

**RESOLUTION: 2021-31806**

**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 5/7<sup>TH</sup> 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 5/7<sup>th</sup> 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

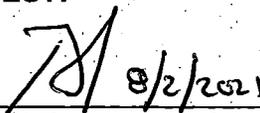
**WHEREAS**, Smith & Wollensky has received endorsements from the South of 5<sup>th</sup> Neighborhood Association (SOFNA), the Miami Beach Chamber of Commerce, the Continuum on South Beach Master Association, Portofino/South Pointe Master Association, Portofino Towers Condominium Association, the Courts 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.

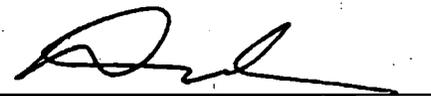
**NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve a Concession Agreement, attached as an exhibit to the Commission Memorandum accompanying this Resolution, between the City of Miami Beach ("City") 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 5/7<sup>th</sup> 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 28 day of July, 2021.

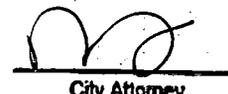
**ATTEST:**

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk



  
\_\_\_\_\_  
Dan Gelber, Mayor

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

  
\_\_\_\_\_  
City Attorney

 7-20-21  
Date

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Alina T. Hudak, City Manager  
DATE: July 28, 2021

**1:30 p.m. Second Reading Public Hearing (#1 Resolution)**

**SUBJECT: 1. 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.**

**2. 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.

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**SUPPORTING SURVEY DATA**

N/A

**Applicable Area**

South Beach

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?**

No

**Does this item utilize G.O. Bond Funds?**

No

**Strategic Connection**

Prosperity - Revitalize targeted areas and increase investment.

**Legislative Tracking**

Property Management

**ATTACHMENTS:**

**Description**

- ▯ Memorandum
- ▯ Attachment A
- ▯ Attachment B
- ▯ Attachment C
- ▯ Attachment D
- ▯ Attachment E
- ▯ Attachment F
- ▯ Attachment G

- ▣ Attachment H
- ▣ Attachment I
- ▣ Resolution - Lease
- ▣ Resolution - Concessions

# MIAMI BEACH

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

## COMMISSION MEMORANDUM

**TO:** Honorable Mayor Dan Gelber and Members of the City Commission

**FROM:** Alina T. Hudak, City Manager

**DATE:** July 28, 2021

**SUBJECT:** **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 AS AN ATTACHMENT 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.**

**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.**

### **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 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.

The Existing Lease contains 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. 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 Existing Lease, the Tenant has an existing concession agreement, dated October 1, 2009, which allows a food and beverage concession area located south of the Premises along the cutwalk ("Existing Concession Agreement"). The existing concession area is approximately 581 square feet pursuant to 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 the combined gross revenues, lease payments, and concession payments under the Existing Lease Agreement and Existing Concession Agreement are provided below:

|                   | Gross Revenues | Lease/<br>Concession<br>Payments |
|-------------------|----------------|----------------------------------|
| <b>Lease</b>      |                |                                  |
| 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                        |
| <b>Concession</b> |                |                                  |
| 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 the Existing Lease, to extend the term; 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 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 **Attachment "A"** hereto, and a 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.

**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 shall consist of the following **maximum** seat counts: (i) 400 seats in the enclosed area of the Premises, (ii) 125 seats in the exterior of the Premises, and (iii) 125 seats in the concession area. Tenant shall be permitted to reallocate the number of seats in each of the preceding areas provided that the aggregate seat count at any one time does not exceed 600 seats.

**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 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.

**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 ("Expiration Date"), as applicable, 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.

**"Lease Minimum Guarantee":**

\$1,042,550 per year.

The Lease Minimum Guarantee shall be subject to a 2.5% annual escalator beginning in Lease year 2022.

**"Percentage Rent":**

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

**"Annual Rent Cap":**

The total payment by the Tenant 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.

Notwithstanding anything to the foregoing, in the event the aggregate amount due under the Concession Agreement and Annual Rent under the Lease in those Lease Years exceed the Annual Rent Cap, such amounts shall only be

credited to Tenant against the amounts otherwise due by Tenant pursuant to the Concession Agreement. In no event shall the Annual Cap impact the amounts due pursuant to the Minimum Guarantee.

**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 effective in 2022 as 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 right 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 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 (½) of such fee shall be credited against Annual Rent.

**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; mentorship program for Miami Beach start-up restaurants and bars, as set forth in Exhibit "H" of the Lease Amendment.

**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**

In addition to the proposed Lease Amendment, Tenant has proposed a new concession agreement with a term of nine (9) years, commencing on January 1, 2022, as well as expanding the concession area to 1,450 square feet, and increasing the minimum guarantee for the concession area in the New Concession Agreement.

The proposed New Concession Agreement is attached as Attachment "B" to this Memorandum and is summarized below.

**Premises (Section 2.1):**

The outdoor seating area relating to the restaurant located at Smith and Wollensky Restaurant at One Washington Avenue, Miami Beach, Florida, 33139 ("Restaurant").

**Gross Square Footage of Concession:**

Concession area consist of 1450 gross square feet, as also shown in Exhibit "2.1" of the Concession Agreement, as follows: East Cutwalk (581 sq. ft.), West Cutwalk (521 sq. ft.), and East Concession (348 sq. ft.)

**Seat count:**

A maximum of 125 seats across all three components of the outdoor seating space in the concession area, and also provided the combined seating under the Lease Amendment and Concession Agreement shall not exceed 600.

Permitted Use of Premises (Section 3.1-3.4):

The Concession Area shall be used by the Concessionaire solely as an outdoor eating, drinking and seating area for the patrons and guests of the Restaurant and food and beverage sold shall be offered daily and be consistent with the type and quality of food and beverages prepared and sold at the Restaurant. The Concession Area Furniture and site plan shall be subject to approval by the City, in its regulatory capacity.

The Concessionaire shall have the right to operate in the Concession Area when the restaurant is open for business (and, conversely, shall be closed when the restaurant is closed).

All alcoholic beverages shall be dispensed only from the Smith & Wollensky Restaurant building, and Concessionaire shall not be permitted to erect or maintain upon the Concession Area, any permanent or temporary structure and/or area (i.e. bars, mini bars, etc.) for the dispensing or sale of alcoholic beverages.

Concessionaire shall not place any speakers, or any other device used to amplify sound, in, on or around the Concession Area and shall not be used as an outdoor entertainment or open-air entertainment establishment.

Term of Concession (Section 1.1):

The term of this Concession Agreement shall run for a term of nine (9) years and shall commence on January 1, 2022.

"Concession Fees" (Section 4.1):

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

Concession Minimum Guarantee":

\$400,000 per year.

The Concession Minimum Guarantee shall be subject to a 2.5% annual escalator effective in 2022.

"Percentage of Gross":

10% of "gross sales".

"Annual Cap on Concession Fees":

Notwithstanding the foregoing, the Concession Fees in years 2022 through 2025 shall be subject to the maximum not-to-exceed amounts set forth in the prior Lease summary.

In the event the aggregate of Concession Fees and Annual Rent under the Lease in those years

exceed the Annual Cap, the Concession Fees will be reduced by the amount exceeded.

Surrender of Concession Area (Section 3.8):

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area in the same condition as the Concession Area was prior to the Commencement Date of this Agreement, reasonable wear and tear excepted.

Hours of operation (Section 9):

Sunday through Saturday: 11:00 AM to 10:00 PM. Maximum daily hours of operation shall be until 12:00 Midnight.

Improvements, Maintenance, Repair and Operation:

Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area (including all furniture, fixtures, equipment and any other improvements thereon). This shall include, without limitation, daily (i.e. 365 days) removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

The Concession Area, and the immediately surrounding twenty-five (25) foot adjacent areas, shall at all times be maintained in a clean and sanitary manner.

The cutwalk shall be maintained free from obstructions at all times during, including fee from patrons.

Comprehensive General Liability Insurance (Section 11.1):

\$1,000,000.00

Cross-Default:

In the event of a default under the Concession Agreement or the Lease Agreement, City may declare a default or terminate both the Concession Agreement and the Lease Agreement.

**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 **Attachment "C"** and **Attachment "D,"** 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:

| <b>Appraisals: Combined Lease &amp; Concession</b>  | <b>Cushman &amp; Wakefield</b> | <b>CBRE</b>       |
|---|--------------------------------|-------------------|
| 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         |
| <b>Recommendations</b>  | <b>Cushman &amp; Wakefield</b> | <b>CBRE</b>       |
| Base Rent per sq ft   | \$50.00                        | \$83.47           |
| Percentage Rent based on Natural Breakpoint *   | 5%                             | 10%               |
| Escalator   | 3%/year                        | 10% every 5 years |
| <b>Restaurant only</b>  | 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.<br/>           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 Attachments C and D, 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.

1 WASHINGTON AVENUE, MIAMI BEACH, FL

LAND VALUATION

| MIAMI-DADE LARGE RESTAURANT LEASE COMPARABLES  |   |            |                |                   |            |              |            |                  |               |            |                         |                    |                        |             |       |  |
|--|---|------------|----------------|-------------------|------------|--------------|------------|------------------|---------------|------------|-------------------------|--------------------|------------------------|-------------|-------|--|
| PROPERTY INFORMATION                           |   |            |                | LEASE INFORMATION |            |              |            |                  |               |            |                         |                    |                        |             |       |  |
| NO.  | Property Name<br>Address, City, State                             | YEAR BUILT | YEAR RENOVATED | TENANT NAME       | LEASE DATE | SIZE (SQ FT) | TERM (Yrs) | INITIAL RENT/RSF | RENT % OF GFA | LEASE TYPE | PERCENTAGE RENT CLAUSES | % RENT BASED POINT | % RENT OVER RENT POINT | MONTHS FREE | TERR  | COMMENTS   |
| 1  | Coral Gables - Restaurant<br>Coral, FL                            | 2002       | N/A            | Confidential      | 2/20       | 9,914        | 5          | \$36.00          | Flat          | Net        | N/A                     | N/A                | N/A                    | N/A         | N/A   | This is a renewal lease rate of an existing restaurant located in a prime location in Coral Gables   |
| 2  | Wynwood - NW 25th Street<br>Miami, FL                             | 1972       | 2018           | Confidential      | 9/19       | 4,480        | 10         | \$56.00          | 2.5%          | Net        | N/A                     | N/A                | 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<br>Miami                                 | 2019       | N/A            | Confidential      | 5/19       | 5,500        | 10         | \$56.00          | 3.0%          | Net        | N/A                     | N/A                | N/A                    | N/A         | N/A   | The ground floor first generation space is located within a mixed-use building   |
| 4  | Wynwood - NW 2nd Avenue<br>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 is an former warehouse that has been fully renovated for a built to suit restaurant/multipurpose space  |
| 5  | Brickell Avenue<br>Ground Floor Retail Space<br>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<br>3610 Old Cutler Road<br>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 the restaurant space was selected via the indoor and outdoor footprint via O&B. This is the only waterfront restaurant in Coral Gables. The restaurant features 154 seats. The lease also includes a bar and tiki shop and food trucks in the adjacent marina. |
| STATISTICS                                     |   |            |                |                   |            |              |            |                  |               |            |                         |                    |                        |             |       |  |
| Low  |   | 1951       | 2017           |                   |            | 1018         | 4,480      | 5                | \$36.00       |            |                         |                    | 5.0%                   | 0           | \$17  |  |
| High   |   | 2019       | 2019           |                   |            | 220          | 10,000     | 15               | \$98.57       |            |                         |                    | 5.0%                   | 0           | \$145 |  |
| Average  |   | 1992       | 2018           |                   |            | 519          | 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:

| SUMMARY OF COMPARABLE RESTAURANT RENTALS |   |                    |              |                                     |          |             |                      |                    |                    |            |            |             |                          |                     |              |                   |           |
|--|---|--------------------|--------------|-------------------------------------|----------|-------------|----------------------|--------------------|--------------------|------------|------------|-------------|--------------------------|---------------------|--------------|-------------------|-----------|
| No.                                      | Property Name and Location  | YOC / Ren'd        | Overall Oct. | Seating Capacity (Indoor & Outdoor) | GLA (SF) | SF Per Seat | Gross Sales Per Seat | Base Rent Per Seat | Rent as % of Sales | Lease Date | Lease Term | Base Rent   | Percentage Rent          | Tenant Improvements | Expense Base | Escalations       | Free Rent |
| 1  | J&B on the Beach<br>300 North Ocean Boulevard,<br>Deerfield Beach, FL 33441 | 2007               | 100%         | 300 Seats                           | 6,470    | 22 SF       | \$38,333             | \$2,080            | 5.2%               | Mar-19     | 20.0 Yrs   | \$92.74 PSF | 3% of Gross Sales        | As Is               | NNN          | 10% Every 3-Years | ---       |
| 2  | Elle Les Oles<br>1002 E Las Oles Boulevard,<br>Fort Lauderdale, FL 33301    | 1964 / 2020        | 90%          | 365 Seats                           | 8,526    | 23 SF       | ---                  | \$1,635            | ---                | Feb-21     | 10.0 Yrs   | \$70.00 PSF | 3% of Gross Sales        | \$146.61 PSF        | NNN          | 3.0% / year       | 6 Months  |
| 3  | Cravo's Restaurant<br>3490 Main Highway,<br>Miami, FL 33133                 | 2020               | 100%         | ---                                 | 7,670    | ---         | ---                  | ---                | ---                | Feb-21     | 10.0 Yrs   | \$70.00 PSF | ---                      | 1st Generation      | NNN          | 3%/Yr.            | 6 Months  |
| 4  | Tavern + Mary<br>3321 Mary Street,<br>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  | Mama's Grill & Bar<br>900 S Miami Avenue,<br>Miami, FL 33130                | 2007               | 85%          | 375 Seats                           | 8,157    | 22 SF       | ---                  | \$1,205            | ---                | Jan-20     | 10.0 Yrs   | \$40.00 PSF | ---                      | \$100.00 PSF        | NNN          | ---               | ---       |
| 6  | Arroyo de Pinar<br>3101 NE 7th Avenue,<br>Miami, FL 33137                   | 2017               | 100%         | 367 Seats                           | 10,798   | 29 SF       | \$21,798             | \$2,588            | 11.9%              | Jun-21     | 10.0 Yrs   | \$85.25 PSF | 10% of Gross Sales       | ---                 | NNN          | 2% / year         | ---       |
| 7  | Red, The Steakhouse<br>801 South Pointe Drive,<br>Miami Beach, FL 33139     | 2015               | 42%          | 210 Seats                           | 6,458    | 31 SF       | ---                  | \$2,143            | ---                | Sep-20     | 10.0 Yrs   | \$49.68 PSF | ---                      | ---                 | NNN          | ---               | ---       |
| Subj.                                    | Smith & Wollensky<br>1 Washington Avenue,<br>Miami Beach, Florida           | 1987 / 1997 & 2017 | 100%         | 456 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

The CBRE report distinguished between the restaurant space and the outdoor concession area, 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 beginning in Lease Year 2022.**

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 both the Existing Concession Agreement and the New Concession Agreement be increased effective in 2022 from \$120,000 (and \$140,000 scheduled to be in effect as of 2024) to \$400,000 escalated annually as of 2022. 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.

### **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 Attachment "E." The Tenant would make these improvements as a condition of the Lease Amendment and has agreed to provide a minimum of \$3,205,970 in restaurant upgrades, to be completed by Tenant within five (5) years following the commencement of the Lease Amendment. The various enhancements would fall into one or more of the following categories and cost estimates have been included and attached hereto as Attachment "F":

- Improvements required by 40-year re-certification requirement, and beyond;
- Improvements proposed by Tenant, as described in the attached Attachment "E"; 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 a mentorship program for Miami Beach 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 located on 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 5/7<sup>th</sup> vote of the City Commission, pursuant to Section 82-39(a) 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 **Attachment "G"**.

## **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 **Attachment "H"**.

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 1,450 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 Amendment 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 a viable restaurant.

**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 5<sup>th</sup> 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 Lease Amendment, including the bid waiver. The community letters of support are attached as Attachment "I".

**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 \$1.1 million 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. Below is a table demonstrating the net increase in payments to the City, by entering into the Lease Amendment and New Concession Agreement.

|  | Minimum Guarantee | Potential Payments without Cap | Potential Payments with Cap | Net increase |
|--|-------------------|--------------------------------|-----------------------------|--------------|
| Year 1   | \$ 1,442,550      | \$ 1,790,000                   | \$ 1,250,000                | \$ 350,000   |
| Year 2   | \$ 1,478,614      | \$ 1,830,000                   | \$ 1,500,000                | \$ 600,000   |
| Year 3   | \$ 1,515,579      | \$ 1,880,000                   | \$ 1,750,000                | \$ 850,000   |
| Year 4   | \$ 1,553,469      | \$ 1,930,000                   | \$ 2,000,000                | \$ 1,030,000 |
| Year 5   | \$ 1,592,305      | \$ 1,980,000                   | \$ 1,980,000                | \$ 1,080,000 |
| Year 6   | \$ 1,632,113      | \$ 2,030,000                   | \$ 2,030,000                | \$ 1,130,000 |
| Year 7   | \$ 1,672,916      | \$ 2,080,000                   | \$ 2,080,000                | \$ 1,180,000 |
| Year 8   | \$ 1,714,739      | \$ 2,130,000                   | \$ 2,130,000                | \$ 1,230,000 |
| Year 9   | \$ 1,757,607      | \$ 2,180,000                   | \$ 2,180,000                | \$ 1,280,000 |
| Year 10  | \$ 1,801,547      | \$ 2,230,000                   | \$ 2,230,000                | \$ 1,330,000 |
| Based on FY 2019 \$14M in Lease revenues and assuming \$5.3M in concession revenues but with max caps in Years 1-4 and 2.5% growth |                   |                                |                             |              |

Further, by amending the Existing Lease, the City mitigates the risk that it would incur bringing a new operator into the space which at the same time ensuring market rate revenues.

Given the strong price proposal negotiated by the Administration, the long term proven track record of the Tenant, 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 5/7<sup>th</sup> vote, the formal competitive bidding requirement, finding such waiver to be in the best interest of the City; approve the Amended and Restated Lease Agreement which shall be subject to and contingent upon, voter referendum approval pursuant to Section 1.03(b)(1); and approve the new Concession Agreement which would become effective on the subject to voter referendum approval of the Amended and Restated Lease Agreement.

**Attachments**

|                      |   |
|----------------------|---|
| <b>Attachment A:</b> | <b>Proposed Amended and Restated Lease</b>                    |
| <b>Attachment B:</b> | <b>Proposed Concession Agreement</b>                          |
| <b>Attachment C:</b> | <b>Appraisal Report, CBRE Valuation and Advisory Services</b> |
| <b>Attachment D:</b> | <b>Appraisal Report, Cushman &amp; Wakefield</b>              |
| <b>Attachment E:</b> | <b>Tenant Improvements</b>                                    |
| <b>Attachment F:</b> | <b>Tenant Improvement Cost Estimates</b>                      |
| <b>Attachment G:</b> | <b>Planning Analysis</b>                                      |
| <b>Attachment H:</b> | <b>South Pointe Park Deed</b>                                 |
| <b>Attachment I:</b> | <b>Community Support Letters</b>                              |

# ATTACHMENT

# A

**LANDLORD:**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

and

**TENANT:**

1 Washington Avenue Corp.  
1 Washington Avenue  
Miami Beach, Florida 33139

**DATE OF EXECUTION:**

\_\_\_\_\_, 2021

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**1 WASHINGTON AVENUE  
Miami Beach, FL 33139  
Smith & Wollensky  
AMENDED AND RESTATED RESTAURANT LEASE**

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**LEASE SUMMARY**

The following is a summary of basic lease provisions with respect to the Lease. It is an integral part of the Lease, and terms defined or dollar amounts specified in this Summary shall have the meanings or amounts as stated, unless expanded upon in the text of the Lease and its Exhibits, which are attached to and made a part of this Summary.

1. **Lease Execution Date:** \_\_\_\_\_, 2021
  
2. **"Landlord" or "City":** City of Miami Beach, a municipal corporation of the State of Florida
  
3. **Landlord 's Address:** City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: Asset Manager  
  
with a copy to:  
  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: City Attorney  
  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: City Manager
  
4. **"Tenant":** 1 Washington Avenue Corp., a Florida corporation
  
5. **Tenant's Address:** 1 Washington Avenue  
Miami Beach, Florida 33139  
  
with copies to:  
  
Smith & Wollensky Restaurant Group, Inc.  
101 Station Lndg.  
Medford, MA 02155  
  
Shutts & Bowen LLP  
200 South Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
Attention: Alexander I. Tachmes, Esq.
  
6. **Premises (Section 1.1):** 1 Washington Avenue  
Miami Beach, Florida 33139  
  
All of the land described on **Exhibit "A"** attached hereto (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".

7. Concession Space: That certain concession area that is subject to that separate Concession Agreement is not included in Premises square footage.
8. Gross Square Footage of Premises: Premises consist of approximately 24,010 gross square feet as also shown in Exhibit "A-1".
9. Seat count: Aggregate seat count (inside and outside, and including the Concession Agreement) shall not exceed 600 seats, which shall consist of the following maximum seat counts: (i) 400 seats in the enclosed area of the Premises, (ii) 125 seats in the exterior of the Premises, and (iii) 125 seats in the concession area. Tenant shall be permitted to reallocate the number of seats in each of the preceding areas provided that the aggregate seat count at any one time shall not exceed 600 seats.
10. 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. Tenant shall also be entitled to use the Premises for incidental retail sale of good and merchandise to patrons on the Premises and, subject to Landlord's sole consent, additional uses consistent with the business operations of Tenant and/or its owner; all to be further subject to the prohibited uses described in Section 3.6 of the Lease.
11. "Existing Lease": That certain Lease Agreement between Landlord 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, for the Premises, which is currently set to expire on November 7, 2025 ("Existing Lease Current Expiration Date").
12. 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 this Lease, this Lease shall supersede and replace the Existing Lease as of January 1, 2022 ("Lease Commencement Date"). The initial term of this Lease 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.

13. 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.

14. "Annual Rent" (Section 2.2):

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

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 (the "Annual Cap"):

\$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.

15. "Lease Minimum Guarantee":

\$1,042,550 per year.

The Lease Minimum Guarantee shall be subject to a 2.5% annual escalator starting on the Lease Commencement Date.

16. "Percentage Rent":

The sum of 9% of "gross sales" (section 2.3).

17. Additional Rent:

See Section 2.1.

18. First Month's Rent:

See Section 12 hereof, "Lease Commencement Date".

19. Security Deposit (Section 2.6): Landlord will continue to hold the security deposit provided under the Existing Lease.
20. 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).
21. 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.
22. Comprehensive General Liability Insurance (Section 7.1): \$2,000,000.00
23. Broker(s) (Section 15.12): None
24. Trade Name (Section 3.1): Smith & Wollensky
25. 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 (½) of such fee shall be credited against Annual Rent.

26. 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.
27. 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" attached hereto.
28. 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"
29. 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.
30. Maximum permitted closing time: 1:00 A.M. interior and 12:00 midnight exterior.

**THIS AMENDED AND RESTATED LEASE** (the "Lease"), dated the \_\_\_\_ day of \_\_\_\_\_, 2021 ("Lease Execution Date"), is made by and between the City of Miami Beach, Florida, a municipal corporation ("Landlord"), and 1 Washington Avenue Corp., a Florida corporation ("Tenant").

RECITALS:

A. Landlord is the owner of (i) a property located in the City of Miami Beach, Miami-Dade County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Land"), (ii) a two-story restaurant structure constructed thereon as shown in Exhibit "A-1", attached hereto and made a part hereof (the "Restaurant Space"), and (iii) the Parking Area as shown on Exhibit "B" (the "Parking Area").

B. Landlord and Tenant desire to (i) enter into this Lease for the Premises, as defined in Section 6 of the Lease Summary, and Exhibits "A" – "A-1" attached hereto and made a part hereof, and (ii) provide Tenant with an exclusive continuous right to use the Parking Area as defined in Section 25 of the Lease Summary and as shown on Exhibit "B" attached herein during the Term and any Renewal Term, all on the terms and conditions hereinafter set forth.

C. 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"), and on September 22, 1993, the Mayor and City Commission adopted Resolution No. 93-20899, approving an assignment of the Existing Lease to Tenant, as assignee.

D. The Tenant has been the long-term operator for the Smith & Wollensky restaurant at the Premises, and the Existing Lease contains 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. Subsequently, 1 Washington Avenue Corp. exercised the second and final renewal term, commencing on November 7, 2015 that is currently set to expire on November 6, 2025 ("Existing Lease Current Expiration Date").

E. Landlord and Tenant desire to enter into this Lease to supersede and replace the Existing Lease as of January 1, 2022, on the terms set forth herein, and the parties desire to extend the term until December 31, 2045, which is approximately twenty (20) years from the date of the Existing Lease Current Expiration Date. Additionally, Tenant shall have two (2) 10-year renewal term options, as set forth in the terms of this Lease.

F. This Lease replaces the Existing Lease as defined in Section 11 of the Lease Summary, concerning which neither party is aware of any defaults thereunder by the other party.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE I. TERM.

1.1 Grant Term.

1.1.1 Grant. In consideration of the performance by Tenant of its obligations under this Lease, (i) Landlord leases to Tenant, and Tenant leases from Landlord, for the Term and any Renewal Term, the Land and the Restaurant Space shown on Exhibits "A" and "A-1", respectively, and (ii) Landlord grants to Tenant a continuous, right to use the one hundred and five (105) parking spaces as set forth in Section 3.13 and in Section 25 of the Lease Summary, in the Parking Area shown on Exhibit "B".

1.1.2 Term. The "Term" of the Lease shall commence on the Lease Commencement Date and expire on the Lease Expiration Date as specified in the Lease Summary, except if renewed pursuant to 1.1.3 below.

