposit (Section 2.6):

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

Cost Pass-Throughs (Section 3.11):

This is a net lease to Landlord so Tenant shall be responsible for One Hundred Percent (100%) of all types of costs and expenses, including Common Area Maintenance (CAM) Property Taxes, and Insurance during the term and all Renewal Term(s).

Renewal Term(s) Rent:

The Annual Rent for the initial term of this Lease shall continue in effect during the Renewal Term(s), if any; provided, however, that the Lease Minimum Guarantee shall continue to be adjusted

in accordance with the 2.5% annual escalator set forth in Section 15 of the Lease Summary.

Comprehensive General Liability Insurance (Section 7.1):

\$2,000,000.00

Tenant's Parking (Section 3.13):

Except as limited herein, during the Term and any Renewal Term, Tenant shall have the continuous, unfettered right at all times to use 105 parking spaces in the Parking Area as shown on Exhibit "B" (the "Parking Area"), which consists of a portion of the required parking for the operation of the restaurant pursuant to the City Code. Except for temporary, emergency repairs Landlord may need to make and as otherwise provided in this Lease, the Parking Area shall be available continuously and exclusively 24 hours a day, seven (7) days per week, to be used by Tenant, its employees, guests, customers and invitees. This is a material inducement to Tenant entering into this Lease.

As of the Lease Commencement Date, Landlord 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 Landlord in writing five (5) days in advance that it anticipates needing the spaces due to an event or similar reason. Landlord 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.

Considering the City of Miami Beach's zoning parking requirement is 138 spaces, Tenant shall be responsible to pay the Landlord's parking impact fee for 33 spaces; provided that one-half (1/2) of such fee shall be credited against Annual Rent.

Parking Impact Fee (Section 3.13.4):

Landlord shall be responsible to pay all parking impact fees, if any, for the remaining 105 parking spaces.

Exclusivity:

The only other allowed permanent food and beverage establishment in South Pointe Park shall be a food and beverage concession with counter service only located in the area shown on Exhibit "F" of the Lease Amendment.

Community benefit proffers by Tenant:

Reimbursement for City's installation of electric gates at entry to park parking lot at a cost not to

exceed \$60,000; monthly free lunch for Rebecca Towers residents; monthly mentorship program for Miami Beach start-up restaurants and bars, as set forth in Exhibit "H".

Minimum 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.

CONCESSION AGREEMENT

The Tenant has also proposed an amendment to the Concession Agreement to extend the term of the concession for an additional nine (9) years following the expiration of the Existing Concession Agreement; expanding the concession area; and increase the base rent for the concession area (the "New Concession Agreement"). The New Concession Agreement will contemplate the use of the 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 "B"** hereto (the "Concession Area"). The New Concession Agreement will contemplate Tenant paying to the City the **GREATER OF** \$400,000 minimum guarantee or 10% of gross revenue derived from the operation of the Concession Area.

The New Concession Agreement will be presented to the Commission in July along with the second reading of the Lease Amendment, if the lease is approved by the Mayor and City Commission on first reading. A draft version of the New Concession Agreement is attached as **Exhibit "C"** to this Memorandum.

APPRAISALS

On October 28, 2020, the Mayor and City Commission referred a discussion item to the Finance and Economic Resiliency Committee ("**FERC**") for a proposed Lease Amendment with Tenant, the operator of Smith & Wollensky. The tenant agreed to reimburse the City for the costs of conducting two (2) independent third-party appraisals of the Lease rent and concession payments.

In January, 2021, the City received two (2) independent, third-party appraisals for the Premises from Cushman and Wakefield and CBRE, attached hereto as **Exhibit "D"** and **Exhibit "E,"** respectively. The appraisals provided estimates of the fee simple market rents including and excluding the Concession Area. The appraisal reports were discussed independently with the appraisers, the Tenant, and Administration to determine if the valuation of the property was:

- (1) fair and reasonable;
- (2) comparable to other similarly situated restaurant rentals; and
- (3) provided the necessary data needed for decision making purposes to provide recommendations for negotiating terms.

