

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE CONCESSION AGREEMENT WITH BOUCHER BROTHERS PIER PARK, LLC, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-479-KB FOR THE MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE CONCESSION AGREEMENT.

WHEREAS, on May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the Administration to prepare and issue Request for Proposals (RFP) 2023-479-KB for the management and operation of a high-end beach establishment at One Ocean Drive, also known as Pier Park, and the adjacent concession area (collectively, the "Concession Area"), with the new agreement taking effect after the expiration of the existing Penrod Lease and Penrod Concession Agreements, which end on May 6, 2026; and

WHEREAS, the RFP allowed bidders to submit proposals for up to two independent proposal alternates - Option 1 for an agreement having a term of less than 10 years and Option 2 for an agreement having a term of up to 30 years; and

WHEREAS, on August 31, 2023, the City received proposals from the following firms for Options 1 and 2:

Option 1

- Boucher Brothers Management, Inc.
- Tao Group Hospitality/
One Ocean Hospitality
- The Group US Management LLC

Option 2

- Boucher Brothers Management, Inc.
- RH
- Tao Group Hospitality/One Ocean Hospitality
- The Group US Management LLC; and

WHEREAS, on September 11, 2023, the Evaluation Committee appointed by the City Manager convened to consider the proposals received; and

WHEREAS, for Option 1, the proposal submitted by Boucher Brothers was the unanimously top-ranked proposal by the Evaluation Committee, and for Option 2, the Evaluation Committee process resulted in a tie between the proposals submitted by Boucher Brothers and The Group US Management; and

WHEREAS, after a thorough review of the facts of the procurement, the results of the evaluation committee process, the financial analysis of the 10-year option versus the 30-year option, and the best interests of the City with regard to the property, on September 27, 2023, the City Manager recommended that the Mayor and City Commission authorize the Administration to negotiate an agreement for Option 1 with Boucher Brothers, the unanimous top-ranked bidder for Option 1; and

WHEREAS, the full details and analysis of the RFP process are included in Attachment B to the Memorandum accompanying this Resolution; and

WHEREAS, on September 27, 2023, the Mayor and City Commission approved Resolution No. 2023-32783, accepting the recommendation of the City Manager with regard to

the proposals received in response to the RFP and authorizing the Administration to negotiate an agreement with Boucher Brothers based on its Option 1 proposal; and

WHEREAS, as directed by the Mayor and City Commission, the Administration and Boucher Brothers (“Concessionaire”) have finalized negotiations on a concession agreement for the management and operation of a high-end beach club in the Concession Area; and

WHEREAS, the negotiated Concession Agreement for the Management and Operation of a High-End Beach Establishment is attached as Attachment A to the Commission Memorandum accompanying this Resolution (the “Concession Agreement”); and

WHEREAS, the material terms of the agreement are as follows:

1. Important Dates

- *Effective Date* means the date that the agreement is fully executed by all parties, typically ten (10) days after contract approval.
- *Occupancy Date* means the date upon which the Concessionaire is permitted to occupy and use the Concession Area, which is anticipated to be May 7, 2026.
- *Commencement Date* means August 1, 2027, subject to extension due to Unavoidable Delays (as defined in the Concession Agreement agreement), or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first.

2. Concession Area

The Concession Area is depicted in Attachment D to the Commission Memorandum accompanying this Resolution and generally includes all areas in the existing Penrod Lease and Penrod Concession Agreements (i.e., the building and adjacent outdoor areas, the beach concession area) as well as the parking lot. As to the parking lot, the City will retain 72 parking spaces for municipal uses.

3. Uses

The Concessionaire is authorized to conduct the following kinds of businesses and provide the following kinds of services in the Concession Area.