1.1.3 Renewal Term(s). Tenant shall have, at its sole discretion, two (2) consecutive options of ten (10) years each to extend the Term (each, a "Renewal Term"). Each Renewal Term, if and when exercised by Tenant, shall commence the day after the expiration of the preceding Term or Renewal Term, as applicable. With respect to each Renewal Term option, such option can be exercised in the sole discretion of Tenant provided that Tenant is not in default of the Lease and is otherwise in good standing with Landlord, and provided further that the 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 applicable Expiration Date as defined in Section 13 of the Lease Summary. All of the terms and conditions of this Lease shall apply during each Renewal Term.

1.1.4 Rent During Renewal Term(s). 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.

1.1.5 Landlord's Work. Except as stated in Section 5.3, Tenant acknowledges and agrees that it is accepting possession of the Premises and Parking Area in their **AS-IS WHERE-IS** condition and that Landlord has no other obligation to furnish, render, or supply any money, work, labor, material, fixture, equipment, or decoration with respect to the Premises.

1.1.6 Costs Association with Tenant's Work. Tenant is responsible for any and all costs, including any utility impact fees and connection fees, permit fees, charges, and/or deposits as may be required of any kind or nature in connection with Tenant's Work (as defined in Section 5.2(a)) or Tenant's use of the Premises.

## ARTICLE II. RENT.

2.1 Covenant to Pay. Tenant shall pay to Landlord all sums due hereunder as set forth in this Lease prior demand, together with all applicable Florida sales tax thereon; however, unless otherwise provided in this Lease, payments other than Tenant's regular monthly payments of Annual Rent shall be payable by Tenant to Landlord within five (5) days following demand. All rent or other charges that are required to be paid by Tenant to Landlord shall be payable at Landlord's address indicated on the Lease Summary. Annual Rent and additional rent (which is all sums payable to Landlord other than Annual Rent) for any "Lease Year" consisting of less than twelve (12) months shall be prorated on a per diem basis, based upon a period of 365 days. "Lease Year" means the twelve (12) full calendar months commencing on the Lease Commencement Date. However, the final Lease Year may contain less than twelve (12) months due to expiration or sooner termination of the Term. Tenant agrees that its covenant to pay rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement, or reduction whatsoever, except as expressly provided for in this Lease.

2.2 Annual Rent. Subject to any escalation which may be provided for in this Lease and the maximum amounts for the first four (4) Lease Years as described in Section 14 of the Lease Summary, Tenant shall pay Annual Rent for the Term in the initial amount specified in the Lease Summary, which, except for the first installment, shall be paid as follows, the monthly Minimum Guarantee shall be payable throughout the Term in equal monthly installments in advance on the first day of each calendar month of each year of the Term, such monthly installments to be in the amounts (subject to escalation) specified in the Lease Summary. Additionally, in the event the Percentage Rent for any month exceeds the Minimum Guarantee for said month, Tenant shall pay to City the difference between Percentage Rent and the Minimum Guarantee on or before the 15<sup>th</sup> of the subsequent month. The first monthly installment of Annual Rent shall be due on the date specified in Section 18 of the Lease Summary. The Lease Minimum Guarantee described above shall be adjusted during the Term of this Lease as provided in the Lease

Summary. It is also agreed and understood that the applicable Florida State sales and use tax shall be added to Tenant's payment of Annual Rent and forwarded to Landlord as part of said payments. It is the intent of Landlord that it is to receive Annual Rent, and any other additional rental amounts due, as net, free and clear of all costs and charges arising from, or relating to, the Premises. Notwithstanding anything to the foregoing, in the event the aggregate amount due under the Concession Agreement and Annual Rent under the Lease in those Lease Years exceed the Annual Cap, such amounts shall only be credited to Tenant against the amounts otherwise due by Tenant pursuant to the Concession Agreement. In no event shall the Annual Cap impact the amounts due pursuant to the Minimum Guarantee herein.

2.3 Gross Sales. The following shall apply with respect to Percentage Rent:

2.3.1 Defined. The term "gross sales" as used herein shall include all receipts, whether collected or accrued, derived by Tenant (or any licensee, concessionaire, or sub-tenant of Tenant), from all business conducted upon or from the Premises including, without limitation, receipts from the sale of food, beverage, alcoholic beverages, merchandise, rental of space, or from any other source whatsoever; provided, however, that gross sales shall not include gratuities (tips) and taxes.

2.3.2 Exclusions. The following items are excluded from gross sales:

- (1) The cost or value of meals or discounts given to employees of Tenant;
- (2) The cost or value of food and beverage used for entertainment and business promotion purposes by officers and employees of Tenant. No trade outs may be deducted from gross sales under this provision; and
- (3) Receipts from off-site retail sales.

2.3.3 Records, Accounts, Statements, Audits. Tenant shall keep on the Premises, or such other place approved by Landlord, true, accurate, and complete records and accounts of all sales, gross sales, rentals, and business being transacted upon or from the Premises and shall give Landlord or Landlord's representative access during reasonable business hours, with advance notice, to examine and audit such records and accounts.

Within thirty (30) days after each month of the term hereof, Tenant shall deliver to Landlord a written monthly statement of the gross sales for such month certified by Tenant to be true, accurate, and complete.

Within sixty (60) days after each fiscal year, Tenant shall deliver to Landlord a written annual statement of the gross sales for such fiscal year. Said statement shall be certified as true, accurate and complete by Tenant, by and through a duly authorized officer of Tenant. The Landlord's City Auditor or his/her designee shall have the right, during regular business hours and upon the Landlord's written request to Tenant to audit, inspect, examine and copy the Tenant's fiscal and financial records, books, ledgers, statements, reports, tax returns and documents relating to this Lease and the Tenant's revenues thereunder through the Term and Renewal Term(s), if any, of this Lease and for three (3) years following its expiration or cancellation. The Tenant agrees to have such audit(s) conducted at such locations within Miami-Dade County, Florida as are mutually convenience to the parties.

2.4 Payment of Personal Property Taxes; Sales Tax Reports. Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises and to the use of the Premises by Tenant or such other occupant. Tenant shall provide Landlord with copies of Tenant's sales tax reports provided to the State of Florida, as and when such reports are provided to the State.

2.5 Rent Past Due. If any payment due from Tenant shall be overdue more than five (5) days, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due

from Tenant shall remain overdue for more than fifteen (15) days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month eighteen (18%) percent per annum) of the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord.

## 2.6 Security Deposit.

2.6.1 Landlord acknowledges that it is in possession of the full security deposit from the Existing Lease as set forth in Section 19 of the Lease Summary. Such security deposit shall remain unchanged and shall continue to be held by Landlord, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Landlord shall be entitled to commingle the security deposit with Landlord's other funds. If Tenant defaults in any of its obligations under this Lease, Landlord may at its option, but without prejudice to any other rights which Landlord may have, apply all or part of the security deposit to compensate Landlord for any loss, damage, or expense sustained by Landlord as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Landlord. Within thirty (30) days following termination of this Lease, if Tenant is not then in default, the security deposit will be returned by Landlord to Tenant.

2.7 Landlord's Lien. To secure the payment of all rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property now or hereafter acquired (including fixtures, equipment, chattels, and merchandise) which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of Landlord's City Manager until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid; provided, Tenant may operate its business in the ordinary course and the removal of food, merchandise and inventory from the Premises shall not be a default under this section. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises are located. To the extent permitted by law, this Lease shall constitute a security agreement under Article 9 of the Florida Uniform Commercial Code. Notwithstanding anything in the foregoing to the contrary, to the extent Tenant's lender requires a lien on property and subordinates its lien to the above-referenced Landlord's lien, Landlord shall act reasonably and in good faith to permit the same.

## ARTICLE III. USE OF PREMISES.

3.1 Permitted Use(s). The Premises shall be used and occupied solely and exclusively for the purposes specified in Section 10 of the Lease Summary with a seat count as provided in Section 9 of the Lease Summary. Tenant shall operate the Premises under the trade name "Smith and Wollensky" and shall use the Premises solely for the purpose of conducting the business of a first-class, fine dining steak house restaurant, commensurate to the current operation under the Existing Lease, and for no other purpose whatsoever except as set forth herein. Tenant shall not change the trade name of the restaurant without the prior approval of the City Commission. Tenant shall carry on its business on the Premises in a reputable manner and shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which shall result in a nuisance, hazard, or bring about a breach of any provision of this Lease or any applicable municipal or other (i.e. federal, State, or County) governmental law or regulation, or would otherwise be inconsistent with a first-class restaurant. Tenant shall observe all reasonable rules and regulations established by Landlord from time to time for the Premises. The rules and regulations in effect as of the date hereof are attached to and made a part of this Lease as Exhibit "E". Landlord will provide a copy of any amendments to the rules and regulations at least seven (7) days prior to the effective date of any such amendments. Notwithstanding the foregoing, Landlord consents to all uses of the Premises being made under the Existing Lease as of the Lease Execution Date of this Lease.

3.2 **Compliance with Laws.** The Premises shall be used and occupied in a safe, careful, and proper manner so as not to contravene any present or future laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders, and requirements of all governmental authorities having jurisdiction over the Premises, or any street, road, avenue, or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the local building codes, and the laws, rules, regulations, orders, ordinances, statutes, codes, and requirements of any applicable Fire Rating Bureau or other body exercising similar functions), the temporary and/or permanent Certificates of Occupancy issued for the Premises as then in force, and any and all provisions and requirements of any property, casualty, or other insurance policy required to be carried by Tenant under this Lease. If due to Tenant's use of the Premises, repairs, improvements, or alterations are necessary to comply with any of the foregoing, Tenant shall pay the entire cost thereof.

3.3 **Signs.** Tenant, at Tenant's expense, shall erect and maintain signage upon the exterior of the Premises. The design and specification of such signage shall be subject to Landlord's sign criteria as adopted from time to time and such design and specification (including camera-ready artwork) shall be submitted for Landlord's prior approval. Except with the prior written consent of Landlord's City Manager, Tenant shall not erect, install, display, inscribe, paint, or affix any signs, lettering, or advertising medium upon or above any exterior portion of the Premises or in or on Tenant's storefront or storefront window. Landlord's signage criteria is attached hereto and made a part hereof as **Exhibit "D"**. Notwithstanding the foregoing, Landlord hereby consents to all signage on the existing premises as of the Lease Execution Date.

3.4 **Environmental Provisions.**

(a) The parties acknowledge and agree that they have obtained that certain Phase I Environmental Site Assessment Report, dated October 23, 2020, prepared by Aptim Environmental & Infrastructure, LLC (the "Environmental Report") concerning the Premises. The Environmental Report reflects no issues concerning Hazardous Materials. Each party hereto represents and warrants to the other, without further investigation, it has no actual knowledge of Hazardous Materials not set forth in the Environmental Report.

(b) Tenant shall not knowingly incorporate into, use, or otherwise place or dispose of at the Premises (or allow others to incorporate into, use, or otherwise place or dispose of at the Premises) any Hazardous Materials, as hereinafter defined, unless (i) such Hazardous Materials are for use in the ordinary course of business (i.e., as with office or cleaning supplies), (ii) notice of and a copy of the current material safety data sheet is provided to Landlord for each such Hazardous Material (except for Hazardous Materials used by Tenant in the ordinary course of business (i.e., as with office or cleaning supplies)), and (iii) such materials are handled and disposed of in accordance with all applicable governmental laws, rules, and regulations. If Landlord or Tenant ever has knowledge of the presence at the Premises of Hazardous Materials which affect the Premises, such party shall notify the other thereof in writing promptly after obtaining such knowledge. For purposes of this Lease, "Hazardous Materials" shall mean: (a) petroleum and its constituents; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon.

(c) If Tenant or its employees, agents, contractors, or assigns shall ever violate the provisions of subsection (b), above, then Tenant shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord, provided that such work shall commence not later than thirty (30) days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision; and Landlord shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Premises is otherwise closed (i.e., holidays) if reasonably required for the protection of Tenant's patrons.

(d) Tenant agrees to defend, indemnify and hold harmless Landlord against any and all claims, costs, expenses, damages, liability, and the like, which Landlord may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this Section 3.4, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant, its employees, agents, contractors, or assigns. Tenant's liability under this Section 3.4 shall survive the expiration or any termination of this Lease.

(e) With respect to the Parking Area, Tenant shall have no responsibility to pay for, assist with, contribute to, or remediate any environmental issues concerning the Parking Area unless it is the cause of same. Any and all responsibility for the Parking Area being the responsibility of Landlord are hereby disclaimed by Tenant.

**3.5 Hours; Continued Occupancy.** During the Term, Tenant shall conduct its business in and on the Premises, at a minimum, of seven (7) days a week with the exception of Christmas Eve and other such days as are approved in advance by Landlord's City Manager. The minimum hours shall be 11:00 a.m. to 10:00 p.m. and the maximum permitted closing time shall be 1:00 a.m. for the interior and 12 midnight for the exterior. Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to Landlord. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Except as set forth in Section 10 of the Lease Summary, Tenant shall not sell, advertise, conduct, or solicit business anywhere other than in and on the Premises and as set forth in the separate Concession Agreement. Tenant shall ship and receive supplies, fixtures, equipment, furnishings, wares, and merchandise only through the appropriate service and delivery facilities provided by Landlord; and shall not park its trucks or other delivery vehicles or allow suppliers or others making deliveries to or receiving shipments from the Premises to park in the parking areas, except in those parts thereof as may from time to time be allocated by Landlord for such purpose. Tenant shall maintain available a substantial stock of goods, wares, and merchandise adequate to ensure successful operation of Tenant's business, and shall employ and maintain sales and other personnel sufficient at all times for proper service to customers.

**3.6 Prohibited Uses.** The restrictive covenants contained in paragraphs (A) – (FF) of this Section 3.6 are intended and designed to bind Landlord and Tenant and their respective successors and assigns, and be binding upon and run with the Premises throughout the Term. Notwithstanding any other provisions of this Lease, Tenant shall not use the Premises nor permit them to be used for any of the following purposes ("Prohibited Uses"): (A) for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (B) 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 Premises, and then only for thirty (30) days after the date of any such damage; (C) as an auction or flea market; (D) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale

shall not continue beyond thirty (30) days; (E) a business primarily used for an order office, mail order office, or catalogue store; (F) any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (G) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (H) coinbox entertainment (pinball, video games, moving pictures operated by coins); (I) casino gambling or games of chance or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (J) 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 extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of Tenant's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (K) movie theatre; (L) medical facilities and offices; (M) check cashing facilities; (N) pawn shops; (O) the sale of firearms; (P) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (Q) printing or duplicating other than as an incidence to the operation of some other business; (R) the sale of religious artifacts and books; (S) places of worship; (T) political offices; (U) military recruiting; (V) consular, legation or any other offices of foreign governments; (W) tire sales; (X) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (Y) offices for the practice of veterinary medicine; (Z) the sale of major appliances as a primary business; (AA) housing or sleeping quarters; (BB) grocery stores (other than specialty gourmet shops); (CC) second hand stores; (DD) any theatre or performing arts activity; or (EE) dinner theatre; and/or (FF) in any manner that will violate any Certificate of Occupancy or Certificate of Use for the Premises, or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises. Immediately upon its discovery of any Prohibited Use by, through or under Tenant, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires.

3.7 Exclusive Use. Landlord agrees that the only additional permanent food and beverage establishment within the boundary of South Pointe Park shall be a food and beverage concession, and located approximately in the area shown in Exhibit "F" attached hereto.

3.8 Intentionally Omitted.

3.9 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.

3.10 Licenses and Permits. Unless otherwise already obtained, Tenant shall obtain, pay for, maintain and comply with all licenses, permits and fees necessary for Tenant to conduct Tenant's business on the Premises, including liquor license.

3.11 Common Area Maintenance (CAM). This is intended to be a net lease to Landlord. Tenant shall contract for and pay directly all maintenance, use, operation and all other types of cost or fees with respect to the Premises:

3.12 Intentionally Omitted.

3.13 Tenant's Parking.

3.13.1 Except as limited herein, during the Term and any Renewal Term, Tenant shall have the continuous right to use 105 exclusive parking spaces in the parking lot shown on Exhibit "B" (the "Parking Area") as further set forth in Section 25 of the Lease Summary. Except for exclusive temporary, emergency repairs Landlord may need to make and as otherwise provided in this Lease, the parking spaces shall be available continuously 24 hours per day, seven (7) days per week, to be used by Tenant, its employees, guests, customers and invitees, except as provided in 3.13.2 below.

3.13.2 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.

3.13.3 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 (½) of such fee shall be credited against Tenant's monthly Annual Rent payments as set forth in 2.1 of the Lease. Landlord hereby agrees that Tenant shall not be responsible or liable for any and all parking impact fees, if any, for the remaining 105 parking spaces.

3.14 Service and Loading Area. The loading area and all garbage containers, at a minimum, shall be adequately screened from public view, subject to the City's reasonable approval, sufficient garbage collection containers shall be maintained so that garbage is not overflowing, employee rest area's shall be outside of view from the public, and enclosures shall remain closed at all times unless garbage is actively being disposed or collected or there is active loading. The service and loading area shall be subject to the Maintenance Standards and fines set forth in Exhibit E.

#### ARTICLE IV. ACCESS AND ENTRY.

4.1 Right of Examination. Landlord, through its City Manager and/or such other individuals as he/she may designate, in his/her reasonable discretion, from time to time, shall be entitled at all reasonable times and upon reasonable notice (but no notice is required in emergencies) to enter the Premises to examine them if Landlord reasonably believes that Tenant is not complying with any of its obligations hereunder. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.2 Right to Show Premises. Landlord and its agents (including, without limitation, Landlord's City Manager and such other individuals as he/she may designate, in his/her reasonable discretion, from time to time) shall have the right during the last twelve (12) months of the Term if no option, if applicable, was exercised to enter the Premises at reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Premises. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

#### ARTICLE V. TENANT'S INVESTMENT AND WORK, ALTERATIONS, MAINTENANCE AND REPAIRS.

5.1 Tenant Investment. As an added inducement to have Landlord enter into this Lease, Tenant covenants and agrees that it will:

(a) Invest, or cause to be invested, an amount not less than \$3,305,970.00 in hard and soft costs in the aggregate on/to the Premises as part of the Approved Tenant's Work (as defined in Section 5.2(a)). Tenant shall achieve Substantial Completion (as defined in Section 5.2(i)) of the Approved Tenant's Work within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17, and shall be subject to Article 5.2.

(b) Complete any and all work necessary to timely obtain the required 40-year recertification of the Restaurant Space at its sole cost and expense, including all repairs and replacements required for such recertification, and also timely obtain all recertifications required thereafter.

#### 5.2 Tenant's Work.

(a) Landlord hereby approves, in its proprietary capacity only, the list of improvements to the Premises to be made by Tenant as set forth and identified on Exhibit "C" attached hereto and

incorporated by reference ("Approved Tenant's Work"). Nothing contained herein shall or is deemed to limit the City's inspection rights or design review in its governmental and/or regulatory capacity. Subject to the provisions hereof, Tenant may, but shall not be obligated to, at its sole cost and expense, cause the construction and installation of additional improvements, alterations and modifications to the Premises in accordance with Tenant's Plans (as defined below) and as necessary to permit Tenant to occupy same and conduct normal business operations. Any such additional improvements, alterations or modifications costing more than \$10,000.00 shall be referred to herein as "Additional Tenant's Work" and shall trigger the application of the balance of this Section 5.2. Any Additional Tenant's Work shall require the prior approval of Landlord, which such approval shall not be unreasonably withheld or delayed, conditioned, or delayed. "Approved Tenant's Work" and "Additional Tenant's Work" shall be collectively referred to as "Tenant's Work." Additionally, Tenant's maintenance and repair obligations pursuant to Section 5.4 below costing more than \$10,000 dollars shall be referred as ("Tenant's Maintenance Work") and shall also trigger the application of the balance of this section 5.2.

(b) To the extent that Tenant desires to perform any of Tenant's Work or performs any of the required Tenant's Maintenance Work, then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager or his/her designee, who, for purposes of this Article, shall be the Landlord's Asset Manager, a preliminary schedule of finishes and values, as well as a conceptual plan for any improvements and/or alterations to the Premises any of Tenant's Work or Tenant's Maintenance Work. The preliminary schedule of finishes and values, as well as the conceptual plan shall be subject to Landlord's City Manager's review and approval, not to be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to the preliminary schedule of finishes and conceptual plan within ten (10) business days after such preliminary schedule has been provided to him/her.

(c) Once the preliminary schedule of finishes and values, as well as a conceptual plan, have been approved by Landlord pursuant to Section 5.2(b), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a set of schematic drawings (including an initial space plan) plan for any improvements and/or alterations to the Premises, which shall also include as an attachment a schedule of finishes and Tenant's proposed construction budget (the "Schematic Drawings") for Tenant's Work or Tenant's Maintenance Work. The construction budget shall include detailed descriptions of the scope of work and provide for a minimum expenditure for Tenant's Work or Tenant's Maintenance Work. The Schematic Drawings shall be subject to Landlord's City Manager's (or his/her designee) review and approval, not to be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall use best efforts to notify Tenant in writing of its acceptance or of its objections to the Schematic Drawings within ten (10) business days after the Schematic Drawings have been provided to him/her.

(d) Once the Schematic Drawings have been approved by Landlord pursuant to Section 5.2(c), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete, detailed set of plans and specifications through the design development stage ("Tenant's Plans") for Tenant's Work or Tenant's Maintenance Work, which shall include, without limitation, all working drawings, elevations, finish selections, and signage schematics, along with a separate schedule detailing Tenant's estimated expenditures in connection with Tenant's Work or Tenant's Maintenance Work (based on the construction budget described above as supplemented to reflect the approved Schematic Drawings) and a list of the proposed architect and engineer(s), interior design team, general contractor, and subcontractors. Tenant's Plans shall be prepared by Tenant's architect and engineer(s), which architect and engineer(s) shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, not to be unreasonably withheld or delayed. Tenant's Plans shall be subject to Landlord's City Manager's (or his/her designee's) reasonable review and approval, which approval shall not be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to Tenant's Plans within ten (10) business days after the Tenant's Plans have been provided to Landlord. Notwithstanding Landlord's City Manager's (or his/her designee's) review and approval of Tenant's Plans, Landlord assumes no responsibility whatsoever, and shall not be liable, for the manufacturer's, architect's, or engineer's design or performance of any structural, mechanical, electrical, or plumbing systems or equipment of Tenant.

(e) Once Tenant's Plans have been approved by Landlord pursuant to Section 5.2(d), then Tenant shall provide Landlord's City Manager (or his/her designee) with two (2) sets of Tenant's Plans (and any changes to Tenant's Plans and/or the approved construction budget shall be made only by written addendum signed by both parties). Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), shall be incorporated herein by reference and made part of this Lease.

(f) Once Tenant complies with Section 5.2(e), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete and detailed set of construction documents in AIA form, including all exhibits ("Tenant's Construction Documents") for Tenant's Work or Tenant's Maintenance Work, which shall be prepared by Tenant's architects. Tenant's Construction Documents shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, which approval shall not be unreasonably withheld or delayed, and Tenant shall receive written notification of Landlord's approval or objections to Tenant's Construction Documents, which Landlord will use best efforts to provide to Tenant within ten (10) business days after Tenant's Construction Documents have been provided to Landlord's City Manager. Notwithstanding Landlord's review of Tenant's Construction Documents, Landlord assumes no responsibility whatsoever and shall not be liable with respect to any item contained therein.

(g) Once Tenant's Construction Documents have been approved by Landlord pursuant to Section 5.2(f), then Tenant shall provide Landlord's City Manager (or his/her designee's) with two (2) sets of Tenant's Construction Documents (and any changes to Tenant's Construction Documents and/or the approved construction budget shall be made only by written addendum signed by both parties).

(h) Tenant shall use only licensed contractors and subcontractors approved, in writing, by Landlord's City Manager (or his/her designee) to complete the construction and installation of Tenant's Work or Tenant's Maintenance Work, which approval shall not be unreasonably withheld or delayed. Tenant shall provide to Landlord's City Manager (or his/her designee) certificates of insurance evidencing that Tenant's general contractor has in effect (and shall maintain at all times during the course of the work hereunder) workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; comprehensive general liability and builder's risk insurance for the hazards of operations, independent contractors, products and completed operations (for two (2) years after the date of acceptance of the work by Landlord and Tenant); and contractual liability specifically covering the indemnification provision in the construction contract, such comprehensive general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord (if any) or Tenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of \$1,000,000.00. Landlord and Tenant are to be included as an additional insured for insurance coverages required of the general contractor. Tenant shall inform its contractor, subcontractors, and material suppliers that Landlord's interest in the Premises shall not be subject to any lien to secure payment for work done or materials supplied to the Premises on Tenant's behalf. All inspections and approvals necessary and appropriate to complete Tenant's Work or Tenant's Maintenance Work in accordance with Tenant's Plans and as necessary to obtain a certificate of use and occupancy as hereinafter provided are the responsibility of Tenant and its general contractor. Tenant shall arrange a meeting prior to the commencement of construction between Landlord and Tenant's contractors for the purpose of organizing and coordinating the completion of Tenant's Work or Tenant's Maintenance Work.

(i) Once Tenant's Plans have been approved by Landlord's City Manager (or his/her designee), Tenant shall diligently pursue the issuance of a full building permit therefor. Tenant shall commence Tenant's Work or Tenant's Maintenance Work (and shall be required to diligently pursue same) upon receipt of the full building permit. If Tenant has not achieved Substantial Completion of the Approved Tenant's Work in accordance with Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17, then, in such event, Tenant shall be in default under this Lease, and Landlord

shall have the option to declare this Lease null and void and exercise any remedies available under this Lease. Should this Lease be declared null and void pursuant to this paragraph, Tenant shall forfeit all rights to any deposits, advance rent, and any other payments made under this Lease, and Landlord shall have no further liability to Tenant under this Lease. "Substantial Completion" shall mean that the Approved Tenant's Work has been completed in accordance with the approved Tenant's Plans and that the Premises are approved for use and occupancy by the appropriate governmental authorities and are in suitable condition for the operation of Tenant's business. Compliance with the immediately preceding sentence shall be evidenced by the issuance of, as applicable, a Temporary Certificate of Completion, Temporary Certificate of Occupancy, Certificate of Completion, or Certificate of Occupancy.