The Cushman and Wakefield and CBRE appraisals are summarized below. In subsequent discussions following the submission of its initial report, Cushman Wakefield has emphasized that their report was a market study report, defined as "a macroeconomic analysis that examines the

general market conditions of supply, demand, and pricing or the demographics of demand for a specific area or property type”.

The following summary provides a comparison of the two appraisals showing a significant difference in value between the two:

Appraisals: Combined Lease & Concession	Cushman & Wakefield	CBRE
Comparable Restaurant Properties		
All: Range per sq ft	\$36.60-\$88.57	\$60.00-\$92.74
Waterfront: Range per sq ft	\$88.57	\$85.00-\$90.00
Average Rent	\$66.03	N/A
Percentage Rent based on Natural Breakpoint *	5%	5-10%
Escalator	2.5-3%/year	2-3%/year
Recommendations	Cushman & Wakefield	CBRE
Base Rent per sq ft	\$50.00	\$83.47
Percentage Rent based on Natural Breakpoint *	5%	10%
Escalator	3%/year	10% every 5 years
Restaurant only	N/A	\$58.69
	N/A	10%
	N/A	10% ever 5 years
<p>*Natural Breakpoint: the point at which the fixed based rent equals the percentage rent. Note only 1 comparable for percentage rent provided by Cushman and Wakefield, although the report referenced market ranges of 5-6%</p>		

The Cushman and Wakefield report did not provide separate recommendations for the Lease Amendment versus the New Concession Agreement; however, while not an appraisal approach, mathematically, if the concession revenues for Fiscal Year 2019 (the year used in the Cushman and Wakefield report) are subtracted from the total base rent from that report, the effective base rent for the restaurant only would be \$29.07, well below all other comparables.

	Cushman&Wakefield	CBRE
Base Rent per sq ft	\$ 50.00	\$ 58.69
Equivalent Revenues based on 20,851 sf	\$ 1,042,550	\$ 1,223,745
Less FY 19 Concession Revenues	\$ (436,492)	N/A
Net Restaurant only Revenues	\$ 606,058	\$ 1,223,745
Restaurant only equivalent base rent per sf	\$ 29.07	\$ 58.69

A significant difference in the Cushman and Wakefield and CBRE appraisals is perhaps not unusual, bearing in mind the characteristics of such a large and unique property. However, the low derived base rent and percentage rent conclusions from Cushman and Wakefield may be due to the significant differences in comparables used as seen in the excerpts from the Exhibits D and E, shown below.

Cushman and Wakefield Comparables

The Cushman and Wakefield report did not contain any comparable Miami Beach restaurant properties, nor did it contain destination waterfront locations. The comparables contained several warehouse type restaurant spaces in Wynwood, restaurants in Coral Gables and Brickell and only one waterfront comparable: Redfish Grill, located off Old Cutler Road. The price per square foot for that one waterfront property was higher than the other properties at \$88.57 per square foot. Even so, the average for all comparable properties was \$66.03. In discussions with Cushman and Wakefield, they explained that the reduced price of \$50.00 per square foot for the conclusion for City property was due to its unusually large size. Only approximately 2 percent of restaurants are at this size.