- **Rental of Beach and Pool Equipment.** In connection with the Beachfront Operations and the Pool Operations, Concessionaire shall be permitted to rent Beach and Pool Equipment including, but not be limited to, beach beds, beach chairs (including lounge chairs), pads, umbrellas, cabanas, sun canopies, flotation devices and such other related equipment as approved by the City Manager or his/her designee pursuant to this Agreement.
- **Restaurant Operations and Café Operations.** The Concessionaire shall enter into a subcontract with Major Food Group with respect to the Restaurant Operations and Café Operations at the Concession Area. The Restaurant Operations shall consist of the construction and operation of three (3) distinct dining concepts at the Concession Area, with the initial concepts being a daytime casual dining concept on the first floor of the building on the Concession Area, another being an evening upscale dining concept on the second floor of the building on the Concession Area, and the third being an outdoor upscale café concept (the “Outdoor Café”). The proposed final dining concepts, or any change in the future, shall

be submitted to the City by or before April 1, 2024, for the prior written approval of the City Manager or his or her designee.

- **Kids Club.** Concessionaire shall enter into a subcontract with Nannywisdom, LLC, d/b/a itavi®, with respect to the Kids Club operations at the Concession Area. The Kids Club Operations shall be a high-end quality children's center operated in accordance with the itavi® Method and will provide free childcare services, subject to availability, for the children or legal wards of patrons of the restaurants, health and wellness center and/or retail pavilion while patrons are physically present on-site. The Kids Club shall be a dedicated, secure, indoor location inside the building on the Concession Area and will include a secure, private bathroom for children from the approximate ages of 4 to 12 years of age and furnished with age-appropriate furniture.
- **Health and Wellness Center.** The Concessionaire shall have the right to operate or subcontract for the operation of the wellness operations, which shall consist of a high-end quality health and wellness facility.
- **Sale of Beach-Related Sundries and Skin Care Products by Concessionaire.** Concessionaire shall have the right to sell beach-related sundries and skin care products (such as lotions, oils, and other skin care products) in the beachfront area and pool area.
- **Retail Pavilion.** Concessionaire shall have the right to operate the retail pavilion consisting of, among other things, a collection of retail shops which may include, but not be limited to, art galleries comprised of unique, emerging local talent side by side with established artists, artisanal food shops, fashion and design shops and floral shops.
- **Prohibited Uses.** Concessionaire shall not use the Concession Area for any of the following purposes: (a) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Concession Area, and then only for thirty (30) days after the date of any such damage; (b) as an auction or flea market; (c) any business in which Concessionaire is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (d) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (e) coinbox entertainment (pinball, video games, moving pictures operated by coins); (f) casino gambling or games of chance or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (g) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or for any purpose or in any way in violation of Concessionaire's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (h) movie theatre; (i) medical facilities and offices; (j) check cashing facilities; (k) pawn shops; (l) the sale of firearms; (m) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (n) places of worship; (o) political offices; (p) military recruiting; (q) consular, legation or any other offices of foreign governments; (r) tire sales; (s) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (t) offices for the practice of veterinary medicine; (u) the sale of major appliances as a primary business; (v) housing or sleeping quarters; (w) grocery stores (other than specialty gourmet shops); (x) second hand stores; and/or (y) in any manner that will violate any Certificate of Occupancy or Certificate of Use

for the Concession Area or any portion thereof, or which will violate any Requirements applicable to the Concession Area.

4. Term

The term of the agreement with Boucher Brothers is nine (9) years and 364 days, commencing on August 1, 2027, subject to any Unavoidable Delays, or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first. While the Concession Agreement becomes effective upon execution, the term is scheduled to begin after the renovations, which are expected to take 13 months, have been completed. Boucher Brothers may begin the design process, permitting, and the required regulatory approvals following the effective date of the agreement but may not begin the actual construction work until after the expiration of the existing Penrod Lease and Penrod Concession Agreements on May 6, 2026.

5. Hours of Operation

- Beach Concession: open 1 hour after sunrise and close 1 hour prior to sunset
- First-floor outdoor Mediterranean restaurant: 11 am-7 pm
- Second-floor Japanese steakhouse: 5 pm-11 pm
- Sadelle's Boardwalk Cafe: 9 am-5 pm
- Outdoor lounge, pool, Kids Club, wellness, retail: 11 am-7 pm

6. Renovations

Boucher Brothers will invest \$26,226,920 in the renovation of the facility, which will include renovating the main building, outdoor areas, parking lot, and adjacent public restrooms, and the addition of a pool and retail areas. The planned renovations must comply with all applicable development regulations, and the approval of the Building and Planning Departments, as well as the Design Review Board and the Planning Board.