(j) All of Tenant's Work or Tenant's Maintenance Work shall be completed in a good and workmanlike manner and shall be in conformity with the City's building codes and the Florida Building Code, and in accordance with Landlord's construction rules and regulations pertaining to contractors. Upon completion of Tenant's Work or Tenant's Maintenance Work, Tenant shall furnish Landlord's City Manager (or his/her designee):

(1) a certificate of use and/or occupancy issued by the City and other evidence satisfactory to Landlord's City Manager (or his/her designee) that Tenant has obtained the governmental approvals necessary to permit occupancy; and

(2) a notarized affidavit from Tenant's contractor(s) that all amounts due for work done and materials furnished in completing Tenant's Work or Tenant's Maintenance Work have been paid; and

(3) releases of lien from any subcontractor or material supplier that has given Landlord a Notice to Owner pursuant to Florida law; and

(4) as-built drawings of the Premises, with a list and description of all work performed by the contractors, subcontractors, and material suppliers.

(k) Any damage to the existing finishes of the Premises shall be patched and repaired by Tenant, at its expense, and all such work shall be done to Landlord's satisfaction. If any patched and painted area does not match the original surface, then the entire surface shall be repainted at Tenant's expense. Tenant agrees to indemnify and hold harmless Landlord, its employees, contractors, and agents, from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs, which arise out of, is occasioned by, or is in any way attributable to the build-out of the Premises or any subsequent improvements or alterations by Tenant pursuant to this Lease. Tenant, at its expense, shall be responsible for the maintenance, repair, and replacement of any and all items constructed by Tenant's contractor.

(l) Tenant shall obtain a performance bond and a payment bond for all of Tenant's Work or Tenant's Maintenance Work that exceeds an estimated cost of \$200,000, in compliance with Florida Statutes Section 713.23, and otherwise in form and content approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney.

(m) In the event that: (i) Landlord objects to any item submitted by Tenant pursuant to this Section 5.2, and (ii) Tenant provides Landlord with such item revised to address Landlord's objection(s), then the timeframes provided herein for Landlord to notify Tenant of its acceptance or objection to such original item(s) shall also apply to the revised item(s).

(n) Landlord's failure to timely respond to any construction, alteration or modification items or plans submitted by Tenant anywhere under this Lease within the specified time period provided herein shall be deemed a default by Landlord under this Lease, following the expiration of the thirty (30) day cure period.

**5.3 Maintenance and Repairs by Landlord.** It is hereby acknowledged and agreed that Landlord, at its sole cost and expense, is responsible to maintain and repair the Parking Area, roads including landscaping and lighting), electricity lines, water lines, sanitary sewer lines, gas lines and telephone facility from the outside to the connection points of the Premises. Landlord shall use all reasonable efforts to fulfill its maintenance and repair obligations. Tenant will notify Landlord in writing of any necessary repairs that are the obligation of Landlord. Notwithstanding any other provisions of this Lease, if any part of the Premises is damaged or destroyed or requires repair, replacement, or alteration as a result of the act or omission of Tenant, its employees, agents, invitees, licensees, or contractors, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord upon demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may proceed forthwith to have the repairs or replacements made and pay the costs thereof. Within ten (10) days after written demand, Tenant shall reimburse Landlord for the cost of making the repairs.

**5.4 Maintenance and Repairs by Tenant.**

**5.4.1** Tenant shall maintain or cause to be maintained, at its own cost and expense, the Premises substantially equal in quality and class to the original quality of improvements, both inside and out, including, without limiting the generality of the foregoing, Tenant is specifically required to maintain and make repairs to: (i) all pipes, lines, ducts, wires, or conduits contained within the Premises; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); (iii) Tenant's sign; (iv) any heating or air conditioning equipment serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract that include, without limitation, preventive HVAC maintenance no less than semi-annually); (v) all or any portion of Tenant's Work including, without limitation, any materials, machinery, finishings, fixtures, and equipment related thereto; and (vi) emergency water and fire sprinkler system, ceilings, stairways, floor slabs and floor coverings, sidewalks, walkways, hallways, corridors, landscaping (irrigation system), canopies (awnings and frames), loading dock/service areas, utility rooms, electric rooms, building structure including roof, siding, painting, structural integrity (collectively, the "Maintenance Standards"). The Maintenance Standards shall also include Tenant's obligation to: (x) furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage, all at Tenant's sole cost and expense; and (y) maintain sufficient garbage collection areas so that garbage is not overflowing and enclosures remain closed at all times unless garbage is actively being disposed or collected. The Premises shall further be kept in good order, condition and repair by Tenant, and in a clean, sanitary and safe condition in accordance with all laws, including without limitation, the ADA, and directions, rules and regulations of the health officer, fire marshal, building inspector or other officers of any governmental agencies having jurisdiction, all at the sole cost and expense of Tenant. Tenant shall also be responsible for replacing all fixtures and equipment which are stolen damaged beyond repair or worn out. The interior wall finishes, interior flooring finishes, fixtures, and furniture in the Premises shall be repaired, replaced, and/or maintained by Tenant, at Tenant's sole cost and expense, periodically as to keep the Premises in good condition.

**5.4.2** All repair and maintenance performed by Tenant shall be performed by contractors or workmen approved by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed.

**5.4.3** Tenant's compliance with the Maintenance Standards shall be subject to Landlord's reasonable discretion. Tenant and Landlord shall inspect the physical structure of the Premises every five (5) years, at the expense of the Tenant, and using a contractor mutually agreed upon by the parties, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the following five (5) years.

**5.4.4** If Tenant fails to comply with any of the Maintenance Standards and Tenant does not commence and continue to diligently work to comply with such Maintenance Standard(s) within five (5) business days after written notice by Landlord to Tenant specifying the nature of such failure to comply, then Landlord's sole and exclusive remedy for Tenant's failure to comply with such Maintenance

Standard(s) herein shall be limited to the fines set forth in the fine schedule set forth in **Exhibit "G"**. For the avoidance of doubt, such fines shall neither commence nor accrue until and unless Tenant fails to cure such failure within the time period set forth herein.

5.4.5 At the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in as good condition and repair as Tenant is required to maintain the Premises throughout the Term, reasonable wear and tear excepted.

5.5 Intentionally Omitted.

5.6 Ownership of Improvements and Fixtures; Removal. All leasehold improvements, furnishings, and equipment constructed or installed on the Premises by 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 Landlord. 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. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Tenant is not in default under this Lease; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to such removal. Tenant shall at its own expense repair any damage caused to the Premises by such removal. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant.

5.7 Liens. Tenant shall promptly pay for all materials supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Premises or against Landlord's or Tenant's respective interests therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Premises is recorded and not discharged by Tenant as above required within thirty (30) days following written notice to Tenant, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises shall be subject to any lien for improvements made by Tenant in or for the Premises, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the requirements of this Section.

5.8 Utilities. Tenant shall contract for and shall pay for all gas, electricity, water, sewer, stormwater, telephone and other utility charges applicable to the Premises.

5.9 License and Permits. Tenant shall, at its sole cost and expense, obtain and maintain in good standing all required licenses, and permits.

ARTICLE VI. MORTGAGE OR PLEDGE OF TENANT LEASEHOLD INTEREST

6.1 Mortgaging/Pledging Tenant's Leasehold Interest.

6.1.1 With the prior written consent of Landlord, not to be unreasonably withheld or delayed, Tenant may from time to time pledge or mortgage Tenant's leasehold interest (but not the fee) as security for any bona fide loan or loans from reputable lenders, but not beyond the original term plus any previously exercised renewal term, upon the condition that all rights acquired under any such financing or re-financing shall be subject to each of the provisions set forth in this Lease, and to all rights and interests of the City herein (a "Permitted Leasehold Mortgage"), and provided, further that:

6.1.1.1 any such secured financing of the Lease exclusively secures debt of the Tenant to the Lease;

6.1.1.2 any Permitted Leasehold Mortgage or other encumbrance executed by the Tenant in connection with a Permitted Leasehold Mortgage or otherwise will not extend to or be a lien or encumbrance upon Landlord's interest in the Lease or Property or in any rights appurtenant to Landlord's interests;

6.1.1.3 any Permitted Leasehold Mortgage or other encumbrance executed by the Tenant in connection with a Permitted Leasehold Mortgage shall at all times, without the necessary for the execution of any further documents, be subject and subordinate to the interest of the Landlord in the Premises, and the rights of the Landlord in the Premises and arising out of the Lease shall not be affected by any Permitted Leasehold Mortgagee, nor shall the Landlord be deprived in any other way of its rights in the Premises or under this Lease, except to the extent provided in this Section or in any subordination, non-disturbance and recognition agreement between the Landlord and the Primary Leasehold Mortgagee that is consistent with the terms of this Lease; and

6.1.1.4 Tenant shall at all times remain liable hereunder for the all payment obligations pursuant to the Lease, including Annual Rent, and the performance of all covenants and conditions of this Lease as provided in this Lease

6.1.2 Copies of all loan applications, commitments and loan agreements must be supplied to Landlord for its approval in advance.

6.1.3 Landlord and Tenant acknowledge, and agree to accept, customary and reasonable amendments or documents that lenders typically require and agree to the following typical Lender provisions:

- (i) Lender shall be supplied copies of any notices of default by Landlord,
- (ii) Landlord shall give to Lender reasonable additional time to cure Tenant default,
- (iii) Lender shall have no liability with respect to defaults occurring prior to the time lender takes possession and there shall be no set offs, holdbacks for such periods,
- (iv) Landlord shall consent to a new direct replacement lease with lender or its transferee,
- (v) Landlord and Lender shall enter into customary Subordination, Nondisturbance and Attornment Agreement.

6.1.4 The Landlord agrees that in the event of a termination hereof by reason of the occurrence of any Event of Default, and subject to the rights herein granted to leasehold mortgagees, the Permitted Leasehold Mortgage which is a senior/first lien on Tenant's interest in this Lease and the leasehold interest created hereby ("Primary Leasehold Mortgagee"), shall have the option, but not the obligation, to enter into a Mortgagee Lease, with the Primary Leasehold Mortgagee, as lessee, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have been fully satisfied by Tenant or Landlord prior to termination) ("Mortgagee Lease"); provided:

- (i) The Primary Leasehold Mortgagee shall enter into a Mortgagee Lease, within the six (6) month period following the date in which notice is given by Landlord to lender of the Event of Default referred to in Section 6.1.4, with Landlord's obligation to enter into a Mortgagee Lease

conditioned upon, on the date the Mortgagee Lease is executed, (a) Landlord receiving payment of all Rent due hereunder through the date of such Mortgagee Lease; (b) all monetary defaults having been cured; (iii) all non-monetary defaults susceptible to cure having been remedied and cured or Primary Leasehold Mortgagee, as lessee, having commenced such cure and continuing to diligently complete the cure; and (iv) the Landlord receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the Landlord in connection with such Event of Default, the termination of this Lease and the preparation of the new Mortgagee Lease, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the Landlord, as the case may be, to the date of actual payment from Primary Leasehold Mortgagee.

(ii) Landlord's delivery of the Mortgagee Lease shall be (a) made without representation or warranty of any kind or nature whatsoever either express or implied; (b) Primary Leasehold Mortgagee, as lessee, shall take such Premises "as-is" in its then current condition; and (c) upon execution and delivery of such Mortgagee Lease, Primary Leasehold Mortgagee, as lessee, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant from the Premises.

(iii) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease, shall perform and observe all covenants contained in the Mortgagee Lease on the Tenant's part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Premises under the said Mortgagee Lease.

(iv) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease shall have the same right, title and interest in and to the Premises and the right to use the Improvements thereon as the Tenant had under this Lease.

6.1.5 No Mortgages of Fee or Landlord's Interest. Tenant shall have no right whatsoever to pledge or mortgage the fee interest of Landlord's leasehold estate.

6.1.6. City Manager Approval. Landlord's consent referenced in Section 6.1.1, the new Mortgagee Lease referenced in Section 6.1.4, and the related actions of Landlord under this Article VI may be exercised by the City Manager.

## ARTICLE VII. INSURANCE AND INDEMNITY.

7.1 Tenant's Insurance. Tenant shall, throughout the Term (and any other period when Tenant is in possession of the Premises), maintain at its sole cost the following insurance:

(A) All risks property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(B) Comprehensive General liability insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate applies, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. The police must be endorsed to include Liquor Liability.

(C) Worker's compensation and employer's liability insurance in compliance with applicable legal requirements.

(D) Business interruption insurance, sufficient to insure Tenant for no less than one (1) full year of loss of business, with the Landlord named thereon as loss payee to the extent permitted by applicable law.

(E) Any other form of insurance which Landlord, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent tenant would insure, but in any event not less than that carried by comparable restaurant establishments in Miami-Dade County, Florida.

(F) **Building Improvements.** All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to Landlord's City Manager; (ii) be in a form reasonably satisfactory to Landlord's City Manager; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord; (iv) contain an undertaking by the insurers to notify Landlord by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on Landlord's standard form or, if required by Landlord's City Manager, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Landlord's City Manager promptly upon request. If Tenant fails to take out or to keep in force any insurance referred to in this Section 7.1, or should any such insurance not be approved by Landlord, and Tenant does not commence and continue to diligently cure such default within two (2) business days after written notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Landlord shall be paid by Tenant to Landlord as additional rent without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises

(G) Additional insurance requirements:

**(i) Additional Insured**

City of Miami Beach, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such operations.

**(ii) Primary Coverage**

For any claims related to this contract, the Tenant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Miami Beach, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Miami Beach, its officers, officials, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it.

**(iii) Legal Liability Coverage**

The property insurance is to be endorsed to include Legal Liability Coverage with a limit equal to the replacement cost of the leased property.

**(iv) Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

**(v) Waiver of Subrogation**

Tenant hereby grants to the City of Miami Beach a waiver of any right to subrogation which any insurer of said Tenant may acquire against the City by virtue of the payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not a waiver of subrogation endorsement has been issued by the insurer, and each party shall indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

**(vi) Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. The City may require the Tenant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**(vii) Acceptability of Insurers**

Insurance must be placed with insurers authorized to do business in the State of Florida with a current A.M. Best rating of A:VII or higher, unless otherwise acceptable to the City.

**(viii) Verification of Coverage**

Tenant shall furnish the City with original certificates and all amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**(ix) Special Risks or Circumstances**

The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**(x) CERTIFICATE HOLDER MUST READ:**

CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 4668 – ECM #35050  
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

Compliance with the foregoing requirements shall not relieve the Tenant of his liability and obligation under this section or under any other section of this Agreement.

7.2 Loss or Damage. Tenant acknowledges that the Landlord will not be performing any maintenance and repairs. Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Premises, or damage to property of Tenant or of others located in the Premises, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Restaurant Space, or from the street or any other place or by dampness, or by any other cause whatsoever, unless resulting from the gross negligence or willful misconduct of Landlord. Tenant agrees to indemnify Landlord and hold it harmless from and against any and all loss (including loss of Annual Rent and additional rent payable in respect to the Premises), claims, actions, damages, liability, and expense of any kind

whatsoever (including attorneys' fees and costs at all tribunal levels), unless caused by the gross negligence or willful misconduct of Landlord, arising from any occurrence in, upon, or at the Premises, or the occupancy, use, or improvement by Tenant or its agents or invitees of the Premises, or occasioned wholly or in part by any act or omission of Tenant its agents, employees, and invitees or by anyone permitted to be in the Premises by Tenant.

7.3 Lawsuit. In the event of any lawsuit, action or proceeding challenging the validity, execution or effectiveness of the Lease, any tort or other claim related to any of the foregoing, or any such challenge relating to any approval required under the City Code and/or the City Charter ("Lawsuit"), Tenant shall defend any such Lawsuit at their sole cost and expense using legal counsel reasonably acceptable to the City. Tenant shall further indemnify and hold the City harmless from and against all claims of any and every kind arising out of, relating to or resulting from any Lawsuit. The terms of this paragraph shall become effective upon execution of the Lease and shall survive the expiration or any earlier termination of the Lease. This Section 7.3 shall apply only to a Lawsuit brought by a third party.

7.4 Waiver of Subrogation. Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or any improvements to any of the aforesaid, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are, or could or should be insured against under the terms of the standard fire and extended coverage insurance policies referred to in this Lease, regardless of whether such insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees. Tenant shall obtain from its insurers, under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained by it at any time during the Term hereof insuring or covering the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of Tenant have against the Landlord, and Tenant shall indemnify, defend, and hold harmless Landlord against any loss or expense, including reasonable attorneys' fees (appellate or otherwise) resulting from the failure to obtain such waiver.

#### ARTICLE VIII. DAMAGE AND DESTRUCTION.

8.1 Damage to Premises. Tenant acknowledges that if the Premises are partially or totally destroyed due to fire or other casualty, the Tenant, except as hereafter provided in this subsection, shall, at its sole cost and expense within (i) thirty (30) days after receiving insurance proceeds with respect to any such casualty or (ii) within one hundred eighty (180) days from the date of such casualty, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the work with all reasonable dispatch, so as to fully complete such work as expeditiously as reasonably possible consistent with the nature and extent of the casualty, with such Improvements to be repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such casualty. Annual Rent shall abate proportionately to the portion of the Premises, if any, rendered untenable from the date of destruction or damage until the repairs have been substantially completed. Upon being notified that the repairs have been substantially completed, Tenant shall diligently perform all other work required to fully restore the Premises for use in Tenant's business, in every case at Tenant's cost and without any contribution to such cost by Landlord except in the case of gross negligence or willful misconduct by Landlord. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. If neglect of Tenant or Tenant's employees, contractors, agents, guest, or invitees, rent and all other charges shall not abate.

8.2 Termination for Damage. Notwithstanding Section 8.1, if damage or destruction which has occurred to the Premises is such that, in the reasonable opinion of Landlord or Tenant, such reconstruction or repair cannot be completed within three hundred and sixty (360) days of the happening of the damage or destruction, Landlord or Tenant may, at its sole option, terminate this Lease on notice given within sixty (60) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

## ARTICLE IX. ASSIGNMENT, LEASES, AND TRANSFERS.

9.1 Transfer by Tenant. Tenant shall not enter into, consent to, or permit any Transfer, as hereinafter defined, without the prior written consent of Landlord in each instance. For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; a sublease of all or any part of the Premises; any transaction whereby the rights of Tenant under this Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; and if Tenant is a corporation or a partnership, the transfer of a controlling interest in the stock of the corporation or partnership interests, as applicable. If there is a permitted Transfer, Landlord may collect rent or other payments from the transferee and apply the net amount collected to the rent or other payments required to be paid pursuant to this Lease but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding tenant. Notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease. Landlord's consent to any Transfer shall be subject to the further condition that if the Annual Rent and additional rent pursuant to such Transfer exceeds the Annual Rent and additional rent payable under this Lease, the amount of such excess shall be paid to Landlord. If, pursuant to a permitted Transfer, Tenant receives from the transferee, either directly or indirectly, any consideration other than Annual Rent and additional rent for such Transfer, either in the form of cash, goods, or services, Tenant shall, upon receipt thereof, pay to Landlord an amount equivalent to such consideration.

9.2 In addition, Tenant shall not grant any purchase money security interest in its furniture, fixtures, and equipment in the Premises, without prior written consent of the Landlord's City Manager. Notwithstanding anything in the foregoing to the contrary, to the extent that any purchase money security interests are required by Tenant's lender, Landlord shall act reasonably and in good faith to permit the same.

9.3 Permitted Transfers. Notwithstanding anything to the contrary above, Transfers by Tenant are permitted without Landlord consent in connection with (i) intercorporate restructure, and (ii) assignments to wholly-owned affiliates of Tenant.

## ARTICLE X. DEFAULT.

10.1 Defaults. A default by Tenant shall be deemed to have occurred hereunder, if and whenever: (i) any monthly payment of the Annual Rent is not paid when due whether or not any notice or demand for payment has been made by Landlord; (ii) any other additional rent is in arrears and is not paid within fifteen (15) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of rent) and Tenant fails to remedy such breach within thirty (30) days after written notice from Landlord detailing such breach, or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Tenant fails to reasonably commence, or, in the event of a breach reasonably related to a life safety issue concerning the Premises, immediately commence, to remedy and thereafter proceed diligently to remedy such breach, in each case after notice in writing from Landlord; (iv) Tenant becomes bankrupt or insolvent; (v) the business operated by Tenant in the Premises shall be closed by governmental or court order or for any reason for more than forty-five (45) consecutive days, other than governmental orders ordering such closure in connection with public health issues such as COVID-19 or other pandemics; (vi) Tenant abandons or vacates the Premises prior to the expiration of the Term; (vii) Tenant fails to obtain all necessary permits for Tenant's Work or Tenant's Maintenance Work within the timeframe provided in this Lease or achieve Substantial Completion the Approved Tenant's Work within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17; (viii) timely obtain all required recertifications for the Restaurant Space as provided in Article 5.1(b); and/or (viii) failure to comply with the Community Benefits as set forth in Exhibit "H", as may be amended (each, an "Event of Default"). Tenant shall not at any time have any personal liability under this Lease. In the event of any breach or default by Tenant of any term or provision of this Lease, Landlord agrees to look solely to the equity or interest then-owned by Tenant in the Premises, and in no event shall any deficiency judgment be sought or obtained against Tenant. It is expressly understood that the

obligations of Tenant under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the officers, directors, or employees, as such, of the Tenant, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Tenant contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

**10.2 Remedies.** In the event of any default hereunder by Tenant, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Landlord, through its City Manager, shall have the following rights and remedies, which are cumulative and not alternative:

(A) Landlord may cancel this Lease by notice to Tenant and retake possession of the Premises for Landlord's account, or may terminate Tenant's right to possession of the Premises without terminating this Lease. In either event, Tenant shall then quit and surrender the Premises to Landlord. If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Tenant's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder.

(B) Landlord may enter the Premises as agent of Tenant to take possession of any property of Tenant on the Premises, to store such property at the expense and risk of Tenant or to sell or otherwise dispose of such property in such manner as Landlord may see fit without notice to Tenant. Re-entry and removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Landlord shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(C) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (A) above, Tenant shall remain liable (in addition to accrued liabilities) to the extent legally permissible for all rent and all of the charges Tenant would have been required to pay until the date this Lease would have expired had such cancellation not occurred. Tenant's liability for rent shall continue notwithstanding re-entry or repossession of the Premises by Landlord. In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereover may adjudge as reasonable attorneys' fees with respect to any successful lawsuit or action instituted by Landlord to enforce the provisions of this Lease.

(D) Landlord shall have the obligation to mitigate damages and may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable, in its sole and absolute discretion.

**10.3 Prevailing Party Attorneys' Fees.** In the case of litigation, the prevailing party's attorney's fees and costs shall be paid by the other party (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by the prevailing party.

**10.4 Additional Remedies: Waiver.** The rights and remedies of the parties set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and exclusive of each other. No delay or omission by the parties in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default. If either party excuses or condones any default by the other party of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. No waiver of either party's rights under this Lease shall be effective unless reduced to a written document signed by the party to be charged.

10.5 Default by Landlord. A default by Landlord shall be deemed to have occurred hereunder, if and whenever, Landlord has breached any of its obligations in this Lease and Landlord fails to remedy such breach within thirty (30) days after written notice from Tenant detailing such breach, or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Landlord fails to reasonably commence to remedy and thereafter proceed diligently to remedy such breach. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or injunction. Notwithstanding the foregoing, in the event Landlord fails to cure or respond to two (2) notices from Tenant of the same default, Tenant shall, after a final third notice specifying activation of its self-help authority, have the rights after ten (10) days have lapsed to cure the alleged default and offset against Rent, the cost of such curative action. Landlord shall not at any time have any personal liability under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Premises, and in no event shall any deficiency judgment be sought or obtained against Landlord. It is expressly understood that the obligations of Landlord under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the officers, directors, or employees, as such, of the Landlord, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Landlord contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

#### ARTICLE XI. ESTOPPEL CERTIFICATE; SUBORDINATION.

11.1 Estoppel Certificate. Within fifteen (15) days after written request by either party to the other, such party shall deliver an estoppel certificate as to the status of this Lease, including:

(a) whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements);

(b) the amount of Annual Rent and additional rent then being paid and the dates to which same have been paid; and

(c) whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof.

11.2 Subordination; Attornment. This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Premises, from time to time in existence against the Premises, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as required by Landlord's City Manager. Tenant shall, if requested by Landlord, or a mortgagee, owner, or purchaser, or by any person succeeding to the interest of such mortgagee, owner, or purchaser, as the result of the enforcement of the remedies provided by law or the applicable instrument held by Landlord, such mortgagee, owner, or purchaser, automatically attorn to and become the tenant of Landlord or any such mortgagee, owner, purchaser, or successor-in-interest, without any change in the terms or other provisions of this Lease; provided, however, that Landlord, said mortgagee, owner, purchaser, or successor shall not be bound by (a) any payment of rent or additional rent for more than one (1) month in advance, or (b) any security deposit or the like not actually received by Landlord, such mortgagee, owner, or purchaser,

or successor, or (c) any amendment or modification in this Lease made without the consent of Landlord, such mortgagee, owner, purchaser, or successor, or (d) any construction obligation, free rent, or other concession or monetary allowance, or (e) any set-off, counterclaim, or the like otherwise available against Landlord, or (f) any act or omission of any prior landlord (including Landlord). Upon request by Landlord, said mortgagee, owner, or purchaser, or successor, Tenant shall execute and deliver an instrument or instruments confirming its attornment.

Notwithstanding the foregoing, the above subordination and any future subordination of this Lease shall be conditioned on the Landlord obtaining a nondisturbance agreement in favor of Tenant from all mortgagees and ground Landlords (if any) regarding any financings or leases entered into by Landlord with respect to the Premises, and no subordination shall be effective without a corresponding nondisturbance agreement.

#### ARTICLE XII. CONTROL BY LANDLORD.

12.1 Intentionally Omitted.

12.2 Alterations by Landlord. Landlord shall make no modifications to the utilities servicing the Premises or the Parking Area which would lessen, reduce or deprive Tenant of its use as contemplated hereunder.