MIAMI-DADE LARGE RESTAURANT LEASE COMPARABLES																
PROPERTY INFORMATION							LEASE INFORMATION									
NO.	Property Name Address, City, State	YEAR BUILT	YEAR RENOVATED	TENANT NAME	LEASE DATE	SIZE (NGA)	TERM (yrs.)	INITIAL RENT/SF	RENT STEPS	LEASE TYPE	PERCENTAGE RENT CLAUSE	% RENT BREAKPOINT	% Rent over Breakpoint	MONTHS FREE	TISF	COMMENTS
1	Coral Gables - Restaurant Coral, FL	2002	N/A	Confidential	2/20	9,914	5	\$36.60	Flat	Net	N/A	N/A	N/A	N/A	N/A	This is a renewal rental rate of an existing restaurant located in a prime location in Coral Gables.
2	Wynwood - NW 25th Street Miami, FL	1972	2018	Confidential	9/19	4,480	10	\$56.00	2.5%	Net	Yes	Natural	5.0%	0	\$139	This space was a former warehouse that has been fully renovated for a built to suit restaurant space.
3	Wynwood - NW 25th Street Miami	2019	N/A	Confidential	6/19	5,500	10	\$65.00	3.0%	Net	N/A	N/A	N/A	N/A	N/A	This ground floor first generation space is located within a mixed-use building.
4	Wynwood - NW 2nd Avenue Miami	1951	2017	Confidential	1/19	10,000	5	\$75.00	3.0%	Net	N/A	N/A	N/A	N/A	N/A	This space was a former warehouse that has been fully renovated for a built to suit restaurant/bar multipurpose space.
5	Brickell Avenue Ground Floor Retail Space Miami	2011	N/A	Confidential	3/19	5,179	15	\$75.00	2.5%	Net	N/A	N/A	N/A	N/A	\$145	This is a second generation restaurant space on the ground floor of a Class A office building with direct frontage on Brickell Avenue.
6	Red Fish - Waterfront Restaurant 9610 Old Cutler Road Miami	1997	2019	Red Fish Grill	10/18	8,400	10	\$88.57	Flat	Net	N/A	N/A	N/A	N/A	\$17	The size of this restaurant space was estimated via the indoor and outdoor footprint via GIS. This is the only waterfront restaurant in Coral Gables. This restaurant features 154 seats. The lease also includes a bait and tackle shop and fuel dock in the adjacent marina.
STATISTICS																
Low		1951	2017		10/18	4,480	5	\$36.60					5.0%	0	\$17	
High		2019	2019		2/20	10,000	15	\$88.57					5.0%	0	\$145	
Average		1992	2018		5/19	7,246	9	\$66.03					5.0%	0	\$100	

Compiled by Cushman & Wakefield Regional, Inc.

The Cushman and Wakefield conclusion provided for a 5 percent rent combined for the restaurant and concession area based on the natural breakpoint, with 3 percent escalator annually.

CBRE COMPARABLES

CBRE similarly did not provide comparable Miami Beach restaurant properties; however, their report provided more comparable waterfront spaces in the South Florida market, as demonstrated below:

The CBRE report distinguished between the restaurant space and the outdoor concession area,

SUMMARY OF COMPARABLE RESTAURANT RENTALS																	
No.	Property Name and Location	YOC / Reno'd	Overall Occ.	Seating Capacity (Indoor & Outdoor)	GLA (SF)	SF Per Seat	Gross Sales Per Seat	Base Rent Per Seat	Rent as a % of Sales	Lease Date	Lease Term	Base Rent	Percentage Rent	Tenant Improvements	Expense Basis	Escalations	Free Rent
1	JB's on the Beach 300 North Ocean Boulevard, Deerfield Beach, FL 33441	2002	100%	300 Seats	6,470	22 SF	\$38,333	\$2,000	5.2%	Mar-19	20.0 Yrs.	\$92.74 PSF	5% of Gross Sales	As Is	NNN	10% Every 5-Years	---
2	etta Las Olas 1002 E Las Olas Boulevard, Fort Lauderdale, FL 33301	1966 / 2020	90%	365 Seats	8,526	23 SF	---	\$1,635	---	Feb-21	10.0 Yrs.	\$70.00 PSF	5% of Gross Sales	\$146.61 PSF	NNN	3.0% / year	6 Months
3	Grove Ink Restaurant 3490 Main Highway, Miami, FL 33133	2020	100%	---	7,670	---	---	---	---	Feb-21	10.0 Yrs.	\$70.00 PSF	---	1st Generation	NNN	3%/Yr.	6 Months
4	Tigertail + Mary 3321 Mary Street, Miami, FL 33133	2018	100%	120 Seats	5,731	48 SF	---	\$2,917	---	Oct-18	10.0 Yrs.	\$61.07 PSF	7.5%-10% of Gross Sales	1st Generation	NNN	2% / year	---
5	Moxie's Grill & Bar 900 S Miami Avenue, Miami, FL 33130	2007	83%	375 Seats	8,157	22 SF	---	\$1,305	---	Jan-20	10.0 Yrs.	\$60.00 PSF	---	\$100.00 PSF	NNN	---	---
6	Amara at Paraiso 3101 NE 7th Avenue, Miami, FL 33137	2017	100%	367 Seats	10,798	29 SF	\$21,798	\$2,508	11.5%	Jan-21	10.0 Yrs.	\$85.25 PSF	10% of Gross Sales	---	NNN	2% / year	---
7	Red, The Steakhouse 801 South Pointe Drive, Miami Beach, FL 33139	2015	43%	210 Seats	6,458	31 SF	---	\$2,143	---	Sep-20	10.0 Yrs.	\$69.68 PSF	---	---	NNN	---	---
Subj.	Smith & Wollensky 1 Washington Avenue, Miami Beach, Florida	1987 / 1997 & 2017	100%	458 Seats	20,851	46 SF	\$42,071	\$2,032	4.8%	Nov-15	10.0 Yrs.	\$44.63 PSF	2.5%-3.5% of Gross Sales	---	NNN	---	---