The agreement requires Boucher Brothers to invest the full proposed amount of \$26,226,920 into the project. Any savings will be placed into an account, the use of which must be mutually agreed upon by the parties.

7. Maintenance

The Concessionaire accepts the use of the Concession Area in its "as is, where is" condition with all faults other than any hazardous materials or other environmental issues existing in the Concession Area prior to the Occupancy Date. Concessionaire shall maintain or cause to be maintained, at its own cost and expense, the Concession Area, the Concession Area Structures, and the Public Parking Area in a first-class manner which is at least equal to the condition and quality of high-end beach establishments in other world-class beach resorts.

8. Early Termination of Agreement in the Event of a Financial Emergency

In the event of a financial emergency, as defined in the agreement, and the City Commission's tentative approval (i.e., subject to any other required approvals, including a voter referendum) of a sale of the City property that encompasses the Concession Area, then the City shall have the right to terminate this Agreement upon not less than one hundred eighty (180) days prior written notice to Concessionaire, provided that (a) the early termination notice shall not be earlier than the first day of the sixth (6th) Agreement Year and (b) the City shall pay Concessionaire the early termination payment. The early termination payment is intended to compensate the Concessionaire for the loss of anticipated profits that it would derive from the operations for the time remaining in the term, less the fair market value of any FF&E (furniture, fixtures and equipment) to be removed by Concessionaire from the Concession Area) plus the reasonable

costs incurred in connection with the early termination. The loss of anticipated profits and fair market value of FF&E is to be determined by mutual agreement of the parties, but if the parties cannot agree, these amounts are to be determined pursuant to appraisal provisions included in Section 25 of the Agreement.

9. Public Benefits

The public benefits included in the agreement are detailed in Attachment C to the Commission Memorandum accompanying this Resolution, including the salary of two police officers and a park ranger; a minimum of 250 square feet for a police sub-station or other uses as determined by the City; a reservation application (app) and discounts for Miami Beach residents; funding for the mobile food pantry, senior programs, City public schools, dune maintenance/restoration, and the Victory Community Garden; mechanical sifting from Government Cut to 5th Street; litter clean-up; and, improvements at the children’s playground at 13 Street and Ocean Drive, and at the Bark Park on Washington Avenue; and, accessibility equipment.

10. Revenue

- **Upfront Payments:** Concessionaire shall pay to the City a total of \$4,000,000.00 in upfront payments, payable in four (4) equal non-refundable installments of \$1,000,000.00 due on (a) the Effective Date, (b) on or before January 10, 2025, (c) on or before January 10, 2026, and (d) on or before January 10, 2027. Such upfront payments shall be applied to the 1st year minimum rent guarantee. The upfront payments shall be applied to the minimum guarantee for the first year of the term.

- **Minimum Annual Guarantee:** The Concessionaire shall pay the City an annual minimum guarantee of \$4,000,000.00, which shall be increased by 3% annually beginning in year 2. In addition, after the fifth term year, the minimum guarantee will be reset to the greater of (a) the existing Minimum Fixed Rent or (b) 80% of the average of the actual rent paid during the past five (5) years. The projected minimum revenue to the City over the term is \$45,855,517.

- **Percentage of Gross Receipts:** Annually, the Concessionaire shall pay to the City ten percent (10%) of Gross Receipts in excess of the amount of the then-current minimum annual guarantee. In addition, the Concessionaire shall pay the City an additional five percent (5%) of gross receipts between \$65,000,000 and \$70,000,000; and

* * * * *

WHEREAS, based on the foregoing, the Administration recommends that the Mayor and City Commission approve the negotiated Concession Agreement for the Management and Operation of a High-End Beach Establishment with Boucher Brothers Pier Park, LLC.

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 approves the Concession Agreement for the Management and Operation of a High-End Beach Establishment with Boucher Brothers Pier Park, LLC in the form attached as Exhibit A hereto; and further, authorize the Administration to finalize the Agreement; and further authorize the City Manager and City Clerk to execute the Concession Agreement.


PASSED AND ADOPTED this _____ day of _____ 2023.

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

DAN GELBER, MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney


 10-12-23
Date

Exhibit A
Concession Agreement for the Management and Operation of a High-End Beach Establishment