#### ARTICLE XIII. CONDEMNATION.

13.1 Total or Partial Taking. If the whole of the Premises, or such portion thereof or the Parking Area as will make the Premises unusable for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable in Tenant's reasonable judgment for the purposes leased hereunder, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay rent and other charges up to the Taking Date, with appropriate credit by Landlord (toward the next installment of rent due from Tenant) of any rent or charges paid for a period subsequent to the Taking Date. Annual Rent and other charges payable to Landlord shall be reasonably reduced in proportion to or as may be reasonably required to reflect the value loss of the Premises taken.

13.2 Award. All compensation awarded or paid upon a total or partial taking of the Premises including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant and for Tenant's moving expenses; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee and Tenant may not prosecute any claim for leasehold value.

#### ARTICLE XIV. INTENTIONALLY OMITTED.

#### ARTICLE XV. GENERAL PROVISIONS.

15.1 Intentionally Omitted.

15.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement or written notice extending the Term,

there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises as a Tenant from month to month at a monthly Annual Rent payable in advance on the first day of each month equal to twice the monthly amount of Annual Rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a monthly tenancy.

15.3 Partial Invalidity. All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any provision of this Lease is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

15.4 Recording. Tenant shall record this Lease or any memorandum hereof in any public records.

15.5 Notices. Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed (i) if to Landlord, at the address: set forth in the Lease Summary; and (ii) if to Tenant, at the Premises and addresses set forth in the Lease Summary. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then forty-eight (48) hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier.

15.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII. If there is at any time more than one Tenant or more than one person constituting Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them.

15.7 Captions and Section Numbers. The captions, section numbers, article numbers, and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance of this Lease.

15.8 Extended Meanings. The words "hereof," "hereto," "hereunder," and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to Tenant includes, when the context allows, the employees, agents, invitees, and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. This Lease has been fully reviewed and negotiated by each party and their counsel and shall not be more strictly construed against either party.

15.9 Entire Agreement; Governing Law; Time. This Lease and the Exhibits and Riders, if any, attached hereto are incorporated herein set forth the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements or understandings between them. This Lease and its Exhibits and Riders may not be modified except by agreement in writing executed by Landlord and Tenant. This Lease shall be construed in accordance with and governed by the laws of the State of Florida. Time is of the essence of this Lease.

15.10 No Partnership. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease, whether based on the calculation of rental or otherwise, shall be

construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the Term.

15.11 Quiet Enjoyment. If Tenant pays rent and other charges and fully observes and performs all of its obligations under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

15.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty.

15.13 Radon Notice. Section 404.056(5), Florida Statutes, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

15.14 Intentionally Omitted.

15.15 TRIAL BY JURY. LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE LANDLORD AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

15.16 Reference to "Approvals" or "Consent," etc. Except when expressly provided otherwise, all references in this Lease to the terms "approval," "consent," and words of similar import shall mean "reasonable written approval" or "reasonable written consent."

15.17 Delay: Force Majeure. The performance of any act by Landlord or Tenant hereunder may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance of its obligations under this Lease by riots, acts of God, pandemic, COVID-19, war, rebellion, lockouts, governmental law, regulatory or restrictions in the nature of a moratorium or prohibition, or any other bona fide causes beyond the reasonable control of such party (each a "Force Majeure"), provided, however, if such condition persists for more than two hundred forty (240) consecutive days, Landlord and Tenant may in their sole discretion renegotiate the terms of this Lease. If the performance of the contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case later than fifteen (15) business days thereof, provide notice of (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party. In no event shall "Force Majeure" include the following instances, unless caused by Force Majeure: economic hardship, financial inability to perform specific to the party, technological impossibility, or failure to secure any of the required permits pursuant to this Lease.

15.18 Federal Approval. To the extent applicable, this Lease shall be subject to receiving written approval from the Federal Agencies having jurisdiction over development, construction and operations of South Pointe Park. This Lease shall not be effective until Tenant has been notified by registered mail that all applicable Federal Agency approvals have been obtained.

15.19 No Third-Party Beneficiaries. There exist no third-party beneficiaries, whether express or implied, with respect to this Lease.

15.20 Subject to Approval. The effectiveness of this Lease is subject to approval by the Landlord's electorate at a referendum. In the event the Lease is not approved by the Landlord's electorate by receiving at least 50% plus 1 vote, this Lease shall become null and void, and in such case, the Existing Lease shall remain in full force and effect. Provided that the Mayor and City Commission adopt a resolution accepting the certification of the official results of the November 2, 2021, City referendum approving this Lease, in accordance with Section 1.03(b)(1) of the City Charter, the Lease will take effect on the Lease Commencement Date.

15.21 Special Circumstances. To the extent Tenant's use and enjoyment of the Premises is temporarily or permanently hampered or reduced on account of the existence of work necessitated due to the construction of a stormwater pump or sea level rise or other flooding or other work to South Pointe Park, then Rent will be reduced or abated by Landlord and Tenant negotiating reasonably and in good faith.

15.22 Intellectual Property Rights. All intellectual property rights, including the name Smith & Wollensky, trademarks logos, marks or comparable items are the sole and exclusive property of Tenant and shall never be used by Landlord or anyone by, through or under Landlord.

15.23 Community Proffers. Tenant agrees to provide the community proffers as described on Exhibit "H" attached hereto.

15.24 City Inspector General.

(a) Pursuant to section 2-256 of the Code of the City of Miami Beach, the City has established the office of the inspector general which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The office of the inspector general is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the inspector general has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The inspector general shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(c) Upon ten days' written notice to the Tenant, the Tenant shall make all requested records and documents available to the inspector general for inspection and copying. The inspector general is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(d) The inspector general shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the inspector general's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subtenants and suppliers,

all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(e) The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

(1) If this contract is completely or partially terminated, the Tenant shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

(2) The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this section shall apply to the Tenant, its officers, agents, employees, subtenants and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this contract.

(g) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Tenant or third parties and does not create rights in any third parties.

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EXECUTED as of the Lease Execution Date.

WITNESSES:

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

LANDLORD:

**City of Miami Beach, a municipal corporation  
of the State of Florida**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

**1 Washington Avenue Corp.,  
a Florida corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBITS

- Exhibit "A": Land
- Exhibit "A-1": Restaurant Space
- Exhibit "B": Parking Area
- Exhibit "C": Approved Tenant's Work
- Exhibit "D": Sign Criteria
- Exhibit "E": Rules and Regulations
- Exhibit "F": Permitted Food and Beverage Area
- Exhibit "G": Fine Schedule for Maintenance Standard(s)
- Exhibit "H": Community Proffers

EXHIBIT "A"

Legal Description of Land

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"

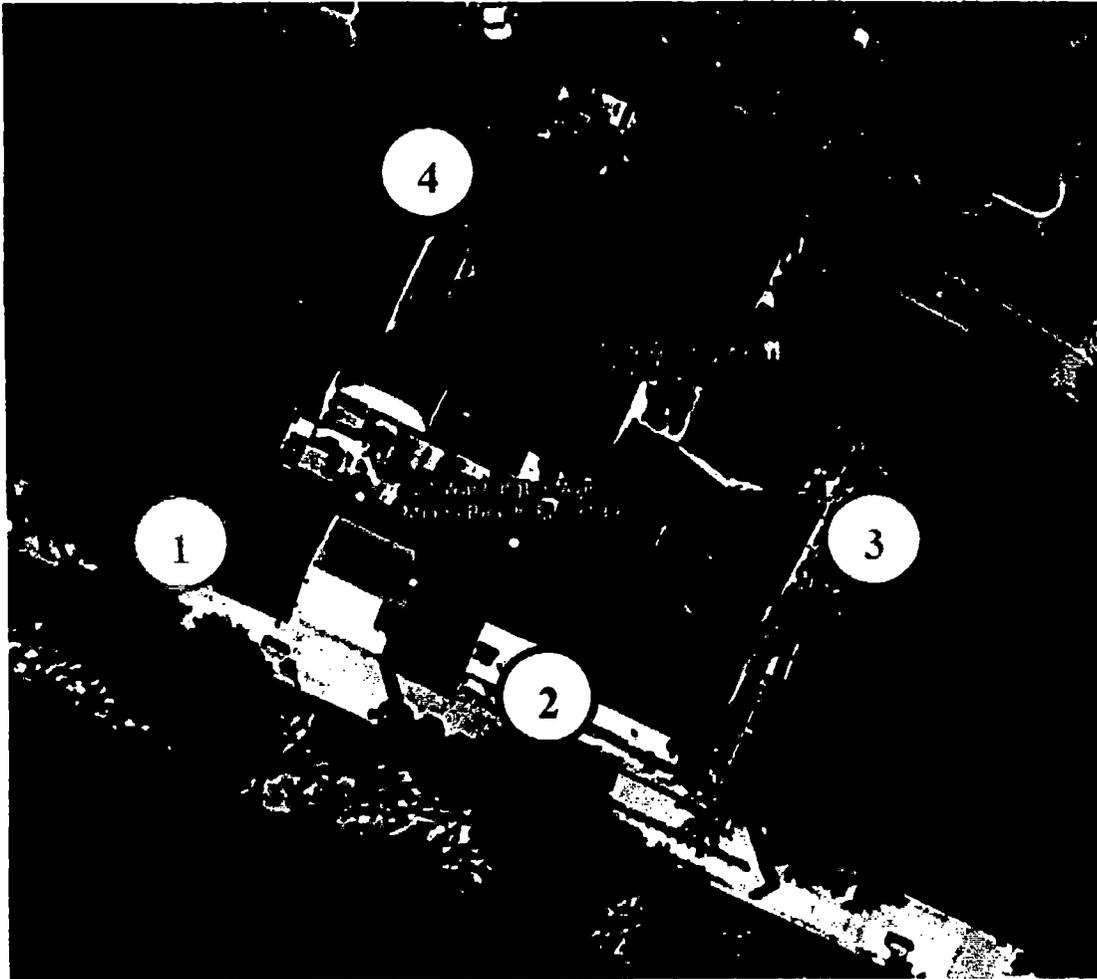
Parking Area (Outlined in Red)



EXHIBIT "C"

Approved Tenant's Work

**Proposed Tenant's Work Location Map and Description**



- 1 – Improvements to exterior southwest corner
- 2 – Improvements to southern façade patio dining area
- 3 – New seating area on eastern terrace, including the installation of pavers and other work
- 4 – Beautification and buffering of service area

**Additional Proposed Tenant's Work Not Reflected on Location Map Above**

- Repair and/or replacement of various mechanical, electrical, and plumbing equipment;
- Technology upgrades;
- Repair and/or replacement of furniture, fixtures and equipment; and
- Work to roof.

EXHIBIT "C" (Continued)

**SMITH & WOLLENSKY**

AMERICA'S STEAKHOUSE

**MIAMI BEACH PRELIMINARY RENOVATION ESTIMATE**

| <b>Category</b>           | <b>Estimate</b>     |
|---------------------------|---------------------|
| 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          |
| <b>TOTAL</b>              | <b>\$ 3,305,970</b> |

Estimates are preliminary and subject to adjustment.

**EXHIBIT "D"**

**Sign Criteria**

**All building signage shall be consistent in type, composed of flush mounted non-plastic, individual letters and shall require a separate permit. Based on the design of the building and its lighting scheme, signage should be located in the window transom at the ground level of the structure, in a manner to be reviewed and approved by the City's Planning Department.**

## EXHIBIT "E"

### Rules and Regulations

1. **Security.** Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Premises, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.

2. **Return of Keys.** At the end of the Term, Tenant shall promptly return to Landlord all keys for the Restaurant Space which are in the possession of Tenant. In the event any Tenant fails to return keys, Landlord may retain \$100.00 of Tenant's security deposit for locksmith work and administration.

3. **Bicycles, Animals.** Tenant shall not bring any animals or birds into the Premises, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Premises except in areas designated from time to time by Landlord for such purposes.

4. **Deliveries.** Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, elevators, and corridors and at such times as may from time to time be designated by Landlord, and shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Premises caused by any person making improper deliveries.

5. **Solicitations.** Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Premises.

6. **Refuse.** Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Premises, and shall keep sidewalks and driveways outside the Premises, and lobbies, corridors, stairwells, ducts, and shafts of the Premises, free of all refuse.

7. **Obstructions.** Tenant shall not obstruct or place anything in or on the sidewalks or driveways outside the Premises or in the lobbies, corridors, stairwells, or other common areas, or use such locations for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing caused or placed by Tenant (and unauthorized by Landlord) without notice or obligation to Tenant.

8. **Proper Conduct.** Tenant shall not conduct itself in any manner which is inconsistent with the character of the Premises as a first quality restaurant/dining facility or which will impair the comfort and convenience of other patrons in the Premises.

9. **Employees, Agents, and Invitees.** In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.

10. **Pest Control.** In order to maintain satisfactory and uniform pest control, Tenant shall engage for the Premises and at its sole cost, a qualified pest extermination contractor either designated or approved by Landlord, who shall perform pest control and extermination services in the Premises at such intervals as reasonably required or as may be directed by Landlord.

EXHIBIT "F"

Permitted Food and Beverage Area

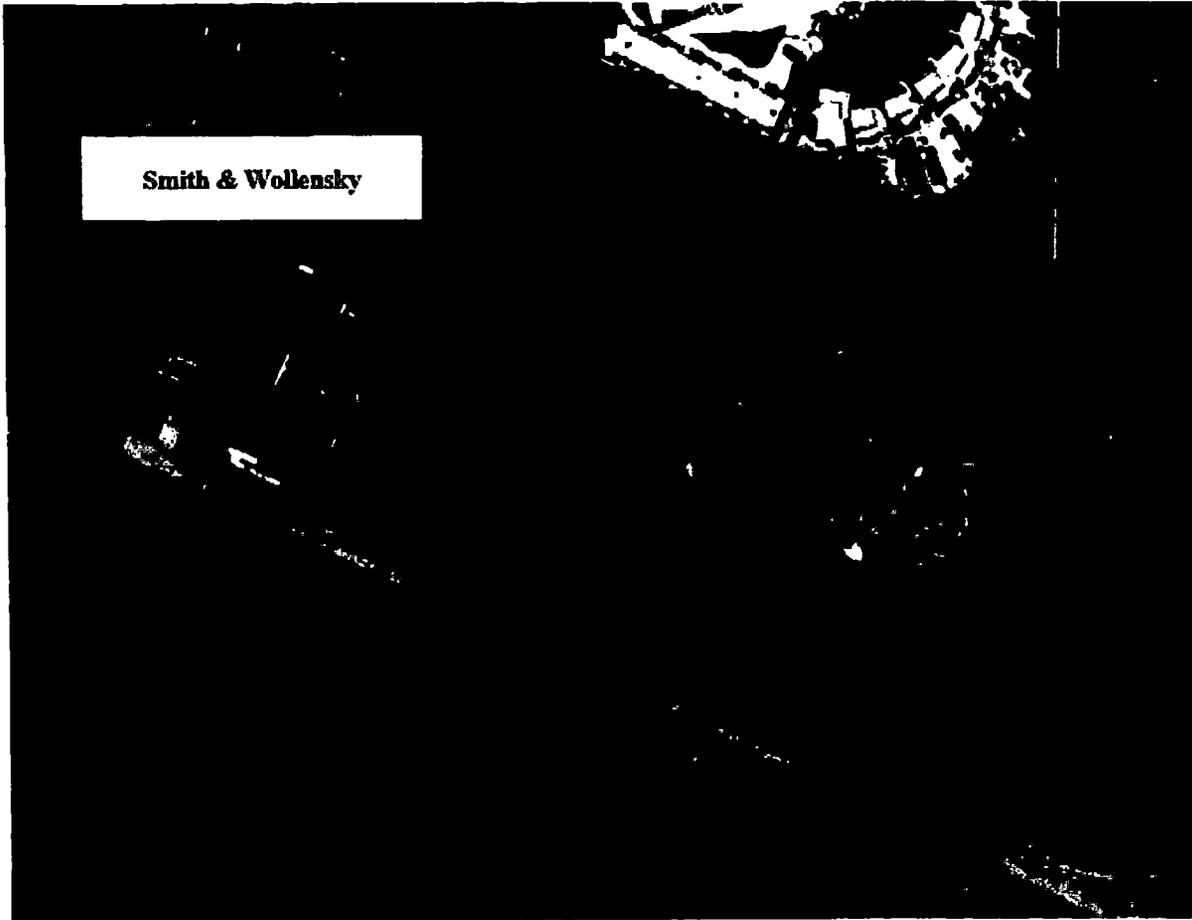


EXHIBIT "G"

FINE SCHEDULE FOR MAINTENANCE STANDARDS

| <b>INFRACTION</b>   | <b>FINE</b>  |
|---|--|
| Failure to perform any scheduled renewal and replacement projects for the Premises <u>identified by the contractor mutually agreed by both parties</u> in accordance with Section 5.4.4 of the Lease.   | 20 percent of the cost of renewal and replacement projects not completed per year, and each additional year thereafter, as determined by the City. |
| Failure to maintain sufficient garbage collection areas so that garbage is not overflowing and enclosures remain closed <u>and screened from view</u> at all times unless garbage is actively being disposed or collected.  | \$1000 per violation   |
| <p><b>Major:</b> Priority conditions or practices create or have the potential to exert a <b>significant</b> impairment to resident, visitor or employee health and safety, City resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.</p> <p><u>Example:</u><br/> <u>Failure to perform unscheduled necessary maintenance of the following items in Section 5.4</u><br/>                     (i) all pipes, lines, ducts, wires, or conduits contained within the Premises; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); (iii) Tenant's sign; (iv) any heating or air conditioning equipment serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract that include, without limitation, preventive HVAC maintenance no less than semi-annually); (v) all or any portion of Tenant's Work including, without limitation, any materials, machinery, finishings, fixtures, and equipment related thereto; and (vi) emergency water and fire sprinkler system, ceilings, stairways, floor slabs and floor coverings, sidewalks, walkways, hallways, corridors, landscaping (irrigation system), canopies (awnings and frames), loading dock/service areas, utility rooms, electric rooms, building structure including roof, siding, painting, structural integrity.</p> <p>Failure to maintain sidewalks or driveway pursuant to Exhibit E, Section 7.</p> | \$1000 per day.  |
| <b>Moderate:</b> Second Priority conditions or practices create or have the potential to exert a  | \$500 per week.  |

|  |                        |
|--|------------------------|
| <p><b>moderate</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.</p> <p>Example:<br/> <u>Failure to furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage</u></p>  |                        |
| <p><b>Minor:</b> Third Priority conditions or practices create or have a potential to exert a <b>minor</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, the Premises, or associated personal property.</p> <p>Example:<br/> <u>Failure to repair, replace or maintain interior wall finishes, interior flooring finishes, fixtures, and furniture in the Premises</u></p> <p><u>Failure to operate in accordance with all other rules and regulations provided in Exhibit E (with the exception of Section 7).</u></p> | <p>\$100 per week.</p> |

EXHIBIT "H"

COMMUNITY PROFFERS

- i. Reimbursement of the City's cost for the design, permitting, and construction of electric gates at entry to South Pointe Park parking lot, at an aggregate cost (soft and hard costs) not to exceed \$60,000.
  - a. The electric gates shall be designed, permitted, installed and maintained by the City, at the City's sole cost and expense.
  - b. Following the Lease Commencement Date of the Lease, City shall provide the Tenant with an invoice containing the backup for the City's incurred costs for the design, permitting, installation and construction of electric gates at entry to South Pointe Park, and Tenant shall reimburse the City within fifteen (15) days from receipt of said invoice.

- ii. Monthly free lunch for Rebecca Towers residents:

Tenant will provide once monthly, appropriate and nutritional congregate meals to residents of Rebecca Towers. The City and persons receiving meals will be asked to sign a liability waiver that is customarily used when free food is donated. There are approximately 240 residents, the demographic of which is primarily Hispanic. A sample menu is provided below:

| <u>Appetizer</u>             |          |
|------------------------------|----------|
| Garden Salad                 | 1.5 cups |
| Ceasar Salad                 | 1.5 cups |
| Vegetable Soup               | 1 cup    |
| Pea Soup                     | 1 cup    |
| Seasonal Soup                | 1 cup    |
| <u>Entrée</u>                |          |
| Ceasar w Chicken             | 6 oz     |
| Steak Sandwich               | 6 oz     |
| Chicken Sandwich             | 6 oz     |
| Fish and Chlps               | 6 oz     |
| Beef Stew                    | 7 oz     |
| Pasta Primavera              | 7 oz     |
| Spaghetti Bolognese          | 8 oz     |
| Roasted Chicken w vegetables | 6oz      |
| Lasagna                      | 8 oz     |
| <u>Dessert</u>               |          |
| Fresh Fruit Cup              | 1 cup    |
| Baked Cookies                | 2 oz     |
| Chef's Choice Cake           | 4 oz     |
| Chocolate Brownie            | 3 oz     |

- iii. Monthly mentorship program for Miami Beach start-up restaurants and bars within five years of opening, as set forth below.

The brand Smith & Wollensky has successfully been in business for over four decades domestically and is gaining international recognition as it continues to expand in major cities around the world. Smith & Wollensky Miami Beach will offer a mentorship program as a complimentary resource for restaurants in the City of Miami Beach that are the first restaurant or bar ever opened or operated by the owner anywhere in the world. It is not the intention of the mentorship program to apply to chain restaurants/bars or establishments with ownership groups or management that are highly-experienced in the food service industry. The goal of the program is to assist businesses facing operational difficulties successfully overcome challenges. Smith & Wollensky will offer a one (1) hour Zoom session each month for eligible restaurants in Miami Beach. If any eligible business needs individualized mentorship rather than group Zoom sessions, then such operators in need of assistance will get reasonable one-on-one guidance from Smith & Wollensky's Miami Beach Senior Managers once a month. Help

topics include: Menu development, purchasing, budgeting and forecasting, restaurant financials, staff development and training programs, fast track management program, beverage programs and Corporate Citizenship.

# ATTACHMENT

# B

**1 WASHINGTON AVENUE CORPORATION  
DBA SMITH & WOLLENSKY  
RESTAURANT**

**Concession Agreement**

**CONCESSION AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA AND  
1 WASHINGTON AVENUE CORPORATION  
FOR MANAGEMENT AND OPERATION OF A FOOD & BEVERAGE CONCESSION**

THIS CONCESSION AGREEMENT (the "Agreement") is made the \_\_\_\_ day of \_\_\_\_\_, 2021, and shall become effective on the Commencement Date as defined in Section 1.1, between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter called the "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **1 WASHINGTON AVENUE CORPORATION**, a Florida corporation, having its principal place of business at One Washington Avenue, Miami Beach, Florida, 33139 d/b/a Smith & Wollensky Restaurant (hereinafter called "Concessionaire").

This Agreement shall, from and after the Commencement Date, renew/replace that certain Existing Concession Agreement dated October 1, 2009 between the parties thereto ("Existing Concession Agreement").

Each party represents to the other that, to the best of its knowledge, there exist no defaults by either party under the Existing Concession Agreement.

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the rights to maintain, manage, and operate a food and beverage concession within the Concession Area (as hereinafter defined), in accordance with the purpose(s) and for the term(s) stated herein, and subject to all the terms and conditions herein contained.

**SECTION 1. TERM.**

- 1.1 The term (the "Term") of this Concession Agreement shall commence on the 1st day of January, 2022 (the "Commencement Date"), and shall run for a term of nine (9) years. This Agreement shall terminate on the 31st day of December, 2030.

For purposes of this Agreement, a "Contract Year" shall be defined as that certain period commencing on the 1st day of January, and ending on the 31st day of December.

- 1.2 Notwithstanding anything to the foregoing, this Agreement shall be subject to and contingent upon: (1) the Mayor and City Commission approval of the Lease Agreement (as defined below), and (2) the Mayor and City Commission's adoption of a resolution accepting the Certification of the official results of the November 2, 2021 City Referendum approving the Lease Agreement.

- 1.3 Upon the Commencement Date, subject to 1.2 above, the City and Concessionaire hereby agree that this Concession Agreement shall supersede and replace the Existing Concession Agreement and the Existing Concession Agreement shall become null and void.

## **SECTION 2. CONCESSION AREA.**

The City hereby grants to Concessionaire the right, during the Term herein, to maintain, manage and operate an outdoor seating area relating to restaurant space located at Smith & Wollensky Restaurant at One Washington Avenue, Miami Beach, Florida, 33139 in the following Concession Area:

### **2.1 Concession Area:**

The City and Concessionaire are parties to the Lease Agreement, dated \_\_\_\_\_, (the "Lease Agreement") relating to restaurant space located at Smith & Wollensky Restaurant at One Washington Avenue, Miami Beach, Florida, 33139 (the "Demised Premises"). The Concession Area shall consist of the **581** square feet of outdoor space adjacent to the Demised Premises (which is currently addressed in the Existing Concession Agreement between the parties), plus the additional **521** square feet of outdoor space located adjacent to and to the west of the existing Concession Area, plus the additional **348** square feet of outdoor space located adjacent to and to the east of the Demised Premises, for a total of **1,450** square feet (the "Concession Area"); which Concession Area is further delineated in "**Exhibit 2.1**", attached hereto and incorporated herein. Concessionaire shall be permitted to reallocate the square footage of the Concession Area within the locations described herein as necessary based on the Approved Concessionaire Work (as defined below), subject to the City Manager's prior written approval, which shall not be unreasonably withheld, provided that the aggregate square footage of the Concession Area shall not exceed 1,450 square feet.

Concessionaire shall have the right to place up to a maximum of one hundred twenty-five (125) chairs (with associated tables) and eight (8) umbrellas (collectively, "Concession Area Furniture") within the Concession Area, subject to approval of the type of Concession Area Furniture and site plan by the City, in its regulatory capacity, including the Planning Department and Public Works Department, and compliance with applicable ADA requirements. The proposed site plan is also delineated in Exhibit 2.1. Except as set forth herein, no material change in the proposed site plan (or in **Exhibit 2.1**) shall be permitted without the prior written consent of the City Manager or her designee, which consent (if given at all) shall be at the City Manager's (or his designee's) sole discretion.