Compiled by CBRE

with the restaurant space valued significantly less than the outdoor area at \$58.69 per square foot. CBRE's conclusion provided for a 10-percent rent for both the restaurant and concession area based on the natural breakpoint, with 10 percent escalator every 5 years. CBRE explained that the 10 percent of gross sales is high due to type of location.

TENANT'S LEASE PRICE PROPOSAL

Initially, the Tenant proposed the mid-point of the two 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.

For reasons stated above, and given the high success of this particular Smith and Wollensky location, the Administration believed strongly that the percentage rent should be closer to the 10 percent range recommended by CBRE, rather than 6 percent as proposed by Smith and Wollensky. Over the 40 years of the lease, the Administration believes that percentage rent will be a stronger driver of lease revenues than the base rent.

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) or 9 percent of gross revenues from the Premises, to be phased in between 2022 and 2025, with a 2.5 percent per year escalator on the base rent.

Additionally, 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.

Notwithstanding the above rent cap until 2025, if the Lease Amendment and New Concession Agreement are approved, the City will immediately realize an increase in rent.

Given that the current Lease provides for a minimum guarantee of \$95,000, that the Lease Amendment will be increasing by over ten times to \$1,042,550, and the current Lease provides for a maximum rent of 3.5% of gross revenues that is being increased by nearly three times to 9% of gross revenues, the Administration is comfortable with, and recommends, the rent proposal for the Lease Amendment.

CONCESSION FEE PROPOSAL

The Tenant has proposed that the existing concession fee remain at 10% of gross revenues. The Administration is in agreement with the existing 10% of gross revenues consistent with the recommendation by CBRE. However, the Administration recommended that the minimum guarantee for the New Concession Agreement be increased from \$140,000, which is scheduled to be in effect as of 2024, to \$400,000. This would be approximately \$129,492 below the sum of FY 19 concession fees of \$436,492, plus an estimated \$93,000 which the concessionaire estimates from the expanded concession space, allowing for uncertainties in expanding the space, etc.

Accordingly, the recommended price proposal for the restaurant New Concession Agreement is as follows:

The **GREATER OF** \$400,000 base concession fee or 10 percent of gross revenues, with a 2.5 percent per year escalator on base concession fee effective with the start of the new agreement.

PROPOSED EXTENSION OF LEASE AND CONCESSION AND TERM SHEET

Again, the Existing Lease expires on November 6, 2025. Subject to approval of the Lease by the City's electorate at a referendum, the Lease Amendment shall supersede and replace the Existing Lease as of January 1, 2022 ("Lease Commencement Date"). The initial term of this Lease Amendment shall be twenty-four (24) years, and shall commence on the Lease Commencement Date and shall expire on December 31, 2045 ("Lease Expiration Date"), which is approximately twenty (20) years from the date of the Existing Lease Current Expiration Date. Additionally, 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 at least two (2) years prior to the expiration of the initial term (or renewal term, as applicable), and provided further that the Tenant is not in default of the Lease Amendment.

Additionally, the Tenant has proposed an extension of the Concession Agreement for a term of nine (9) years, which term shall begin upon the expiration of the current Concession Agreement on November 6, 2025.