- 2.2 Concessionaire hereby agrees and acknowledges that the Concession Area shall be open and available to all members of the general public choosing to enjoy Concessionaire's food and beverage services.

**SECTION 3. USE(S).**

- 3.1 The Concession Area shall be used by the Concessionaire solely as an outdoor eating, drinking and seating area for the patrons and guests of the Demised Premises subject to the Lease Agreement. **The Concessionaire shall have the right to operate in the Concession Area when the Demised Premises are open for business (and, conversely, shall be closed when the Demised Premises are closed).**
- 3.2 **Concessionaire and the tenant of the Demised Premises shall at all times throughout the Term of this Agreement be one and the same and cannot exist independently of each other. Concessionaire acknowledges and agrees that its use of the Concession Area shall be, and remain at all times throughout the Term, an ancillary use to the Demised Premises.**
- 3.3 Concessionaire is hereby authorized to conduct the following kind(s) of businesses and provide the following kind(s) of services within the Concession Area, all at its sole expense and responsibility:
- 3.4 **Food and Beverage Service.**
- 3.4.1. Concessionaire shall offer for sale within the Concession Area, such food and beverages which, at a minimum, are consistent with the type and quality of food and beverages prepared and sold at Smith & Wollensky Restaurant. However, actual cooking and heating within or on the Concession Area shall not be allowed.
- 3.4.2. All food and beverages sold or otherwise offered within the Concession Area shall be subject to any and all terms and conditions governing food and beverage service under the Lease Agreement and shall be dispensed only from the Smith & Wollensky Restaurant building.
- 3.4.3. The City hereby allows Concessionaire the right to serve and sell alcoholic beverages within the Concession Area, but only for consumption within the Concession Area, and further subject to Concessionaire's compliance, at all times, with whatever restrictions and/or regulations are (or may be) imposed by the State of Florida, Miami-Dade County, and/or the City, with respect to the dispensing and sale of alcoholic beverages (including, without limitation, alcoholic beverage license requirements). Notwithstanding the preceding sentence, all alcoholic beverages shall be dispensed only from the Demised Premises, and Concessionaire shall not be permitted to erect or maintain

upon the Concession Area, any permanent or temporary bar structure for the dispensing or sale of alcoholic beverages.

- 3.4.4. In addition to Concessionaire's general maintenance obligations, as set forth in Section 10 hereof, the Concession Area, and the immediately surrounding twenty-five (25) foot adjacent areas (specifically excluding the water areas), shall at all times be maintained in a clean and sanitary manner; provided however that any obligations to pressure clean the area shall be as set forth in Section 10.2 hereof.
- 3.4.5. Food and beverage service shall be offered daily to patrons.
- 3.4.6. Concessionaire agrees not to place any speakers, or any other device used to amplify sound, in, on or around the Concession Area. Furthermore, Concessionaire shall in no manner use the Concession Area, or the Smith & Wollensky Restaurant building, as an outdoor entertainment or open-air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses). Concessionaire shall, at all times, adhere to the City of Miami Beach Noise Ordinance, as same may be amended from time to time.
- 3.4.7. Concessionaire shall, to the reasonable satisfaction of the City Manager or her designee, maintain the cutwalk area identified in Exhibit 2.2 (the "Cutwalk") free from obstructions at all times during its operations on the Concession Area, by implementing all of the following measures:
  - 3.4.7.1. Identify a queuing area for patrons and provide (at its sole cost and expense) staff to use reasonable efforts to maintain the cutwalk clear of patrons waiting for seating;
  - 3.4.7.2. Provide signage advising patrons that they should remain clear of the Cutwalk; and
  - 3.4.7.3. Provide stanchions and/or other appropriate barrier(s) to demarcate an area where patrons can wait for a table.
- 3.5. **City Business Tax Receipts.**

Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City for the proposed use(s) contemplated herein. To the extent required by City law (as same may be amended from time to time), business tax receipts shall be obtained for each proposed use within a particular Concession Area.
- 3.6. The number of seats in the Concession Area shall be included in the overall seating count of the Demised Premises. There shall be no bar counter of any kind as part of the Concession Area and all food served shall be prepared within the interior kitchen of the Demised Premises. All tables, chairs, and umbrellas shall be left neatly organized, stacked (as applicable),

and secured outside of the path of pedestrian traffic each night at close of business. Concessionaire shall further maintain the Concession Area and abide by the conditions set forth in Exhibit 3.2 (the "Additional Requirements"), attached hereto and incorporated herein.

- 3.6.1. Removal of Concessionaire's Property during Emergency Situations.** The City Manager or his/her designee may direct or require the Concessionaire to immediately remove, relocate and/or store all or part of the Concession Area Furniture or equipment located thereon for public safety considerations in emergency situations, including, without limitation, a threatened tropical storm or hurricane. Upon written and/or verbal notification by the City Manager of a tropical storm/hurricane warning or alert, or other major weather event that may adversely impact the City, or upon the designation by the United States National Weather Service or National Hurricane Center of a tropical storm/hurricane warning or alert, whichever occurs first, the Concessionaire shall, within no more than two hours of same, remove and store all of Concessionaire's Property to secure Concessionaire's Property in response to the threatened storm or other emergency, and shall take all other measures which may be necessary for the protection of the public with respect thereto. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation. The failure of the City to direct the Concessionaire to remove or safety store Concessionaire's Property shall not relieve the Concessionaire of its obligation to remove and store Concessionaire's Property in response to a threatened storm event as outlined herein.

Should Concessionaire fail to remove Concessionaire's Property within said two (2) hour period, or in the event the City Manager or his/her designee determines, at his/her sole discretion, that Concessionaire's removal, storage and other efforts are otherwise not satisfactory, Concessionaire shall thereafter be assessed a fee of \$50.00 per hour, until such time as all of Concessionaire's Property have been removed to the City Manager's satisfaction. In addition, the City Manager, without any obligation to do so, may immediately proceed to remove, relocate, and/or store the Concessionaire's Property that has otherwise not been removed by the Concessionaire, at the Concessionaire's sole cost and expense, with payment to the City for all such costs due within thirty (30) days of City's invoice to Concessionaire.

Concessionaire shall be solely responsible for any damage to City property or other property resulting from Concessionaire's failure to remove and store Concessionaire's property, or otherwise implement appropriate measures in response to a threatened storm or hurricane.

Concessionaire's failure to comply with this section shall constitute a default under this Agreement. The remedies identified herein for Concessionaire's failure to comply with this section are cumulative, and in addition to, all remedies that may be available to the City at law and in equity.

- 3.7 **Concessionaire hereby warrants and represents to City that Concessionaire is the owner of the restaurant operating at the Demised Premises and shall, throughout the Term of the Lease Agreement, remain as the owner of said restaurant, unless any change in ownership, transfer or assignment is approved by the City Commission, in writing, prior to such change taking place in accordance with the Lease Agreement. "Change of ownership" for purposes hereof shall mean the transfer of a controlling interest in the stock of the corporation or partnership interests, as applicable, of Concessionaire. Notwithstanding the foregoing, transfers by Concessionaire are permitted without the City's consent in connection with (i) intercorporate restructure, and (ii) assignments to wholly-owned affiliates of Concessionaire.**
- 3.8 Concessionaire agrees not to place any speakers, or any other device used to amplify sound, in or around the Concession Area. Concessionaire further agrees to not attach any televisions, screens, speakers, or any other device used to amplify sound, to the exterior of the Demised Premises. Furthermore, Concessionaire shall in no manner use the Concession Area, or Concessionaire's restaurant at the Demised Premises, as an outdoor entertainment or open-air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses).
- 3.9 Concessionaire shall be permitted to apply to the City of Miami Beach for one (1) special event permit for the sole and express purpose of hosting an opening event for the restaurant. At no time thereafter, throughout the remaining term of the Lease Agreement, shall the Concessionaire be permitted to submit an application for a special event to be held on the Concession Area.
- 3.10 It is understood and agreed that the Concession Area shall be used by the Concessionaire during the term of this Agreement only for the uses contemplated herein, and for no other purpose or use whatsoever. Concessionaire will not make or permit any use of the Concession Area that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Concessionaire may not commit waste on the Concession Area, use the Concession Area for any illegal purpose, or commit a nuisance on the Concession Area. In the event that the Concessionaire uses the Concession Area for any purpose not expressly permitted herein, then the

City may declare this Agreement in default pursuant to Section 13, or without notice to Concessionaire, restrain such improper use by injunction or other legal action.

- 3.11 **By executing this Agreement, Concessionaire hereby agrees to this condition, and further voluntarily and knowingly waives and releases any and all rights now or hereinafter conferred upon Concessionaire pursuant to Florida Statutes including, without limitation, the procedures set forth in Chapter 83, Florida Statutes' for removal in nonresidential tenancies; the Miami-Dade; and the Miami Beach Code (respectively); to the extent this and applicable law(s) would have the effect of limiting or modifying the City's rights to terminate this Agreement pursuant to this Subsection.**

#### SECTION 4. CONCESSION FEES.

4.1 Minimum Guarantee (MG):

In consideration of the City's granting of the rights provided in this Agreement, as of the Commencement Date, Concessionaire agrees to pay the City the **GREATER OF** a Minimum Guaranteed Annual Concession Fee ("MG") of Four Hundred Thousand Dollars (\$400,000.00), subject to an annual 2.5% escalator effective as of the Commencement Date, or ten percent (10%) of annual gross receipts ("Percentage Rent"). The MG shall be payable in monthly installments of Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and 33/100 cents (\$33,333.33) ("Monthly Minimum Guarantee" or "MMG"). The MMG shall be due and payable in advance on the first day of each month throughout the Term of this Agreement.

4.2 Percentage of Gross (PG) vs. MG:

In the event the Percentage Rent for any month exceeds the MMG for said month, Concessionaire shall pay to City the difference between Percentage Rent and the Minimum Guarantee on or before the 15<sup>th</sup> of the subsequent month.

The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by Concessionaire under this Agreement, or any licensee, sub-concessionaire, or sub-tenant, as Concessionaire, from all business conducted upon or from the Concession Area, including but not limited to, receipts from sale of food, beverages, and alcoholic beverages. The term "gross receipts" shall exclude: (i) amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority; and (ii) the cost or value of meals or discounts given to employees of Concessionaire. Within fifteen (15) days after each month of the term

hereof, Tenant shall deliver to City a written monthly statement of the gross receipts for such month certified by Tenant to be true, accurate, and complete.

For the avoidance of doubt, City hereby acknowledges and agrees that for purposes of calculating the Percentage Rent payable by Concessionaire under this Agreement, such calculation shall: (i) only include the gross receipts directly attributable from the Concession Area, and (ii) specifically exclude gross receipts already included in the calculation of percentage rent under the Lease Agreement.

#### 4.2.1 Cap on Rent.

##### Annual Cap

Notwithstanding anything to the contrary under the Lease Agreement or this Agreement, in the first four Lease Years under the Lease Agreement, the sum of the total payment by Tenant under the Lease Agreement and Concessionaire under this Agreement, in the aggregate, shall be capped ("Annual Cap") as follows:

\$1,250,000 Lease Year 2022  
\$1,500,000 Lease Year 2023  
\$1,750,000 Lease Year 2024  
\$2,000,000 Lease Year 2025

Notwithstanding anything to the foregoing, in the event the aggregate amount due under the Concession Agreement and amount due under the Lease in those Lease Years exceed the Annual Cap, such amounts shall only be credited to Tenant against the amounts otherwise due by Concessionaire pursuant to the Concession Agreement.

#### 4.3 Interest for Late Payment.

Any payment which Concessionaire is required to make to the City which is not paid on or before the respective date provided for in this Agreement shall be subject to a late charge of Fifty and 00/100 (\$50.00), plus interest at the rate of eighteen (18%) percent per annum, or the maximum amount allowable under Florida law, whichever is greater, from the due date of payment until such time as payment is actually received by the City.

#### 4.4 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax.

4.5 Payment Remittances. All payments due to the City hereunder shall be sent to the following address:

City of Miami Beach  
Attention: \_\_\_\_\_  
1700 Convention Center Dr., Floor \_\_\_\_\_  
Miami Beach, Florida 33139

**SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.**

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls; all accounting records shall be maintained in accordance with generally accepted accounting principles; and shall be open to inspection, copying, and audit by the City Manager or his designee upon reasonable verbal or written notice, during normal hours of operation. Concessionaire shall maintain all such records at its principal office, currently located at One Washington Avenue, Miami Beach, Florida, 33139, or, if moved to another location, all such records shall be relocated, at Concessionaire's sole expense, to a location in Miami Beach, within ten (10) days from notice of request for inspection from the City. Such records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. Concessionaire shall maintain accurate receipt-printing cash registers (or a like alternative) for the Concession Area which will record and show the payment for every sale made or service provided in such Area. Concessionaire records shall also be maintained for a period of three (3) years following expiration (or other termination) of this Agreement (regardless of whether such termination results from the expiration of the Term or for any other reason).

A monthly report of gross receipts must be submitted to the City Finance Department's Revenue Manager, no later than thirty (30) days after the close of each month during the Term herein.

Concessionaire shall submit to the City Finance Department's Revenue Manager, within sixty (60)/ days of the end of each Contract Year, an annual statement of gross receipts in a form consistent with generally accepted accounting principles. Additionally, within one hundred twenty (120) days of the end of each Contract Year, a report applying agreed-upon procedures shall be submitted to the City Finance Department's Revenue Manager, such statement shall be accompanied by a report from an independent CPA firm which shall perform certain agreed upon procedures, as described in Exhibit 5, attached hereto.

Additionally, upon the request of City Manager or City Manager's designee ("Contract Manager"), Concessionaire shall submit a monthly (or at such other time as reasonably requested by City) maintenance records reflecting routine maintenance performed on the Concession Area.

## SECTION 6. INSPECTION AND AUDIT.

The City Manager or his designee shall be entitled to audit Concessionaire's records once a year throughout the Term, and three (3) times within the three (3) year period following expiration (or other termination) of this Agreement. The City shall be responsible for paying all costs associated with such audit(s), unless the audit(s) reveals a deficiency of five (5%) percent or more in Concessionaire's statement of gross receipts for any year or years audited, in which case Concessionaire shall pay to the City, within thirty (30) days of the City deeming the audit final, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest. These audits are in addition to periodic City audits of Resort Tax collections and payments (which are performed separately).

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of each Contract Year, Concessionaire and the City may meet to review Concessionaire's performance under the Agreement for the previous contract year. At the meeting, Concessionaire and the City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

## SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

Concessionaire agrees and shall pay, before delinquency, all taxes and assessments of any kind (including, without limitation, ad valorem taxes, if assessed, and/or Resort Taxes) levied or assessed upon Concessionaire and/or the Concession Area including, without limitation, any such taxes and/or assessments that may be levied and/or assessed against Concessionaire and/or the Concession Area by reason of this Agreement, or by reason of the business or other operations and/or activities of Concessionaire upon or in connection with the Concession Area.

Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings, which Concessionaire shall conduct diligently and continuously, in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax (if so ordered).

The Concessionaire Area is not serviced by utilities provided by City. Concessionaire shall be solely responsible for and shall promptly pay when due all charges for utility service(s) provided to the Concession Area (including all hook-up fees and impact fees) for gas, electricity, water, sewer, cable, telephone, trash collection, etc., if applicable.

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for such utility services when due, the City may elect to pay same and Concessionaire shall promptly reimburse the City upon demand. In no event

shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply of any utility services to the Concession Area.

#### **SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.**

8.1 Concessionaire shall select, train, employ (or otherwise hire or retain) such number of employees and/or independent contractors as is necessary and appropriate for Concessionaire to satisfy its responsibilities hereunder, and as necessary to maintain the same levels of service as exist in similar first-class concession facilities and operations. Concessionaire's employees and/or independent contractors shall be employees and/or independent contractors of Concessionaire and not of the City, and Concessionaire shall be solely responsible for their supervision and daily direction and control. Concessionaire shall be solely responsible for, and have the sole authority to hire, terminate and discipline any and all personnel and/or contractors employed or retained by Concessionaire.

8.2 Concessionaire and its employees and/or independent contractors shall wear identification badges and uniforms approved by the City during all hours of operation. The S&W Restaurant uniforms currently worn by Concessionaire's employees shall satisfy the preceding requirement. All employees and/or independent contractors shall observe all the graces of personal grooming. Concessionaire shall hire people to work in its operation who are neat, clean, well groomed, and comport themselves in a professional and courteous manner.

Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

8.3 Concessionaire shall use good faith reasonable efforts to hire employees and/or contractors from among the unemployed workers in the City of Miami Beach.

#### **SECTION 9. HOURS OF OPERATION.**

Concessionaire may operate only during hours of "active operation" of the adjacent Smith & Wollensky Restaurant building, weather or events of force majeure permitting (the term "active operation" being defined as when the full kitchen is in operation and a full restaurant menu is being served). Concessionaire's hours of minimum operation for the Concession Area, subject to inclement weather, shall be 11:00 a.m. to 10:00 p.m. The maximum permitted closing time of the Concession Area shall be 12 midnight.

Any change in the hours of operation including, without limitation, any request by Concessionaire for an increase or decrease in same, shall be subject to the prior written approval of the City Manager or his designee, which approval, if granted at all, shall be at the City Manager's sole option and discretion.

## SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR AND OPERATION.

Concessionaire accepts the use of the Concession Area in its "AS IS" "WHERE IS" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area (including all furniture, fixtures, equipment and any other improvements thereon). This shall include, without limitation, daily (i.e. 365 days) removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

### 10.1 Improvements.

- 10.1.1. Any improvements to the Concession Area shall be at Concessionaire's sole expense and responsibility; provided, however, that any plans for such improvements shall be submitted to the City Manager or her designee for prior written approval. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by Concessionaire without causing damage to the Concession Area.

All permanent (fixed) improvements to the Concession Area shall remain the property of the City upon termination and/or expiration of this Agreement, except as provided in Subsection 10.1.2.

Concessionaire will permit no liens to attach to the Concession Area arising from, connected with, or related to, the design, construction, and installation of any improvements.

Construction of any approved improvements shall be diligently prosecuted to completion and accomplished through the use of licensed, reputable contractors who are acceptable to the City Manager or her designee. In addition to obtaining the prior approval of the City Manager or her designee (acting on behalf of the City, in a proprietary capacity), Concessionaire shall also be solely responsible for obtaining, at its sole cost and expense, any and all permits, licenses, and/or regulatory approvals; such regulatory approvals which may include, without limitation, land use board and/or the approvals of other required regulatory agencies having jurisdiction) required for the construction of improvements.

- 10.1.2. Concessionaire desires to obtain the City's approval for the installation of pavers in the Concession Area space located adjacent to and to the east of the Demised Premises (the "East Pavers Work"). Additionally, Concessionaire desires to obtain the City's permission to duplicate the improvements on the Concession Area space located on the west part of the Cutwalk in the same manner as the east part of the Cutwalk existing as of the Commencement Date, by improving the west Cutwalk area in the following manner: (a) installing pavers or other similar

material, and (b) placing rectangular structures in between the Cutwalk and the right-of-way for pedestrian safety (collectively, the "West Cutwalk Work"). The East Pavers Work and the West Cutwalk Work shall be referred to collectively as "Approved Concessionaire Work". The Approved Concessionaire Work shall be performed at Concessionaire's sole cost and expense. In connection therewith, the City hereby: (i) approves, in its proprietary capacity only, the East Pavers Work; and (ii) conditionally approves, in its proprietary capacity only, the West Cutwalk Work in concept, provided that any plans for the West Cutwalk Work shall be submitted to the City Manager or her designee for prior written approval. Nothing herein shall obligate Concessionaire to perform the Approved Concessionaire Work and such work shall be at Concessionaire's election.

10.1.3. The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 10.1.3 only, shall also include improvements necessary for Concessionaire's ongoing maintenance and repair of the Concession Area) which do not exceed Five Hundred (\$500.00) Dollars; provided that the work is not structural, and provided further that it is permitted by applicable law.

10.1.4. Except with respect to the Approved Concessionaire Work in 10.1.2, upon termination and/or expiration of this Agreement, if directed by the City, the Concessionaire shall immediately remove any permanent improvements made to the Concession Area by Concessionaire during the Term, at Concessionaire's sole expense and responsibility. In such event, Concessionaire shall also restore the Concession Area to its original condition prior to the improvements being made, reasonable wear and tear excepted.

10.2 Garbage Receptacles.

With respect to litter, garbage and debris removal, Concessionaire shall provide, at its sole expense, a sufficient number of trash receptacles for its own use and for the use of its patrons. Determination of the "number" of receptacles shall at all times be within the City Manager or City Manager's designee's sole discretion. Disposal of the contents of said receptacles (and removal of litter, garbage and debris within the Concession Area), shall be done on a daily (i.e. 365 days) basis. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do so, will be assessed to, and become the responsibility of, the Concessionaire.

The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of Concessionaire's operations, into any of the City's trash dumpster shall be prohibited.

Concessionaire shall clean and maintain the portion of the cutwalk between the Smith & Wollensky Restaurant building and the Concession Area, which shall include, without limitation, daily cleaning, litter control, and pressure cleaning (as per the minimum specifications provided by the City in Exhibit 10.2 hereto) and shall be subject to the infraction schedule as set forth in Exhibit "G" of the Lease Agreement.

In addition to the Concessionaire's general maintenance obligations for the Concession Area, the Concessionaire shall maintain, at all times, the immediately surrounding twenty-five (25) foot adjacent areas (specifically excluding the water areas), in a clean and sanitary manner, and in a manner consistent with the maintenance standards set forth for the cutwalk and her adjacent park areas. Additionally, if Concessionaire fails to maintain or make any repairs, restoration and/or replacement within the Concession Area, Concessionaire shall be subject to a major infraction violation set forth in Exhibit "G" of the Lease Agreement.

10.3

Maintenance/Repair.

Concessionaire shall maintain, at its sole expense and responsibility, all furniture, fixtures, and equipment (FFE) and any other improvements (whether permanent or not) required to operate the concession. In the event any FFE and/or other improvement(s) is lost, stolen, or damaged, it shall be replaced or repaired promptly, at the sole expense of Concessionaire. City is responsible for maintenance and repairs to maintain Concession Area in its original condition or better. Concessionaire's failure to maintain or make any repairs, restoration and/or replacement within the Concession Area as set forth in this Section 10.3, Concessionaire shall be subject to the moderate infraction set forth in Exhibit "G" of the Lease Agreement.

- 10.3.1. All damage or injury of any kind to the Concession Area, and/or to any improvements and/or FFE thereon, except damage caused by the willful misconduct or gross negligence of the City, shall be the sole obligation of Concessionaire, and shall be repaired, restored and/or replaced promptly by Concessionaire, at its sole expense, to the satisfaction of the City Manager or his designee.
- 10.3.2. All of the aforesaid repairs, restoration and replacement shall be in quality and class equal to or better than the original work (or FFE, as the case may be) and shall be done in good and workmanlike manner.
- 10.3.3. If Concessionaire fails to make any repairs, restoration and/or replacement, the same may be made by the City, at the expense of Concessionaire, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Concessionaire

within ten (10) days after receipt of a bill or statement thereof. Notwithstanding that the City may elect to make such repairs, restoration, and/or replacement, the City shall have no obligation and/or affirmative duty to do so.

- 10.3.4. It shall be Concessionaire's sole obligation to ensure that any renovations, repairs and/or improvements made by Concessionaire to the Concession Area comply with all applicable permitting, zoning, building codes and life safety codes of governmental authorities having jurisdiction.

10.4 No Dangerous Materials.

Except for items used in the ordinary course of business and in lawful quantities, Concessionaire agrees not to use or permit in the Concession Area the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Concession Area shall be immediately removed. Any actual cooking and heating within or on the Concession Area shall be prohibited.

In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Area as those terms are defined by applicable Federal and State statutes, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this subsection 10.4 shall survive the termination or earlier expiration of this Agreement.

10.5 Security.

Concessionaire shall be responsible for and provide such reasonable security measures as may be required to protect the Concession Area and any improvements and FFE thereon. Under no circumstances shall the City be responsible for: any stolen or damaged FFE; damage to or loss of any improvements in the Concession Area; or any stolen, lost, or damaged personal property of Concessionaire's employees, contractors, patrons, guests, invitees, and/or any other third parties. Notwithstanding the foregoing, except with respect to willful, wonton, reckless, or gross negligent conduct by Concessionaire, Concessionaire shall not be liable to the City or

third parties as a result of the security obligations under this Section in the event any criminal activity occurs in the Concession Area.

10.6

Inspection.

Concessionaire agrees that the Concession Area (and operations thereon) may be inspected at any time by the City Manager or his designee, or by any other municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspection of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operations, whether by the City or by any public agency or official, in enforcing their respective duties, or enforcing compliance with any applicable laws, or ordinances, or regulations. The City Manager shall make reasonable efforts to Minimize any discrepancy of business being conducted in the Concession Area.

SECTION 11. Concessionaire Insurance Requirements.

11.1

Prior to occupying the Concession Area and throughout the Term of the Agreement (including renewal periods), Concessionaire shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that Concessionaire shall not occupy the Demised Premises until proof of the following insurance coverage have been reviewed and approved by the City's Risk Manager. All insurance policies required below shall be issued by companies authorized to do business under the laws of the State of Florida. Provider shall indicate that insurance coverage has been obtained which meets the requirements as outlined below by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively:

11.1.1. Worker's Compensation for all employees of the provider as required by Florida Statute 440 and Employer's Liability coverage in accordance with the Florida Statutory requirements.

11.1.2. Commercial General Liability on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage. City of Miami Beach must be shown as an additional insured with respect to this coverage.

11.1.3. Additionally, Concessionaire will be insured for the following coverage:

11.1.3.1. Business interruption insurance sufficient to insure Concessionaire for no less than one (1) full year of loss of business.