In exchange for the extension of the term for the New Concession Agreement and Lease Amendment, the Tenant has proposed to provide enhanced financial terms in favor of the City, undertake critical building improvements to the Premises, and certain community benefits, which the City can realize immediately, instead of waiting for the expiration of the Existing Lease in 4 years.

OTHER MATERIAL TERMS

In addition to the appraised values that will update rental terms for the Lease Amendment and New Concession Agreement, the Tenant has also proposed a series of improvements to the Premises as depicted in the attached **Exhibit "F."** The Tenant would make these improvements as a condition of the Lease Amendment and further, the type and dollar amount of those improvements would be negotiated between the parties. The Tenant has also agreed to complete the Tenant improvements within five (5) years following the execution of the Lease Amendment. The enhancements would fall into one or more of the following categories and cost estimates have been included and attached hereto as **Exhibit "G"**:

- Improvements required by 40-year re-certification requirement, and beyond;
- Improvements proposed by Tenant, as described in the attached **Exhibit "F"**; and
- Improvements proposed by the City.

COMMUNITY BENEFITS

In addition to the increased Annual Rent payments and the capital improvements to the Premises, the Tenant has proffered, as additional community benefits, to reimburse the City for the permitting, design, construction and installation of electric gates at the entry to the parking lot for South Pointe Park, at a cost not-to exceed \$60,000, in order to increase security in the vicinity. Additionally, the Tenant has proffered to provide monthly free lunch for Rebecca Towers residents and monthly mentorship program for Miami Beach start-up restaurants and bars, more particularly described in Exhibit H to the Lease Amendment.

CITY CHARTER AND CITY CODE REQUIREMENTS

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.

Additionally, the Lease Amendment and New Concession Agreement 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. 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, the strong community support, and the Tenant's strong track record as a good neighbor and a stable operator.

PLANNING ANALYSIS

The Planning Department's analysis, as required pursuant to Section and 82-38 of the City Code, is attached hereto as **Exhibit "H"**.

CITY ATTORNEY'S ANALYSIS OF MIAMI-DADE COUNTY CHARTER

In 1993, years after the effective date of the Existing Lease and the operation of the Premises as a restaurant facility, Miami-Dade County adopted Article 7 of the Miami-Dade County Charter, titled Parks, Aquatic Preserves, and Preservation Lands (the "County Charter Provision"). With certain limited exceptions, the County Charter Provision, known as the "Save Our Parks" amendment, requires a County-wide referendum for private commercial use of a public park. The stated policy of the County Charter Provision is to ensure that parks acquired by the County (or a municipality) for preservation shall be held in trust for the education, pleasure, and recreation of the public. County Charter Provision, Section 7.01.

Although the County Charter Provision applies to public parks within municipalities, including South Pointe Park, it is not applicable to the Premises because the Premises was never conveyed to the City as a park or used as a park, as set forth below. Accordingly, the City Attorney has concluded that the proposed Lease is not subject to the County-wide referendum requirement set forth in the County Charter Provision. However, as noted below, under the City Charter, the Lease Amendment is nevertheless subject to approval by a majority of the City's voters voting in a City-wide referendum.

The land that is currently South Pointe Park (including the Premises) was conveyed to the City by the United States of America by Corrective Quitclaim Deed dated April 15, 1985 and recorded in Official Records Book 12520, Page 469 of the Public Records of Miami-Dade County (the "Deed"), a copy of which is attached hereto as **Exhibit "I"**.

While the vast majority of the land conveyed to the City by the Deed was intended to be used for public recreational uses, and was conveyed subject to a covenant to use and maintain that property for public park purposes in perpetuity, a portion of the land (i.e., the Premises) was expressly excluded from the covenant requiring park use to allow for the operation of a restaurant. **The Premises is not now, nor has it ever been operated as, a park since the transfer of the land to the City.** Because the County Charter Provision applies only to parks, the Premises has never been subject to the requirements of the County Charter Provision.