11.1.4. Intentionally Omitted

- 11.1.5. All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Concessionaire and including without limitation all of Concessionaire 's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Concessionaire under the provisions of this Agreement).
- 11.2 The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the provider.
- 11.3 Any insurance coverage required above must include a waiver of subrogation in favor of the City.
- 11.4 The company must be rated no less than "A" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

**CERTIFICATE HOLDER MUST READ:**

C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 20270  
Long Beach, CA 90801

Updated COI must be submitted to ITS via email with the following:

1. Email address: [miamibeach.contracts@instracking.com](mailto:miamibeach.contracts@instracking.com)
  2. Copy Andrew Bejel at [AndrewBejel@miamibeachfl.gov](mailto:AndrewBejel@miamibeachfl.gov) and Febe Perez at [febeperez@miamibeachfl.gov](mailto:febeperez@miamibeachfl.gov) on the submittal to ITS
- 11.5 Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this Agreement.
- 11.6 City reserves the right to impose additional reasonable insurance requirements as the City may deem necessary or in accordance with common practice.
- 11.7 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to City and then subject to the prior written approval of the City's Risk Manager. Should Concessionaire fail to obtain, maintain or

renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

**11.8 Waiver of Subrogation.**

Concessionaire hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of the Concessionaire may acquire against the City by virtue of the payment of any loss under such insurance. Concessionaire agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**SECTION 12. INDEMNITY AND LIMITATION OF LIABILITY.**

**12.1** In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatsoever kind or nature arising out of (1) wholly or in part from the negligent acts, errors, omissions or other misconduct of Concessionaire, its officers, director, members, employees, agents, contractors, subcontractors, or any other person or entity acting under Concessionaire's control or supervision; (2) Concessionaire's breach of the terms of this Agreement or its representations and warranties herein; (3) the use of the Concession Area; or (4) in the event of any lawsuit, action or proceeding challenging the validity, execution or effectiveness of the Concession Agreement, any tort or other claim related to any of the foregoing, or any such challenge relating to any approval required under the County Charter, City Code and/or the City Charter ("Lawsuit"). Concessionaire shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

**12.2** In addition, and in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or

cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officers, employees, contractors, subconcessionaire(s), agents or servants not included in Subsection 12.1 herein and for which the City, its officers, employees, contractors, subconcessionaire(s), agents or servants are alleged to be liable.

- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its officers, employees, contractors, agents or servants.
- 12.4 **Cross-Default; Effect on Lease.** Except in the instance of a cross-default by either party as set forth in Section 13.4 of this Agreement, nothing in this Agreement shall limit, impair, prejudice or otherwise affect the rights and obligations of the parties pursuant to the Lease Agreement.
- 12.5 **Delay; Force Majeure.** The performance of any act by City or Concessionaire hereunder may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance of its obligations under this Agreement by riots, acts of God, pandemic, COVID-19, war, rebellion, lockouts, governmental law, regulatory or restrictions in the nature of a moratorium or prohibition, or any other bona fide causes beyond the reasonable control of such party (each a "Force Majeure"), provided, however, if such condition persists for more than two hundred forty (240) consecutive days, City and Concessionaire may in their sole discretion renegotiate the terms of this Agreement. If the performance of the contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case later than fifteen (15) business days thereof, provide notice of (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party. In no event shall "Force Majeure" include the following instances, unless caused by Force Majeure: economic hardship, financial inability to perform specific to the party, technological impossibility, or failure to secure any of the required permits pursuant to this Agreement, unless such failure is caused by City or other governmental authority.

- 12.6 Waiver of Loss from Hazards.  
Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure (as defined herein), and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

**SECTION 13. DEFAULT AND TERMINATION.**

Subsections 13.1 through 13.4 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.6.

- 13.1 Bankruptcy.  
If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.
- 13.2 Default in Payment.  
If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.
- 13.3 Non-Monetary Default.  
In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other

party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

**13.4 Default Under Lease Agreement.**

In the event that Concessionaire is in default under the Lease Agreement then the City may, without further demand or notice, terminate this Concession Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

**13.5 City's Remedies for Concessionaire's Default.**

If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such default(s) and to compensate the City for damages resulting from such default(s), including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.8. Upon the termination of this Agreement by the City, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and/or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

**13.6 Concessionaire's Remedies for City's Default.**

If an event of default, as set forth in this Section, by the City shall occur, Concessionaire may, after the expiration of the cure period, terminate this Agreement upon written notice to the City and/or pursue all of its available rights in law or in equity. Said termination shall become effective upon receipt of the written notice of termination by the City. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.8.

13.7 Intentionally Omitted.

13.8 Surrender of Concession Area.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area in the same condition as the Concession Area was prior to the Commencement Date of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its personal property and all permanent improvements, with the exception of the Approved Concessionaire Work, made by Concessionaire pursuant to this Agreement, upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

SECTION 14. Intentionally Omitted

SECTION 15. Intentionally Omitted

SECTION 16. SPECIAL EVENTS / SPONSORSHIPS.

16.1 City Special Events.

- 16.1.1. In the event that the City, at its reasonable discretion, deems that it would be in the interest to the City, and there exists no reasonable alternatives, the City reserves the right to displace the Concessionaire for City produced and/or sponsored special events and/or City produced and/or sponsored productions. (a "City Special Event"). However, nothing contained in this Section 16.1 shall serve to otherwise limit or restrict Tenant's (as defined in the Lease Agreement) ability to operate the portions of the Smith & Wollensky Restaurant located within the Demised Premises, including, but not limited to, the outdoor dining and patio bar.

- 16.1.2. A City Special Event may also require additional time for load-in and load-out of the City Special Event. In such cases, the City may request that Concessionaire cease and desist operations in the Concessionaire Area during the term of, and in the area of, City Special Event, and Concessionaire shall cease and desist during such time. If the Concessionaire is not required to close, or the City Manager or his designee determines that Concessionaire may remain open in such a manner as prescribed by the City, that will not interfere with a City Special Event, Concessionaire shall use its good faith, in either case, in cooperating with the City. If Concessionaire is allowed to remain open during a City Special Event, Concessionaire may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff that the Concessionaire customarily has available to service its patrons within the Concession Area on a normal business day (during its hours of operation).
- 16.1.3. In the event that the City desires to have food and/or alcoholic beverages sold or otherwise provided at a City Special Event, whether by the City or a third party (for purposes of this Section 16.1.3, a "F&B City Special Event"), the City hereby agrees that, in each instance, Concessionaire shall have the right, but not the obligation, to elect to provide the food and/or alcoholic beverages for such F&B City Special Event. The City shall provide prior written notice to Concessionaire in each instance of its intention to host a F&B City Special Event.
- 16.1.4. The City's ability to displace or otherwise affect the business operations of the Concessionaire due to a City Special Event pursuant to this Section 16.1 shall be limited to no more than twice (2) per Contract Year.

16.2

Sponsorships.

The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark, property, brand, logo and/or reputation, shall belong exclusively to the City. Concessionaire shall be specifically prohibited from entering into, or otherwise creating any, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation. Notwithstanding the foregoing, the City hereby expressly agrees that Concessionaire shall keep and maintain all ownership rights relating to or in connection with its intellectual property rights to the "Smith & Wollensky" brand. All intellectual property rights, including the name Smith & Wollensky, trademarks logos, marks or comparable items are the sole and exclusive property of

Concessionaire and shall never be used by City or anyone by, through or under City.

**SECTION 17. NO IMPROPER USE.**

Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, employees, contractors, agents or servants, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Concessionaire, or any of its officers, employees, contractors, agents or servants. In the event of any violation by Concessionaire, or if the City shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City Manager or his designee shall have the right to suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or his designee within twenty-four (24) hours after receiving written or verbal notice of the nature and extent of such violation, conduct, or practice; such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City Manager or his designee.

**SECTION 18. Intentionally Omitted**

**SECTION 19. NOTICES.**

All notices from the City to Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to Concessionaire at the following addresses:

1 Washington Avenue  
Miami Beach, Florida 33139

With copies to:

Smith & Wollensky Restaurant Group, Inc.  
101 Station Lndg.  
Medford, MA 02155

Shutts & Bowen LLP  
200 South Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
Attention: Alexander I. Tachmes, Esq.

All notices from Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

With copies to:

Office of Real Estate  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

Concessionaire and the City may change the above mailing addresses at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

## SECTION 20. LAWS.

- 20.1 Compliance.  
Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental, City, County, State, and Federal ordinances, statutes, rules and regulations, as same may be amended from time to time.
- 20.2 No Discrimination.  
Concessionaire hereby agrees hereby agrees to comply with City of Miami Beach Human Rights Ordinance, as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.
- 20.3 Equal Employment Opportunity.  
Neither Concessionaire nor any affiliate of Concessionaire performing services under this Agreement, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability (as defined in Title I

of ADA). Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

## SECTION 21. MISCELLANEOUS.

- 21.1      No Partnership.  
Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.
- 21.2      Rights of Lender.  
To the extent Concessionaire's lender requires: (i) a lien on this Agreement or furnishings, equipment, or personal property located on the Concession Area, and/or (ii) any purchase money security interests, then the City shall act reasonably and in good faith to permit the same.
- 21.3      Modifications.  
This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager.
- 21.4      Complete Agreement.  
This Agreement, together with all exhibits incorporated hereto, and the Lease Agreement, constitute all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.
- 21.5      Headings.  
The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.
- 21.6      Binding Effect.  
This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 21.7      Clauses.  
The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this

Agreement.

21.8

Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement shall be so modified.

21.9

Right of Entry.

The City, at the direction of the City Manager, shall at all times, have the right to enter into and upon any and all parts of the Concession Area for the purpose of examining the same for any reason relating to the obligations of parties to this Agreement.

21.10

Not a Lease.

**It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to Concessionaire; that this Agreement is a concession agreement and not a lease, and that Concessionaire's right to operate, manage, and maintain the concession shall continue only so long as Concessionaire complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.**

**Accordingly, Concessionaire hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by Concessionaire or otherwise, Concessionaire shall surrender and yield unto the City the Concession Area, in accordance with Subsection 13.8 hereof, and the City shall in no way be required to evict and/or otherwise remove Concessionaire from the Concession Area as if this were a tenancy under Chapter 83, Florida Statutes, nor shall Concessionaire be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a concession agreement and is in no way intended to be a lease).**

21.11

Signage.

Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession. Concessionaire understands that City of Miami Beach regulations strictly prohibit Concessionaire from advertising on any part of the Concession Area Improvements or the Concession Area, and expressly agrees not to conduct any advertising hereunder unless expressly approved in writing by the City, in the City's sole and absolute discretion. Any signage posted by Concessionaire shall be subject to the

prior approval of the City as to size, shape and placement of same.

21.12 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operation(s) contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire.

21.13 No Waiver.

21.13.1. It is mutually covenanted and agreed by and between the parties hereto that the failure of either Party to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect

21.13.2. A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

21.13.3. The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation (and not as rent), unless such breach be expressly waived in writing by the City.

21.13.4. No waiver of either party's rights under this Agreement shall be effective unless reduced to a written document signed by the party to be charged.

21.14 No Third-Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

21.15 Special Construction Circumstances.

To the extent Concessionaire's use and enjoyment of the Concession Area is temporarily or permanently hampered or reduced on account of the existence of work necessitated due to the construction of a stormwater pump or sea level rise or other flooding or other work to South Pointe Park, then rent payable by Concessionaire to City will be reduced or abated by Concessionaire and City negotiating reasonably and in good faith.

SECTION 22. Intentionally Omitted

SECTION 23. GOVERNING LAW; VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **THE CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA.**

SECTION 24. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES OR PLASTIC STRAWS.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

*“Expanded polystyrene”* is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*“Expanded polystyrene food service articles”* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Concessionaire agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Demised Premises or in connection with this Lease Agreement. Concessionaire shall ensure that all vendors operating in the Demised Premises abide by the restrictions contained in this Section 40. A violation of this section shall be deemed a default under the terms of this Lease Agreement. This section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Concessionaire or its vendors.

Additionally, Concessionaire agrees to comply (and ensure compliance by its vendors) with Section 46-92 (c) of the City Code, as may be amended from time to time, which states that it is unlawful for any person to carry **any** expanded polystyrene product onto any beach or into any park within the City or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

#### **SECTION 25. CONFLICT OF INTEREST.**

Concessionaire agrees to adhere to and be governed by the Miami-Dade County Ethics and Conflict of Interest laws, as same may be amended from time to time, and by the City of Miami Beach Charter and Code, as same may be amended from time to time, in connection with the performance of the Services.

Concessionaire covenants that it presently has no interest and shall not acquire any interest, direct or indirectly, in any establishment on Miami Beach, other than pursuant to the Lease Agreement, which would conflict in any manner or degree with the performance of the work and services contemplated in this Agreement. The Concessionaire further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Concessionaire.

#### **SECTION 26. FLORIDA PUBLIC RECORDS LAW.**

- 26.1 Concessionaire shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- 26.2 The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- 26.3 Pursuant to Section 119.0701 of the Florida Statutes, as the same may be amended, if the Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:
- 26.3.1. Keep and maintain public records required by the City to perform the service;
  - 26.3.2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - 26.3.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except

as authorized by law, for the duration of the contract term and following completion of the Agreement if the Concessionaire does not transfer the records to the City;

- 26.3.4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform the service. If the Concessionaire transfers all public records to the City upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

#### **26.4 REQUEST FOR RECORDS: NONCOMPLIANCE.**

- 26.4.1. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- 26.4.2. Concessionaire's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- 26.4.3. A Concessionaire who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

#### **26.5 CIVIL ACTION.**

- 26.5.1. If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services, the court shall assess and award against the Concessionaire the reasonable costs of enforcement, including reasonable attorneys' fees, if:
- a. The court determines that the Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Concessionaire has not complied with the request, to the City and

to the Concessionaire.

- 26.5.2. A notice complies with subparagraph (1)(b) if it is sent pursuant to Section 19 of this Agreement.
- 26.5.3. A Concessionaire who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

**IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV  
PHONE: 305-673-7411**

**SECTION 27. PROCEDURE FOR APPROVALS AND/OR CONSENTS.**

In each instance in which the approval or consent of the City Manager or Contract Manager is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or Contract Manager by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or Contract Manager is allowed or required in this Agreement, Concessionaire shall send to the City Manager a written request for approval or consent (the "Approval Request").

The City Manager or Contract Manager shall use reasonable efforts to provide written notice to Concessionaire approving of consent to, or disapproving of the request, within thirty (30) days from the date of Approval Request (or within such other time period as may be expressly set forth for a particular approval or consent under this Agreement). However, the City Manager or Contract Manager's failure to consider such request within this time provided shall not be deemed a waiver, nor shall Concessionaire assume that the request is automatically approved and consented to. The City Manager or Contract Manager shall not unreasonably withhold such approval or consent. This subsection shall not apply to approvals required herein by the Mayor and City Commission.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, **City Clerk**

\_\_\_\_\_, **Mayor**

\_\_\_\_\_  
**Date**

**FOR CONCESSIONAIRE:**  
**ATTEST:**

**1 WASHINGTON AVENUE CORPORATION**

By: \_\_\_\_\_  
**Witness** \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

**FOR CITY:**

**ATTEST:**

By: \_\_\_\_\_  
**Witness** \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_, **City Attorney**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

## EXHIBIT 2.1

Concession Area



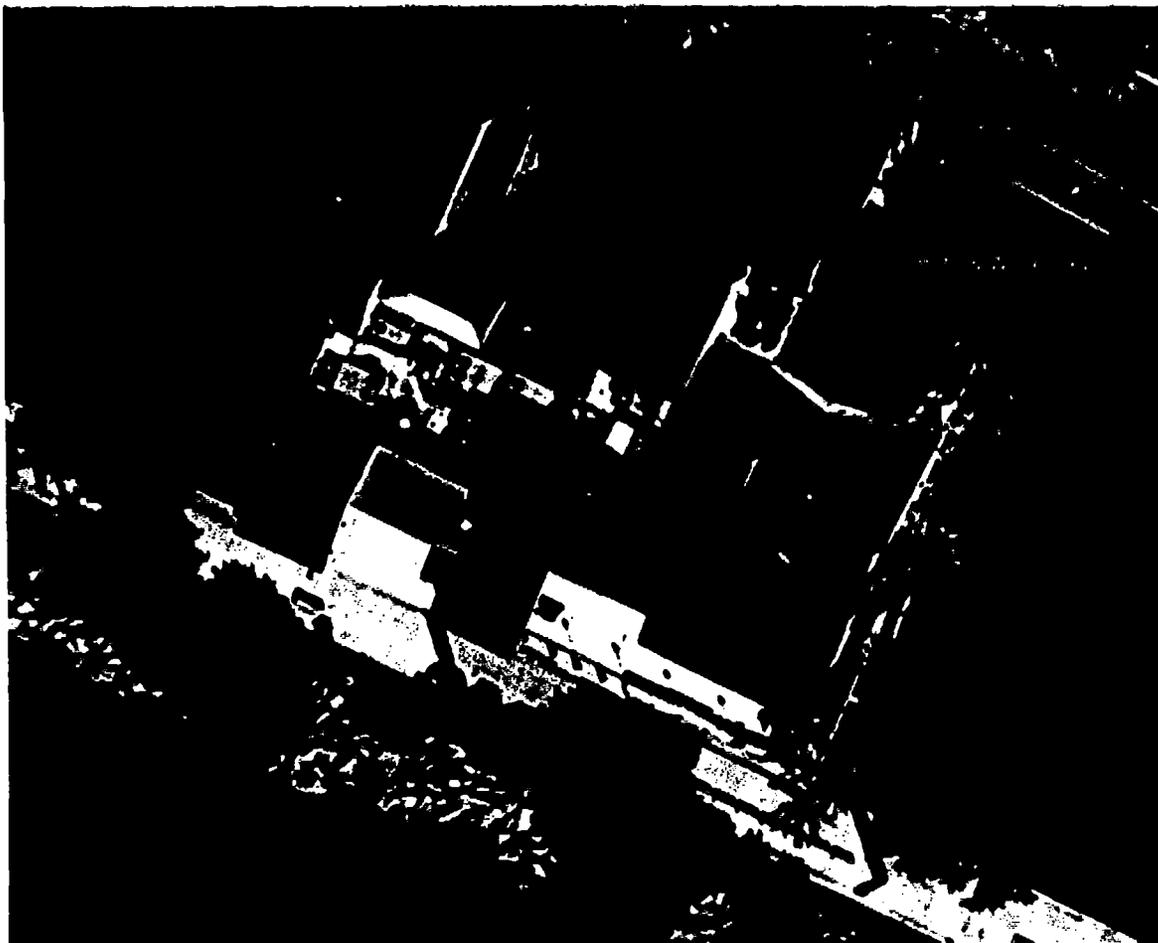
1. Area in red – existing concession agreement (581 sq. ft.)
2. Area in blue – new concession area along cutwalk (521 sq. ft.)
3. Area in green – expanded area to the east outside of leased premises (348 sq. ft.)

**Total Concession Area – 1,450 sq. ft.**

*Concessionaire shall provide the City with legal descriptions and surveys of the Concession Area as soon as received from surveyor.*

## EXHIBIT 2.2

Cutwalk



Area in red – Cutwalk

## **EXHIBIT 3.2**

### **Additional Requirements**

The Concession Area shall be maintained in a clean, neat and orderly appearance at all times by the Concessionaire. The area of the sidewalk, curb and gutter immediately adjacent to the Concession Area shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the City Manager. This Concession Agreement shall be subject to the "Major", "Moderate", and "Minor" Maintenance Infractions as set forth in Exhibit G of the Lease Agreement

The Concessionaire shall be responsible for cleaning the floor surface on which the outdoor seating is located at the close of each business day. In addition, the following conditions shall apply:

1. Tables, chairs, umbrellas and any other outdoor cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times; (Moderate Infraction)
2. All outdoor furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public; (Major Infraction)
3. Only the outdoor cafe furniture specifically shown on the approved site plan shall be allowed on the Concession Area; (Major Infraction)
4. All tables, chairs, umbrellas, and any other outdoor furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way; (Major Infraction)
5. Except as provided herein, the stacking or piling up of chairs shall be prohibited on the Concession Area; (Moderate Infraction)
6. At close of business, all tables, chairs, and any other outdoor furniture shall be left neatly organized, stacked (as applicable), and secured outside of the path of pedestrian traffic; (Moderate Infraction)
7. No storage of dishes, silverware or other similar restaurant equipment shall be allowed on any portion of the public right-of-way or in the Concession Area, or outside the structural confines of the building in which the restaurant is located, during non-business hours; (Major Infraction)
8. There shall be no live entertainment or speakers placed on the Concession Area; (Major Infraction)

9. No menu board(s) shall be permitted to be displayed on the Concession Area; (Moderate Infraction)
10. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the Concession Area; (Major Infraction)
11. No food displays shall be permitted on the Concession Area. No advertising signs or business identification signs shall be permitted, except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height; (Major Infraction)
12. Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed; (Minor Infraction)

The City Manager or his/her designee may direct or require the Concessionaire to immediately remove, relocate and/or store, all or part of any of the FF&E, tables, chairs, or equipment within the Concession Area for public safety considerations and in emergency situations, including, without limitation, a threatened tropical storm or hurricane. Upon written and/or verbal notification by the City Manager of a tropical storm/hurricane warning or alert, or other major weather event that may adversely impact the City, or upon the designation by the United States National Weather Service or National Hurricane Center of a tropical storm/hurricane warning or alert, whichever occurs first, the Concessionaire shall, within no more than two hours of same, remove and store all of Concessionaire's FF&E, equipment, tables, chairs, and other property in response to the threatened storm or other emergency, and shall take all other measures which may be necessary for the protection of the public with respect thereto. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency. The City Manager may remove, relocate, and/or store any outdoor furniture found on the Concession Area that has otherwise not been removed by the Concessionaire pursuant to this subsection. Any and all costs incurred by the City for removal, relocation and/or storage of Concessionaire's property shall be the responsibility the Concessionaire.

# EXHIBIT 5

## ANNUAL REPORT ON AGREED-UPON PROCEDURES

### **(A) System Utilized by Concessionaire:**

The Concessionaire shall utilize the MICROS POS (Point of Sales) system, or any such comparable POS system, that has the capability of tracking transactions by different revenue centers. This system shall be capable of providing separate detail for each revenue center, as well as a combined report for the unit in its entirety.

For this Concession Agreement, it is understood that the Concessionaire's POS system can or will:

1. Generate various revenue centers, such as Restaurant (main Dining room), Bar (bar area), Pavilion (food and beverages with no alcohol), Catering (contracted event with or without a cash bar), and the Concession Area (outside tables south of the cutwalk);
2. Each revenue center can report sales by time period (e.g., breakfast, lunch and dinner) and type of sales (e.g., food, beer wine, liquor, other beverage, coffeatea), tax calculation, discounts, voids, guest count, transaction count, tips and payments(cash, Visa, MC, Amex...);
3. Those daily transactions entered in the POS system will be archived in the system, providing the capability to audit transactions.

Furthermore, the Concessionaire's accounting team will treat each revenue center with different rent requirements as its own unit by preparing separate Journals to capture gross sales, discounts and payments for each revenue center.

### **(B) Agreed-upon procedures will include the following:**

On an annual basis, the Concessionaire shall prepare and deliver to the City, within 120 days after the end of each concession year term, a report prepared by a Certified Public Accountant applying these agreed-upon procedures that reflects their findings of their review of the Concessionaire's operations. Such review, and report thereof, shall include the following:

1. **ANALYSIS OF OPERATION:** Inquire of management and obtain and review documentation on the nature of the concessionaire's business and the factors that affect sales. Inquire about and document any major changes made during the period.
  - a. Review procedures for recording sales within and outside of the concession area.
  - b. Obtain the operating policies and procedures from the Concessionaire.
  - c. Interview key concessionaire representatives to determine procedures used.
  - d. Observe the utilization and effectiveness of the procedures through quarterly site visits to concessionaire's Concession Area location
2. **ANNUAL STATEMENT OF GROSS RECEIPTS:** Obtain the *Annual Statement of Gross Receipts* schedule for the year ended, prepared in conformity with Section 5 of the Concession Agreement. Recalculate concession fees for the period based on sales per the schedule and the terms of the Concession Agreement.
3. **TIMELINESS OF CONCESSION PAYMENTS:** Verify that the Concessionaire's payments were remitted timely in adherence to the due dates designated by the City pursuant to Section 4.1 of the Concession Agreement.
4. **TEST OF SALES BY REVENUE CENTER, TIME PERIOD AND TYPE OF SALES:** Perform an analytical test of sales by obtaining a schedule summarizing sales by revenue center, time period, and type of sales. Obtain or prepare a reconciliation of total sales recorded in the general ledger for the period to the *Annual Statement of Gross Receipts* schedule provided to the City of Miami Beach. Perform the following procedures:

- a. Test the analysis by selecting the Concession Area revenue center and related sub-categories, and compare the amounts shown with those recorded in the sales schedule. Document the items selected

**EXHIBIT 5**  
**(Page 2 of 2)**

for testing. Agree the sales schedule balances to the general ledger.

- b. Review the analysis, and identify any unusual trends or variations within the period or the prior period.
  - c. Obtain sound business reasons for large variations that are unusual in amount or nature included in the analysis.
5. **TEST OF SALES PER GUEST/TABLE:** Perform an analytical test of average sales per guest and/or table within the Concession Area by time of day and compare to sales in other comparable revenue centers within the restaurant. Obtain sound business reasons for large variations that are unusual in amount or nature included in the analysis.
  6. **TEST OF SALES COMPLETENESS:** Perform a test of sales completeness by applying the following procedures:
    - a. Using sales documentation or daily POS reports, select 1 (one) day per month throughout the year, including weekdays and weekends. Document the items selected for testing. Trace a sample of guest checks (sales documentation - including cash sales and credit card sales) to the daily POS recaps. Note the proper handling of any credit memos, etc.
    - b. Agree the summary information on the daily POS recap to proper recording in the general ledger, as appropriate.
    - c. Agree a sample of deposits per the daily POS recap to the bank statements.
    - d. Foot and cross foot a selected number of monthly reports of gross receipts submitted to the City and other linked documents to verify their accuracy.
    - e. Compare total sales for selected months to sales tax returns filed with the applicable taxing jurisdictions.
  7. **VERIFICATION OF CONCESSION AREA OPERATIONS:** Verify the status of operations within the Concession Area.
    - a. Conduct site visit to determine the level of operations.
    - b. Review provided documents to determine the period of activity.
    - c. Discuss and document any variances with Concessionaire for explanation.
  8. **VERIFICATION OF CONCESSION AREA USE:** Determine and document how management verifies the Concession Area was open on a particular day.
    - a. Scan revenue reports for signs of low or no reported income for the Concession Area.
    - b. Verify whether notations of "inclement weather" or other explanation were recorded for days in which the revenues are unusually low.

**(C) City Right to Review**

Notwithstanding the foregoing, the City shall retain the right to engage in all or similar reviews delineated above. The Concessionaire agrees that the City, or their designee, shall be provided all necessary documentation to perform the tests, verifications and reviews described above.

## EXHIBIT 10.2

# CONNERY CONCRETE

946 Beachland Blvd., Suite 12, Vero Beach, FL 32963 (772) 231-1224  
Decker Avenue, Stuart, FL (772) 286-1072  
Melbourne, FL (321) 723-4004  
Fax: (772) 231-5582

May 27, 2009

### Care & Maintenance

Thank you for choosing CONNERY CONCRETE to install and seal your new "Tabby" driveway areas. We appreciate your business and with proper care and maintenance it will look great for many years to come.

Generally, minimal maintenance is required. A light, periodic pressure cleaning might be necessary for heavy dirt or staining from tires, pine needles and vehicle fluids. Most often, hosing down your driveway and cleaning with a biodegradable detergent, using a nylon bristle brush will remove basic dirt and stains. For more stubborn stains, please contact us.

Also, please be aware that certain chemicals can adversely affect your "Tabby" Concrete. Among the chemicals that can damage are:

- Muratic acid / Battery acid / Radiator overflows
- Xylene / Tylene / Paint thinners
- Paint strippers
- Automobile wheel cover cleaners

Please advise your maintenance and pool cleaning contractor **NOT** to place any kind of cleaning chemicals on any of the driveway areas.

Following the above guidelines will help ensure the beauty and durability for many years to come. Once again, we hope you will enjoy years of comfort knowing your investment is protected and maintained by the professionals of CONNERY CONCRETE.

Sincerely,

*Jim Connery*

Jim Connery  
President

**Romanite**



**TABBY**  
SEA SHELL CONCRETE

# ATTACHMENT C

CBRE VALUATION & ADVISORY SERVICES

# APPRAISAL REPORT

SMITH & WOLLENSKY  
1 WASHINGTON AVENUE  
MIAMI BEACH, FLORIDA 33139  
CBRE FILE NO. 20-341SE-9176-1

CLIENT: CITY OF MIAMI BEACH

**CBRE**

Date of Report: January 6, 2021

Mr. Jimmy Morales  
City Manager  
CITY OF MIAMI BEACH  
1700 Convention Center Drive  
Miami Beach, Florida 33139

RE: Appraisal of: Smith & Wollensky  
1 Washington Avenue  
Miami Beach, Miami-Dade County, Florida 33139  
CBRE, Inc. File No. 20-341SE-9176-1

Dear Mr. Morales:

At your request and authorization, CBRE, Inc. has prepared an appraisal of the market rent of the referenced property. Our analysis is presented in the following Market Study.

The subject is a 2-story, 20,851-square foot restaurant property located at 1 Washington Avenue in the South Pointe Park in the City of Miami Beach in Miami-Dade County, Florida. The improvements were constructed in 1987, renovated in 1997 & 2017 and are situated on a 0.55-acre waterfront site overlooking the South Pointe Park bay walk and Government Cut, the deep water, ocean access inlet that connects Biscayne Bay to the Atlantic Ocean. The subject is presently tenant occupied by Smith & Wollensky with 268-indoor seats, 154-outdoor seats plus 36-outdoor seats on 581-SF along the bay walk that is operated via a concession agreement.

The subject property is currently leased to the NY Restaurant Group who operates the Smith & Wollensky restaurant as a successor to One Washington Avenue Corp. with 59-months remaining on the last 10-year renewal option lease term. The original lease dates back to February 1985 with an initial 20-year term plus two, 10-year renewal options that will expire on November 6, 2025.

We have been requested to estimate the fee simple market rent As Is of the subject property, including and excluding the Concession Area, for internal decision making purposes and for negotiations to extend the existing lease term with the NY Restaurant Group. We have also calculated a rent abatement to address the near term impact of the Covid-19 pandemic.

Mr. Jimmy Morales  
January 6, 2021  
Page 2

Based on the analysis contained in the following report, the annual market rent of the subject is concluded as follows:

| <b>MARKET VALUE CONCLUSION</b>                         |                             |                   |                  |
|--|-----------------------------|-------------------|------------------|
| Appraisal Premise                                      | Interest Appraised          | Date of Value     | Value Conclusion |
| Market Rent - Restaurant & Concession Area             | Fee Simple Estate & License | December 18, 2020 | \$1,740,400      |
| Covid-19 Rent Abatement - Restaurant & Concession Area | Fee Simple Estate & License | December 18, 2020 | (\$729,000)      |
| Market Rent - Restaurant                               | Fee Simple Estate           | December 18, 2020 | \$1,223,800      |
| Covid-19 Rent Abatement - Restaurant                   | Fee Simple Estate           | December 18, 2020 | (\$441,000)      |

Compiled by CBRE

The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The intended use and user of our report are specifically identified in our report as agreed upon in our contract for services and/or reliance language found in the report. As a condition to being granted the status of an intended user, any intended user who has not entered into a written agreement with CBRE in connection with its use of our report agrees to be bound by the terms and conditions of the agreement between CBRE and the client who ordered the report. No other use or user of the report is permitted by any other party for any other purpose. Dissemination of this report by any party to any non-intended users does not extend reliance to any such party, and CBRE will not be responsible for any unauthorized use of or reliance upon the report, its conclusions or contents (or any portion thereof).

It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE can be of further service, please contact us.

Respectfully submitted,

CBRE - VALUATION & ADVISORY SERVICES



Stuart J. Lieberman, MAI  
Vice President  
Cert Gen RZ1074

[www.cbre.com/stuart.lieberman](http://www.cbre.com/stuart.lieberman)  
Phone: (305) 381-6472  
Email: [stuart.lieberman@cbre.com](mailto:stuart.lieberman@cbre.com)



James E. Agner, MAI, AI-GRS, SGA, MRICS  
Senior Managing Director –  
Florida/Caribbean  
Cert Gen RZ382

[www.cbre.com/james.agner](http://www.cbre.com/james.agner)  
Phone: (305) 381-6480  
Email: [james.agner@cbre.com](mailto:james.agner@cbre.com)

**CBRE**

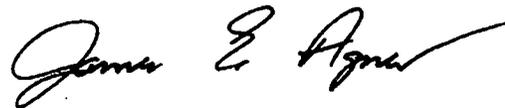
## Certification

We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the State of Florida.
7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. As of the date of this report, Stuart J. Lieberman, MAI and James E. Agner, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.
10. Stuart J. Lieberman, MAI has and James E. Agner, MAI has not made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the persons signing this report.
12. Valuation & Advisory Services operates as an independent economic entity within CBRE, Inc. Although employees of other CBRE, Inc. divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy were maintained at all times with regard to this assignment without conflict of interest.
13. Stuart J. Lieberman, MAI and James E. Agner, MAI have not provided any services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding agreement to perform this assignment.



Stuart J. Lieberman, MAI  
Cert Gen RZ1074



James E. Agner, MAI, AI-GRS, SGA, MRICS  
Cert Gen RZ382

# Subject Photographs



Aerial View



Photo 1 – Front Elevation & Entrance



Photo 2 – Rear Elevation from Bay Walk



Photo 3 – Interior View



Photo 4 – Main Dining Room



Photo 5 – Main Bar/Lounge



Photo 6 – Event Room

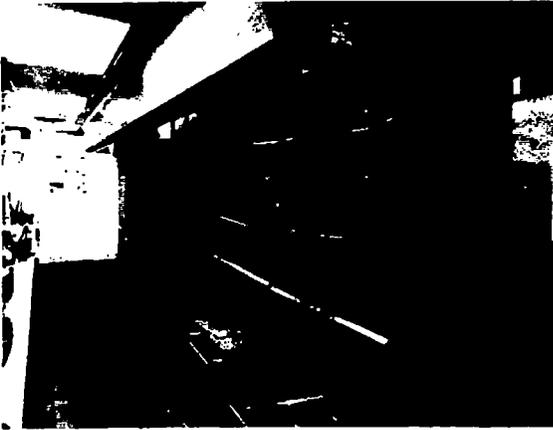


Photo 7 - Kitchen



Photo 8 - Kitchen



Photo 9 - Event Room



Photo 10 - 2<sup>nd</sup> Floor Seating



Photo 11 - 2<sup>nd</sup> Floor Corridor



Photo 12 - 2<sup>nd</sup> Floor Dining Room



Photo 13 – 2<sup>nd</sup> Floor Kitchen



Photo 14 – 2<sup>nd</sup> Floor Event Deck & Bar



Photo 15 – SE View from Event Deck



Photo 16 – SW View from Event Deck



Photo 17 – Concession Area Looking SE



Photo 18 – Concession Area Looking SW

## Executive Summary

|  |   |                            |
|--|---|----------------------------|
| <b>Property Name</b>                         | Smith & Wollensky   |                            |
| <b>Location</b>                              | 1 Washington Avenue<br>Miami Beach, Miami-Dade County, FL 33139 |                            |
| <b>Client</b>                                | City of Miami Beach   |                            |
| <b>Highest and Best Use</b>                  | Government, cultural, private and joint government/private uses |                            |
| As If Vacant                                 | Existing leasehold restaurant use                               |                            |
| As Improved                                  | Fee Simple Estate   |                            |
| <b>Property Rights Appraised</b>             | December 18, 2020   |                            |
| <b>Date of Inspection</b>                    | 6 - 12 Months   |                            |
| <b>Estimated Exposure Time</b>               | 6 - 12 Months   |                            |
| <b>Estimated Marketing Time</b>              | 0.55 AC   |                            |
| <b>Primary Land Area - Restaurant</b>        |   | 24,010 SF                  |
| <b>Surplus Land Area - Concession Area</b>   | 0.01 AC   | 581 SF                     |
| <b>Zoning</b>                                | GU, Government Use District                                     |                            |
| <b>Improvements</b>                          |   |                            |
| Property Type                                | Retail  | (Restaurant)               |
| Number of Buildings                          | 1   |                            |
| Number of Stories                            | 2   |                            |
| Gross Leasable Area                          | 20,851 SF   |                            |
| Seating Capacity - Indoor                    | 268 Seats   |                            |
| Seating Capacity - Outdoor Patios & Decks    | 154 Seats   |                            |
| Seating Capacity - Concession Area           | <u>36 Seats</u>   |                            |
| Seating Capacity - Total Indoor/Outdoor      | 458 Seats   |                            |
| Seating Capacity - Restaurant Indoor/Outdoor | 422 Seats   | (excludes Concession Area) |
| Year Built / Renovated                       | 1987 / 1997 & 2017  |                            |
| Condition                                    | Good  |                            |
| <b>Major Tenants</b>                         |   |                            |
| Smith & Wollensky                            | 20,851 SF   |                            |

| VALUATION                                      |                          | Total       | Per Seat | Per SF  |
|--|--------------------------|-------------|----------|---------|
| <b>Market Rent As Is On</b>                    | <b>December 18, 2020</b> |             |          |         |
| Income Approach - Restaurant & Concession Area |                          | \$1,740,400 | \$3,800  | \$83.47 |
| <b>Market Rent As Is On</b>                    | <b>December 18, 2020</b> |             |          |         |
| Income Approach - Restaurant                   |                          | \$1,223,800 | \$2,900  | \$58.69 |

### CONCLUDED MARKET VALUE

| Appraisal Premise                                      | Interest Appraised          | Date of Value     | Value       |
|--|-----------------------------|-------------------|-------------|
| Market Rent - Restaurant & Concession Area             | Fee Simple Estate & License | December 18, 2020 | \$1,740,400 |
| Covid-19 Rent Abatement - Restaurant & Concession Area | Fee Simple Estate & License | December 18, 2020 | (\$729,000) |
| Market Rent - Restaurant                               | Fee Simple Estate           | December 18, 2020 | \$1,223,800 |
| Covid-19 Rent Abatement - Restaurant                   | Fee Simple Estate           | December 18, 2020 | (\$441,000) |

Compiled by CBRE

### IMPORTANT WARNING - MATERIAL VALUATION UNCERTAINTY FROM CORONAVIRUS

The outbreak of the Novel Coronavirus (COVID-19), declared by the World Health Organisation as a "Global Pandemic" on the 11th March 2020, has impacted many aspects of daily life and the global economy – with some real estate markets experiencing significantly lower levels of transactional activity and liquidity. As of the valuation date, in the case of the subject property, there is a shortage of market evidence for comparison purposes, to inform opinions of value.

Our valuation of the property is therefore reported as being subject to 'material valuation uncertainty'. Consequently, less certainty – and a higher degree of caution – should be attached to our valuation than would normally be the case.

For the avoidance of doubt, the inclusion of the 'material valuation uncertainty' declaration above does not mean that the valuation cannot be relied upon. Rather, the declaration has been included to ensure transparency of the fact that – in the current extraordinary circumstances – less certainty can be attached to the valuation than would otherwise be the case. The material uncertainty clause is to serve as a precaution and does not invalidate the valuation.

Values may change more rapidly and significantly than during standard market conditions. Given the unknown future impact that COVID-19 might have on the real estate market and the difficulty in differentiating between short term impacts and long-term structural changes, we recommend that you keep the valuation(s) contained within this report under frequent review.

## **STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS (SWOT)**

### **Strengths/ Opportunities**

- The subject property is part of a high density, barrier island & resort community.
- The subject location is an exclusive municipal park with off-street parking support, a public bay walk and unobstructed water views overlooking Government Cut, a deep water, ocean access inlet to the Atlantic Ocean and views of Biscayne Bay.
- The subject property has a high ratio of outdoor seating that is very favorable for operations during the Covid-19 pandemic, i.e. a 41.5% of total capacity is outdoor patio, 2<sup>nd</sup> floor event deck and concession area.
- Strong sales revenue history and real estate tax exempt benefit from the municipal park location & ownership.
- Historically low interest rates and unprecedented government stimulus in the wake of the Covid-19 pandemic.
- The State of Florida and the Miami-Dade County market have entered Phase 3 of the re-opening in the wake of Covid-19.

### **Weaknesses/ Threats**

- Current operations are reported to be at 35% of pre-pandemic level and there is a 50% cap on capacity until lifted by executive order.
- Management and maintenance intensive property.

## **EXTRAORDINARY ASSUMPTIONS**

An extraordinary assumption is defined as "an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions."<sup>1</sup>

- The original contract lease & addendum agreements report a site area of 16,000-SF, while a more recent boundary survey, dated October 6, 2020, represents a site area of 24,010-SF plus 581-SF for the concession area. Our appraisal process & analysis is based on the more recent survey unless advised otherwise by the client.

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<sup>1</sup> The Appraisal Foundation, USPAP, 2020-2021

- Our value estimates and conclusions assume mechanical & structural integrity sufficient for continued operation and income production as a restaurant and there are no environmental concerns or hazards.
- The use of these extraordinary assumptions may have affected the assignment results.

### **HYPOTHETICAL CONDITIONS**

A hypothetical condition is defined as "a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purposes of analysis." <sup>2</sup>

- None noted

### **OWNERSHIP AND PROPERTY HISTORY**

Title to the subject site is vested with the City of Miami Beach and the leasehold improvements are vested in the name of the New York Restaurant Group as successor to One Washington Avenue Corporation. According to lease documents and historical accounts, the City of Miami Beach issued an RFP for the site location as a restaurant use. A lease agreement was negotiated and executed with Specialty Restaurant Corp. in February 1985 for a 16,000-SF ready-to-build pad site with the tenant responsible for constructing the improvements, which was completed and opened as Crowdaddy's in 1987.

On the following pages are abstracts of the original lease, the assignment of lease, the addendum to lease and the concession agreement that highlight the historic tenant/operator timeline including entity transfers, tenant/operator bankruptcy and lease assignments.

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<sup>2</sup> The Appraisal Foundation, *USPAP*, 2020-2021

**LEASE ABSTRACT - CRAWDADDY'S RESTAURANT**

|                              |  |
|------------------------------|--|
| Lessor                       | City of Miami Beach                            |
| Lessee                       | Specialty Restaurant Corp.                     |
| Site Size (SF)               | 16,000   |
| Lease Date                   | February 8, 1985                               |
| Lease Commence Date          | November 7, 1985                               |
| Expiration Date (Base Lease) | November 6, 2005                               |
| Lease Term (Base Lease)      | 240 Months                                     |
| No. & Term of Options        | 2 options @ 10 years<br>With 12-months notice. |

|   |                  |
|---|------------------|
| Expiration Date (Base + All Options)      | November 6, 2025 |
| Remaining Lease Term (Base + All Options) | 59 Months        |

Assignment/Subletting Allowed, subject to City Commission approval.

| Contract Rental Rate | \$/SF/Yr.     | Total \$/Yr.    |
|----------------------|---------------|-----------------|
| Base Lease Term      | \$1.88        | \$30,000        |
| Option Term 1        | \$1.88        | \$30,000        |
| <b>Option Term 2</b> | <b>\$1.88</b> | <b>\$30,000</b> |

Lessor Obligation Provide, improved roads, electric, water & sanitary sewer, gas & telephone to site

Lessee Obligation Construct and operate 1st class restaurant & cocktail lounge with not less than 200-seats, 16,000-SF to 18,000-SF and total cost not less than \$1,700,000.

Leasehold Improvements Vest to lessor upon expiration or termination of lease.

Percentage Rent - Gross Receipts  
 2.5% to \$2,500,000  
 3% for \$2,500,001 to \$4,800,000  
 3.5% over \$4,800,000  
 or \$2,500 per month minimum guarantee, whichever is greater.

Security Deposit \$15,000

Lessor Expenses None

Lessee Expenses All - Absolute Net

Automobile Parking Lessor makes available for patrons & employees and refunds any fees to the patrons upon presentation of a validated restaurant parking ticket

Assignment of Lease & Sublease July 12, 1993 assignment & change of entity by same principal of lease & operating sublease to One Washington Avenue Corp. via \$2,500,000 purchase & sale of building & F,F&E.

Name Change April 6, 1994 name change to South Pointe Seafood House who filed bankruptcy on July 26, 1996

Source: Lease Agreement

**ASSIGNMENT OF LEASE ABSTRACT - SMITH & WOLLENSKY - APRIL 16, 1997**

|   |  |                 |
|---|--|-----------------|
| Lessor                                    | City of Miami Beach  |                 |
| Lessee                                    | New York Restaurant Group  |                 |
| Site Size (SF)                            | 16,000   |                 |
| Lease Date                                | February 8, 1985   |                 |
| Lease Commence Date                       | November 7, 1985   |                 |
| Expiration Date (Base Lease)              | November 6, 2005   |                 |
| Lease Term (Base Lease)                   | 240 Months   |                 |
| Remaining Lease Term (Base Lease)         | 181 Months   |                 |
| No. & Term of Options                     | 2 options @ 10 years<br>With 12-months notice.   |                 |
| Expiration Date (Base + All Options)      | November 6, 2025   |                 |
| Remaining Lease Term (Base + All Options) | 59 Months  |                 |
| Assignment/Subletting                     | Allowed, subject to City Commission approval.  |                 |
| Contract Rental Rate                      | \$/SF/Yr.  | Total \$/Yr.    |
| Base Lease Term                           | \$1.88   | \$30,000        |
| Option Term 1                             | \$1.88   | \$30,000        |
| + Bonus Increase Per Year                 | \$1.56   | \$25,000        |
| <b>Option Term 2</b>                      | <b>\$1.88</b>  | <b>\$30,000</b> |
| <b>+ Bonus Increase Per Year</b>          | <b>\$4.06</b>  | <b>\$65,000</b> |
| Leasehold Improvements                    | Vest to lessor upon expiration or termination of lease.  |                 |
| Percentage Rent - Gross Receipts          | 2.5% to \$2,500,000<br>3.5% for \$2,500,001 to \$4,800,000<br>4.0% over \$4,800,000<br>or \$2,500 per month minimum guarantee, whichever is greater<br>Gross receipts exclude cost or value of employee and business promotion meals.<br>Gross receipts include retail sales and mail order sales. |                 |
| Lessor Expenses                           | None   |                 |
| Lessee Expenses                           | All - Absolute Net   |                 |
| Automobile Parking                        | \$75,000 per year payment for 105 parking spaces. If sales exceed \$3 million, the payment can be recaptured by tenant from the base rent payment.   |                 |
| Construction                              | 6-month abatement of approximately \$15,000 to allow for construction.   |                 |
| Contribution                              | NY Restaurant Group will contribute \$40,000 to demolish bandshell at South Pointe Park.   |                 |
| Assignment of Lease                       | Contingent upon immediate payment of all money due from South Pointe Seafood House Restaurant and approval by the bankruptcy court.  |                 |

Source: Assignment of Lease Agreement

**ADDENDUM TO LEASE ABSTRACT - JUNE 1, 1997**

|   |  |                 |
|---|--|-----------------|
| Lessor                                    | City of Miami Beach  |                 |
| Lessee                                    | NY Restaurant Group as successor in interest to One Washington Avenue Corp.  |                 |
| Site Size (SF)                            | 16,000   |                 |
| Addendum to Lease Date                    | June 1, 1997   |                 |
| Lease Commence Date                       | November 7, 1985   |                 |
| Expiration Date (Base Lease)              | November 6, 2005   |                 |
| Lease Term (Base Lease)                   | 240 Months   |                 |
| Remaining Lease Term (Base Lease)         | 181 Months   |                 |
| No. & Term of Options                     | 2 options @ 10 years<br>With 12-months notice.   |                 |
| Expiration Date (Base + All Options)      | November 6, 2025   |                 |
| Remaining Lease Term (Base + All Options) | 59 Months  |                 |
| Contract Rental Rate                      | \$/SF/Yr.  | Total \$/Yr.    |
| Base Lease Term                           | \$1.88   | \$30,000        |
| Option Term 1                             | \$1.88   | \$30,000        |
| + Bonus Increase Per Year                 | \$1.56   | \$25,000        |
| <b>Option Term 2</b>                      | <b>\$1.88</b>  | <b>\$30,000</b> |
| <b>+ Bonus Increase Per Year</b>          | <b>\$4.06</b>  | <b>\$65,000</b> |
| Leasehold Improvements                    | Vest to lessor upon expiration or termination of lease.  |                 |
| Percentage Rent - Gross Receipts          | 2.5% to \$2,500,000<br>3.0% for \$2,500,001 to \$3,000,000<br>3.5% over \$3,000,000<br>or \$2,500 per month minimum guarantee, whichever is greater<br>Gross receipts exclude cost or value of employee and business promotion meals.<br>Gross receipts include retail sales and mail order sales. |                 |
| Lessor Expenses                           | None   |                 |
| Lessee Expenses                           | All - Absolute Net   |                 |
| Automobile Parking                        | \$75,000 per year payment for 105 parking spaces and credited against lessee's percentage rent obligation.   |                 |
| Parking Impact Fee                        | \$9,600 annually for 32 additional parking spaces and 1/2 of all impact fee shall be credited against lessee's percentage rent obligation.   |                 |
| Construction                              | Tenant making improvement with 6-month rent & parking fee abatement from June 1 to December 1, 1997.   |                 |
| Contribution                              | One Washington Avenue will contribute \$35,200 to demolish bandshell at South Pointe Park.   |                 |
| Assignment of Lease                       | Contingent upon immediate payment of all money due from South Pointe Seafood House Restaurant and approval by the bankruptcy court.  |                 |

Source: Addendum to Lease

**CONCESSION AGREEMENT ABSTRACT - APRIL 14, 2009**

|                                   |                 |  |
|-----------------------------------|-----------------|--|
| Owner                             |                 | City of Miami Beach  |
| Concessionaire                    |                 | One Washington Avenue Corp. (d/b/a Smith & Wollensky)  |
| Site Size (SF)                    |                 | 581  |
| Commence Date                     |                 | October 1, 2009  |
| Expiration Date (Base Term)       |                 | November 6, 2025   |
| Term (Base)                       |                 | 193 Months   |
| Remaining Term (Base)             |                 | 59 Months  |
| Contract Rental Rate              | \$/SF/Yr.       | Total \$/Yr.   |
| Base Term - Minimum Guarantee Fee | \$137.69        | \$80,000   |
| Year 5                            | \$172.12        | \$100,000  |
| <b>Year 10</b>                    | <b>\$206.54</b> | <b>\$120,000</b>   |
| Year 15                           | \$213.43        | \$124,000  |
| Use                               |                 | Food and beverage service to be dispensed by Smith & Wollensky; and, alcoholic beverages only for consumption within the concession area |
| Percentage of Gross Receipts      |                 | 10% of gross receipts in excess of the minimum gross fee.  |
| Owner Expenses                    |                 | None   |
| Concessionaire Expenses           |                 | All - Improvements, maintenance, repair & operation including the 25-foot of adjacent area.  |
| Source: Concession Agreement      |                 |  |

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**ADDENDA**

- A Rent Comparable Data Sheets
- B Client Contract Information
- C Qualifications

## Scope of Work

This Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2 of USPAP. The scope of the assignment relates to the extent and manner in which research is conducted, data is gathered, and analysis is applied.

### INTENDED USE OF REPORT

This appraisal is to be used for market rent study and no other use is permitted.

### CLIENT

The client is City of Miami Beach.

### INTENDED USER OF REPORT

This appraisal is to be used by City of Miami Beach. No other user(s) may rely on our report unless as specifically indicated in this report.