Section 6 of the Deed expressly carves out a portion of the property for the development, construction, and operation of a restaurant (the "Restaurant Tract"). Specifically, Section 6 of the Deed provides as follows:

*The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance; **provided, however, that a portion of the premises may be leased by Grantee to Specialty Restaurants Corporation for the development, construction, and operation of a restaurant** (emphasis added).*

As contemplated by Section 6 of the Deed, the City leased the Restaurant Tract to Specialty, as the original tenant under the Lease, and the Restaurant Tract became the Premises. The Lease was subsequently assigned to Tenant. The Restaurant Tract was never conveyed by the Federal government to the City for use as a "park." From the beginning, the parties contemplated that the Restaurant Tract would be used, and the Restaurant Tract was indeed used, for commercial purposes as a restaurant. Accordingly, as there is nothing in the County Charter Provision which would convert non-park property to park uses, based on the foregoing, the Restaurant Tract (i.e.,

the Premises) does not fall within the purview of the County Charter Provision.

Additionally, the City has reviewed the Concession Agreement for applicability of the County Charter Provision. Section 7.02(b) of the County Charter Provision provides for an exception to the County-wide referendum requirement for “food and concession facilities each not in excess of 1,500 square feet of enclosed space, with any complementary outdoor or covered areas needed to service park patrons.” Here, the concession area located south of the cutwalk is 1056 square feet, and the concession area located east of the building is 360 square feet, for a total concession area consisting of 1,416 square feet, within the 1,500 sq. ft. exception set forth in the County Charter provision.

Notwithstanding the foregoing analysis with respect to Article VII of the Miami-Dade County Charter, the City’s voters will, of course, have the opportunity to be heard with respect to the continued operation of Smith & Wollensky at the Premises, as the City Attorney’s Office has concluded that the Lease Amendment will require a City referendum in accordance with Section 1.03(b)(1) of the City Charter.

FINANCE AND ECONOMIC RESILIENCY COMMITTEE

On April 30, 2021, the Finance and Economic Resiliency Committee reviewed the Appraisals and term sheet and unanimously recommended that the lease and New Concession Agreements be forwarded to the City Commission.

Subsequent to the Committee meeting, the Tenant pointed out their inclusion of a cost share security in the park as part of the community benefit had been an error as the cost share for police had been inserted weeks before the tenant agreed on 9%. Tenant has stated that the 9 percent percentage rent is the absolute limit of what they can pay in order to be viable.

COMMUNITY SUPPORT

The Tenant has obtained letters of support from the condominiums abutting the park: the Continuum, the Courts at South Beach, South Pointe Tower Condominium, and Porto Fino Towers. The tenant has also 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 bid waiver. The community letters of support are attached as **Exhibit “J”**.

CONCLUSION

By entering into the Amended Lease prior to the expiration of the Existing Lease, the City will receive major increases in rent for about 4 years that it otherwise would not have received (\$350,000 the first year, \$600,000 the second, \$850,000 the third, and up to \$1.1m more in year 4). Over the longer term of the lease, the minimum guarantee for the Lease Amendment and New Concession Agreement combined will increase from \$235,000 to over \$1.4 million (with a 2.5 percent per year escalator) and the estimated lease revenues increase from a combined total of just under \$900,000 in FY 2019 to approximately \$1.8 million, twice the revenues.

Given the strong price proposal negotiated by the Administration, the 24-year proven track record of the current operator, the strong community support, and the recommendation of the Finance and Economic Resiliency Committee, the Administration recommends that the Mayor and City Commission waive, by 5/7th vote, the formal competitive bidding requirement, finding such waiver

to be in the best interest of the City; and approve, on first reading the, Amended and Restated Lease Agreement, and set the second and final hearing date for the Lease Amendment, which shall be subject to and contingent upon, voter referendum approval pursuant to Section 1.03(b)(1).

Attachments

Exhibit A:	Proposed Amended and Restated Lease
Exhibit B:	Proposed Concession Area
Exhibit C:	DRAFT Concession Agreement
Exhibit D:	Appraisal Report, CBRE Valuation and Advisory Services
Exhibit E:	Appraisal Report, Cushman & Wakefield
Exhibit F:	Tenant Improvements
Exhibit G:	Tenant Improvement Cost Estimates
Exhibit H:	Planning Analysis
Exhibit I:	South Pointe Park Deed
Exhibit J:	Community Support Letters