Intended Users - the intended user is the person (or entity) who the appraiser intends will use the results of the appraisal. The client may provide the appraiser with information about other potential users of the appraisal, but the appraiser ultimately determines who the appropriate users are given the appraisal problem to be solved. Identifying the intended users is necessary so that the appraiser can report the opinions and conclusions developed in the appraisal in a manner that is clear and understandable to the intended users. Parties who receive or might receive a copy of the appraisal are not necessarily intended users. The appraiser's responsibility is to the intended users identified in the report, not to all readers of the appraisal report.<sup>3</sup>

### PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the subject property.

### DEFINITION OF MARKET RENT

Market rent is defined in the 14th Addition of The Appraisal of Real Estate as the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements (TIs).<sup>4</sup>

### DEFINITION OF VALUE

The current economic definition of market value agreed upon by agencies that regulate federal financial institutions in the U.S. (and used herein) is as follows:

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<sup>3</sup> Appraisal Institute, The Appraisal of Real Estate, 14th ed. (Chicago: Appraisal Institute, 2013), 50.

<sup>4</sup> Appraisal Institute, The Appraisal of Real Estate, 14th ed. (Chicago: Appraisal Institute, 2013), 50.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>5</sup>

### INTEREST APPRAISED

The value estimated represents the Fee Simple Estate as defined below:

*Fee Simple Estate* - Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.<sup>6</sup>

*Leased Fee Interest* - The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.<sup>7</sup>

*Leasehold Interest* - The tenant's possessory interest created by a lease.<sup>8</sup>

*Going Concern* - An established and operating business having an indefinite future life.<sup>9</sup>

### Extent to Which the Property is Identified

The property is identified through the following sources:

- postal address
- assessor's records
- legal description

### Extent to Which the Property is Inspected

The extent of the inspection included the following: full interior, exterior and surrounding environs.

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<sup>5</sup> Interagency Appraisal and Evaluation Guidelines; December 10, 2010, Federal Register, Volume 75 Number 237, Page 77472.

<sup>6</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, 6<sup>th</sup> ed. (Chicago: Appraisal Institute, 2015), 90.

<sup>7</sup> Dictionary of Real Estate Appraisal, 128.

<sup>8</sup> Dictionary of Real Estate Appraisal, 128.

<sup>9</sup> Dictionary of Real Estate Appraisal, 102.

## Type and Extent of the Data Researched

CBRE reviewed the following:

- applicable tax data
- zoning requirements
- flood zone status
- demographics
- income and expense data
- comparable rental & listing data

## Type and Extent of Analysis Applied

CBRE, Inc. analyzed the data gathered through the use of appropriate and accepted appraisal methodology to arrive at a probable value indication via each applicable approach to value. The steps required to complete each approach are discussed in the methodology section.

## Data Resources Utilized in the Analysis

| <b>DATA SOURCES</b>   |  |
|-----------------------|--|
| <i>Item:</i>          | <i>Source(s):</i>  |
| <b>Site Data</b>      |  |
| Size                  | Legal description and boundary survey                        |
| <b>Improved Data</b>  |  |
| Building Area         | As Built boundary survey and public records                  |
| No. Bldgs.            | As Built survey  |
| Parking Spaces        | Contract lease agreement, assignments & amendments           |
| Year Built/Developed  | Public records   |
| <b>Economic Data</b>  |  |
| Deferred Maintenance: | Not applicable   |
| Building Costs:       | Not applicable   |
| Income Data:          | Contract lease agreement, tenant sales reports & market data |
| Expense Data:         | Contract lease agreement, tenant sales reports & market data |
| Compiled by CBRE      |  |

## APPRAISAL METHODOLOGY

In appraisal practice, an approach to value is included or omitted based on its applicability to the property type being valued and the quality and quantity of information available.

### Cost Approach

The cost approach is based on the proposition that the informed purchaser would pay no more for the subject than the cost to produce a substitute property with equivalent utility. This approach is particularly applicable when the property being appraised involves relatively new improvements that represent the highest and best use of the land, or when it is improved with relatively unique or specialized improvements for which there exist few sales or leases of comparable properties.

### Sales Comparison Approach

The sales comparison approach utilizes sales of comparable properties, adjusted for differences, to indicate a value for the subject. Valuation is typically accomplished using physical units of

comparison such as price per square foot, price per unit, price per floor, etc., or economic units of comparison such as gross rent multiplier. Adjustments are applied to the physical units of comparison derived from the comparable sale. The unit of comparison chosen for the subject is then used to yield a total value. Economic units of comparison are not adjusted, but rather analyzed as to relevant differences, with the final estimate derived based on the general comparisons.

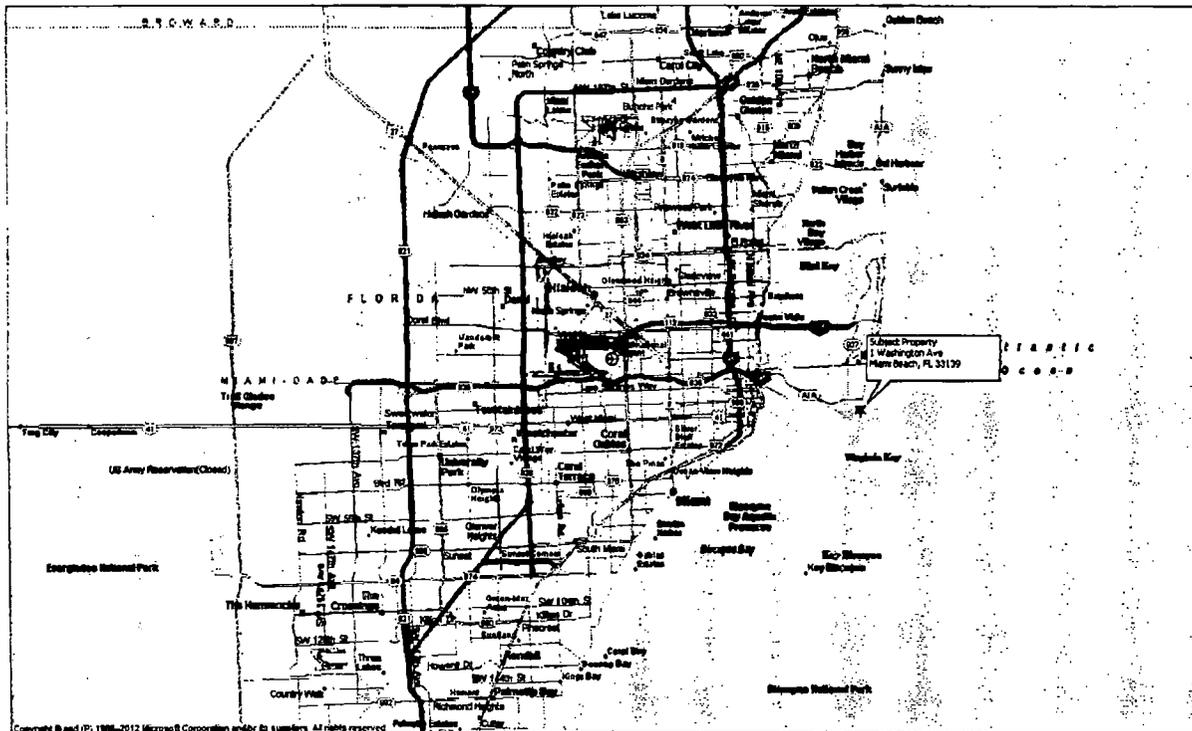
#### **Income Capitalization Approach**

The income capitalization approach reflects the subject's income-producing capabilities. This approach is based on the assumption that value is created by the expectation of benefits to be derived in the future. Specifically estimated is the amount an investor would be willing to pay to receive an income stream plus reversion value from a property over a period of time. The two common valuation techniques associated with the income capitalization approach are direct capitalization and the discounted cash flow (DCF) analysis.

#### **Methodology Applicable to the Subject**

In studying the market for the effective market rent of the subject, we have presented macroeconomic and a microeconomic data and employed a comparable rent survey via the income approach in order to determine a competitive market rent, percentage rent, and market oriented lease terms & conditions.

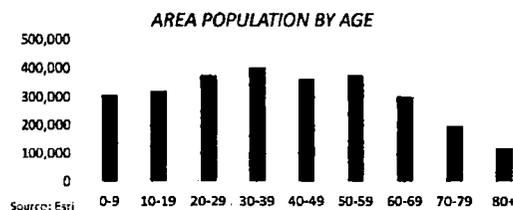
# Area Analysis



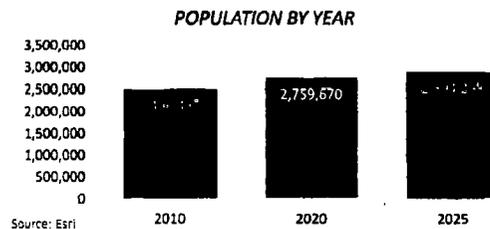
The subject is located in Miami-Dade County. Key information about the area is provided in the following tables.

## POPULATION

The area has a population of 2,759,670 and a median age of 39, with the largest population group in the 30-39 age range and the smallest population in 80+ age range.

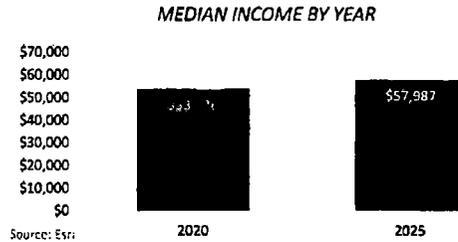


Population has increased by 263,235 since 2010, reflecting an annual increase of 1.0%. Population is projected to increase by an additional 134,628 by 2025, reflecting 1.0% annual population growth.



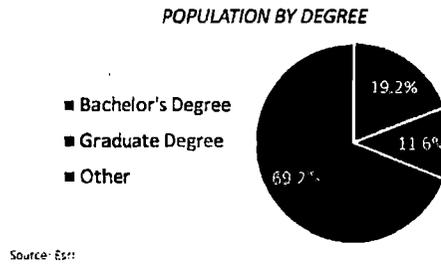
**INCOME**

The area features an average household income of \$80,823 and a median household income of \$53,726. Over the next five years, median household income is expected to increase by 7.9%, or \$852 per annum.

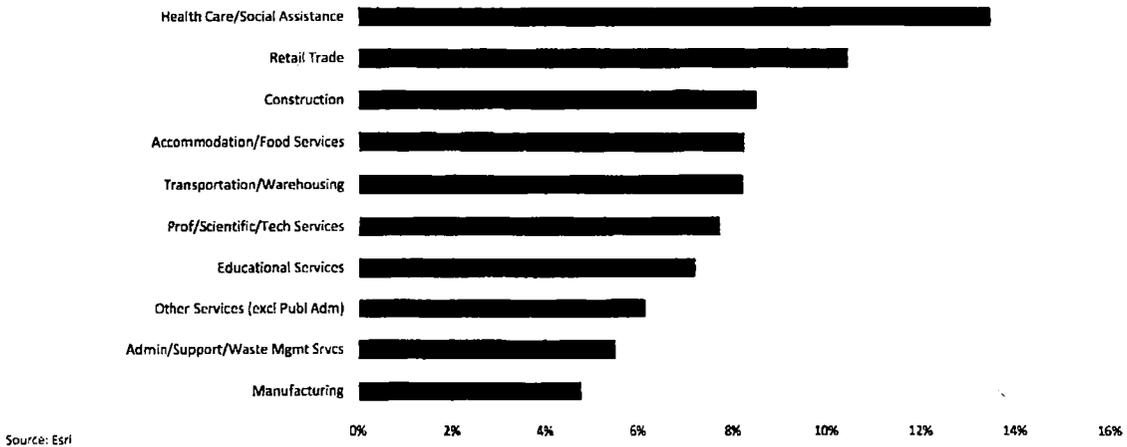


**EDUCATION**

A total of 30.8% of individuals over the age of 24 have a college degree, with 19.2% holding a bachelor's degree and 11.6% holding a graduate degree.

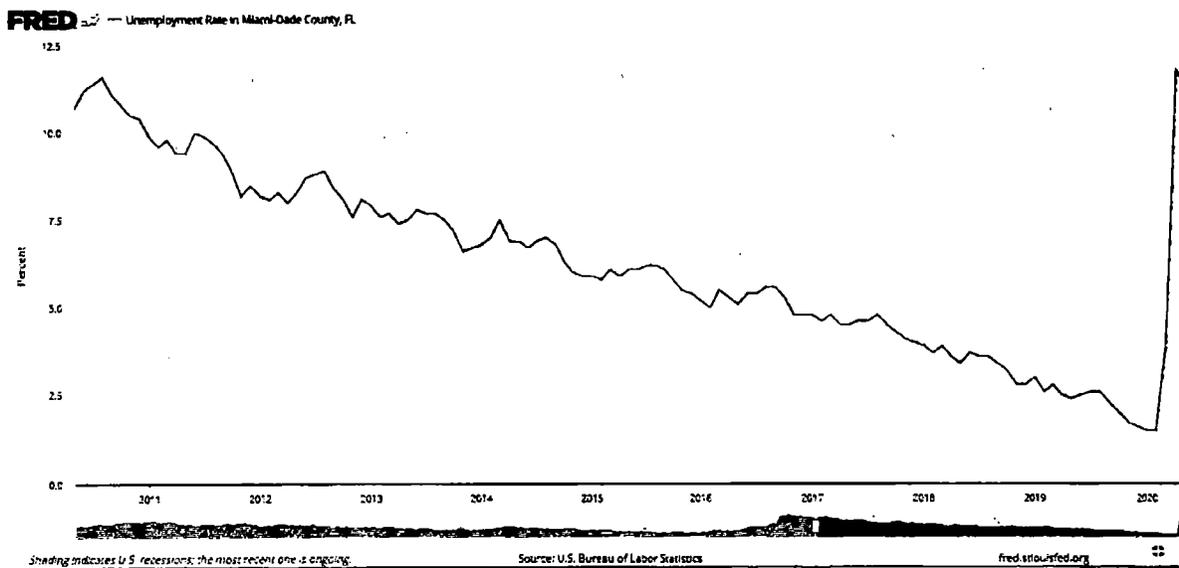
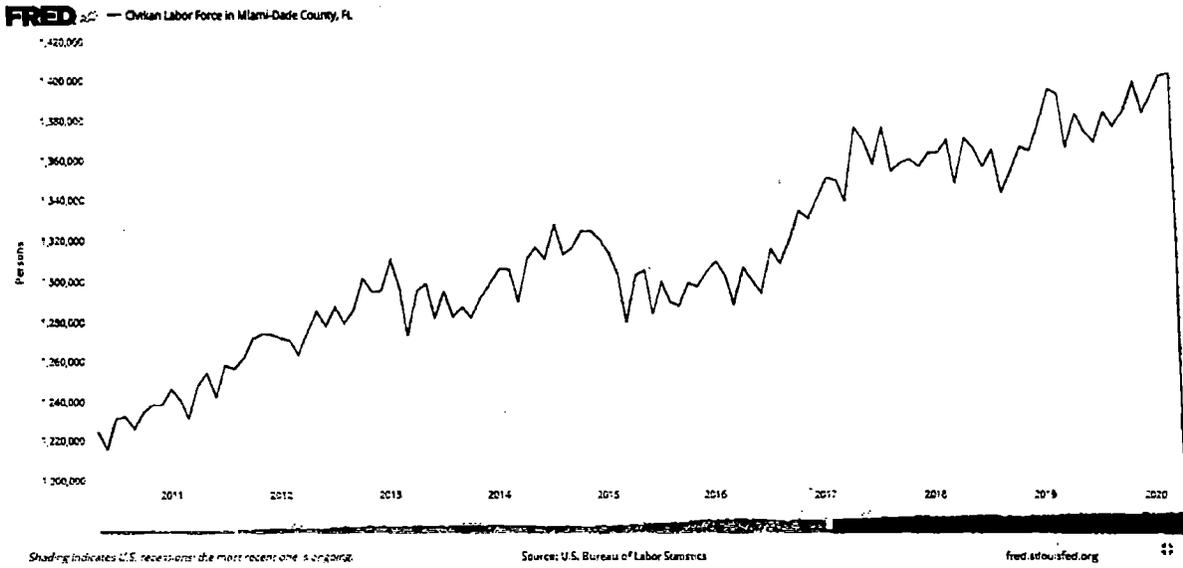


**EMPLOYMENT**



The area includes a total of 1,310,569 employees and has a 7.3% unemployment rate. The top three industries within the area are Health Care/Social Assistance, Retail Trade and Construction, which represent a combined total of 32% of the population.

### MIAMI-DADE COUNTY LABOR MARKET



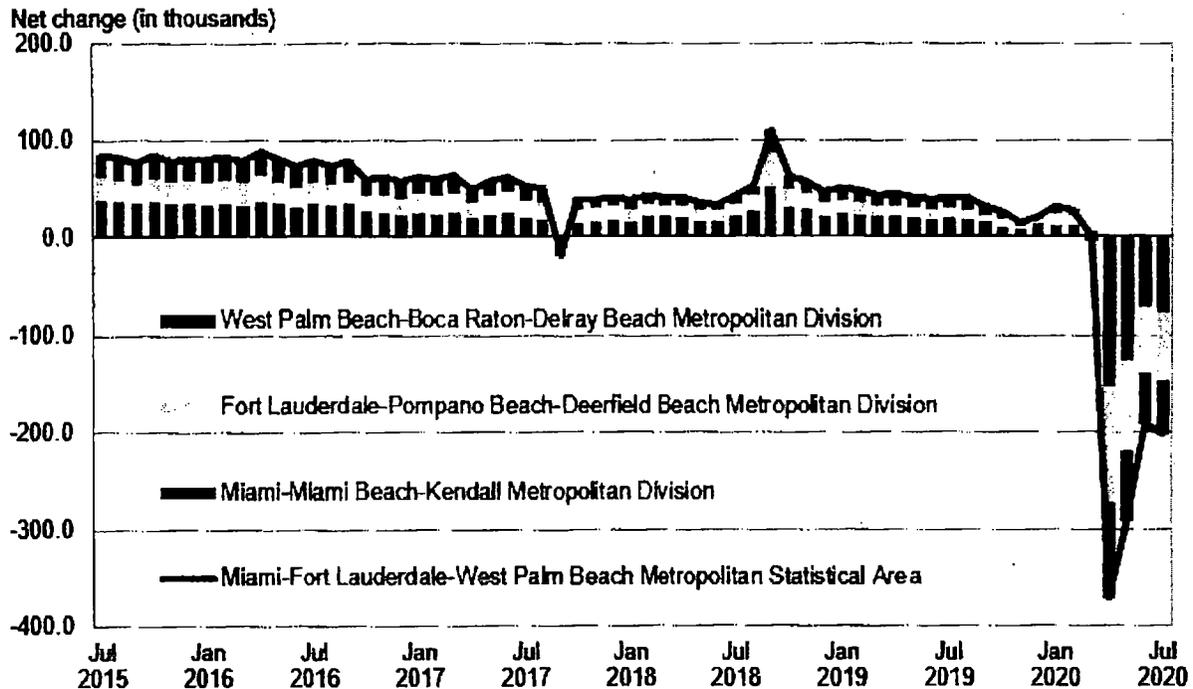
**MIAMI-FORT LAUDERDALE-WEST PALM BEACH MSA EMPLOYMENT**

**Miami Area Employment - July 2020**

**Local Rate of Employment Loss Similar to the National Average**

Total nonfarm employment for the Miami-Fort Lauderdale-West Palm Beach, FL Metropolitan Statistical Area stood at 2,476,400 in July 2020, down 202,500 over the year, the U.S. Bureau of Labor Statistics reported today. Miami’s rate of job loss, at 7.6 percent, was similar to the national decline of 7.7 percent. (See chart 1 and table 1.) Regional Commissioner Janet S. Rankin noted that Miami’s over-the-year employment loss in July was greater than the 191,000 jobs lost in June. (The Technical Note at the end of this release contains metropolitan area definitions. All data in this release are not seasonally adjusted; accordingly, over-the-year analysis is used throughout.)

**Chart 1. Total nonfarm employment, over-the-year net change in the Miami metropolitan area and its divisions, July 2015–July 2020**



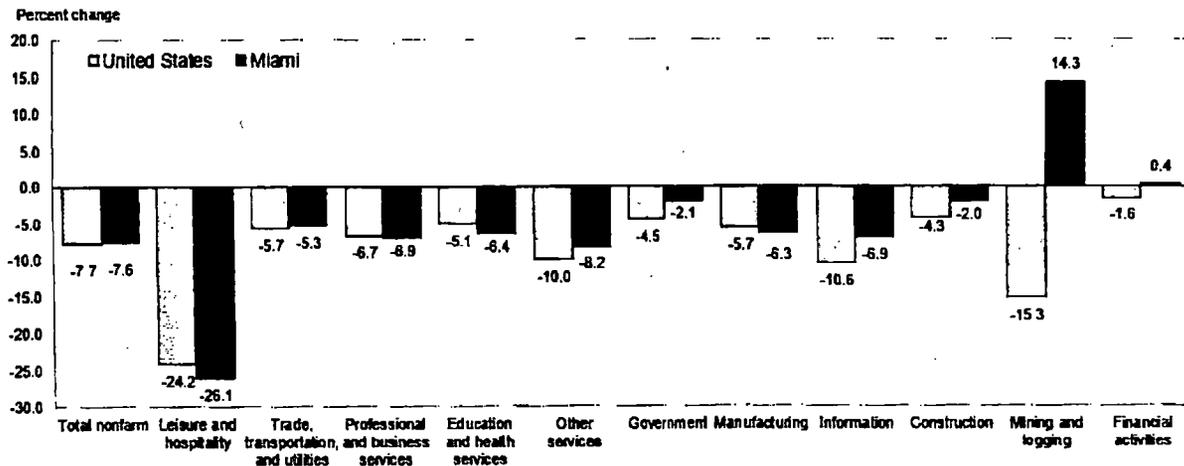
Source: U.S. Bureau of Labor Statistics.

The Miami area is made up of three metropolitan divisions—separately identifiable employment centers within the larger metropolitan area. All three divisions lost jobs over the year. Miami-Miami Beach-Kendall, the largest of the three divisions with 45 percent of the area’s employment, lost 75,900 jobs from July a year ago. The Fort Lauderdale-Pompano Beach-Deerfield Beach Division, which accounted for 32 percent of Miami area’s workforce, lost 69,300 jobs, while the West Palm Beach-Boca Raton-Delray Beach Division lost 57,300 jobs over the 12-month period.

**Industry employment**

Employment in Miami’s leisure and hospitality supersector fell sharply (-85,200) for the 12 months ending in July, the largest loss of jobs among local major industry sectors. In percentage terms, the leisure and hospitality supersector declined 26.1 percent in Miami; nationwide, the rate of job loss was 24.2 percent. (See chart 2.)

**Chart 2. Total nonfarm and selected industry supersector employment, over-the-year percent change, United States and the Miami metropolitan area, July 2020**



Source: U.S. Bureau of Labor Statistics.

The trade, transportation, and utilities sector in the Miami area lost 32,600 jobs, a 5.3-percent decline over the year. Over half of the jobs lost in this sector were in the Miami metropolitan division (-17,800). Nationally, employment in trade, transportation, and utilities was down 5.7 percent over the year.

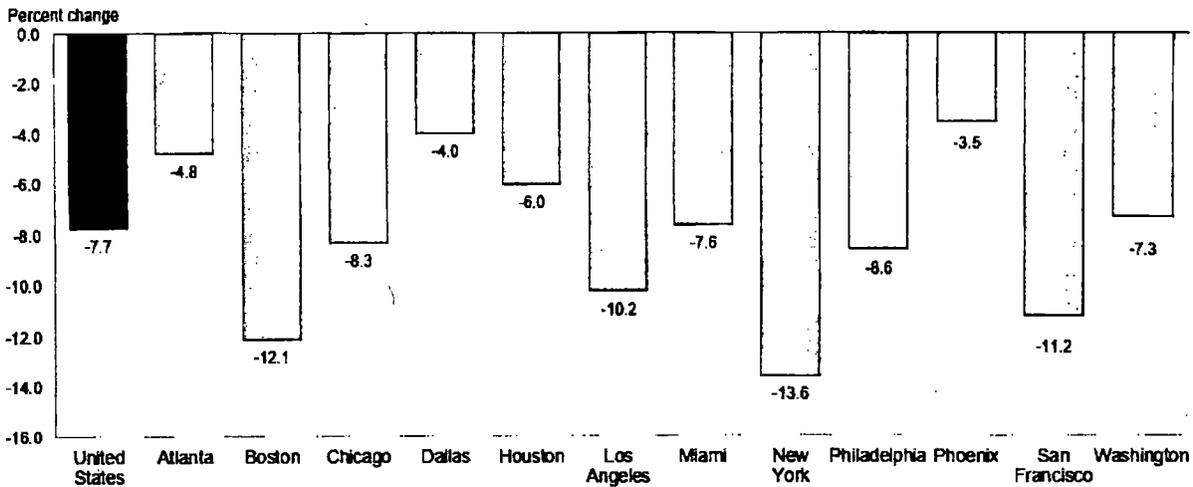
Two other supersectors in the Miami area lost over 25,000 jobs since last July. The professional and business services supersector in the local area lost 31,300 jobs, down 6.9 percent; nationwide, employment in professional and business services was down 6.7 percent. Miami’s education and health services industry lost 25,900 jobs over the year, down 6.4 percent; nationwide, employment in this supersector was down 5.1 percent.

Five other local area supersectors had job losses greater than 1,000, ranging from 9,900 in other services to 2,900 in construction.

**Twelve largest metropolitan areas**

Miami-Fort Lauderdale-West Palm Beach was 1 of the nation’s 12 largest metropolitan statistical areas in July 2020. All 12 areas had over-the-year job losses during the period, with the rates of job losses in 6 areas exceeding the national decrease of 7.7 percent. New York-Newark-Jersey City had the fastest rate of job loss (-13.6 percent), followed by Boston-Cambridge-Nashua (-12.1 percent). Phoenix-Mesa-Scottsdale (-3.5 percent) had the slowest rate of job loss. (See chart 3 and table 2.)

**Chart 3. Total nonfarm employment, over-the-year percent change, United States and 12 largest metropolitan areas, July 2020**



Source: U.S. Bureau of Labor Statistics.

New York lost the largest number of jobs over the year (-1,354,700), followed by Los Angeles-Long Beach-Anaheim (-628,000). The smallest employment loss occurred in Phoenix (-74,000). Annual losses in the remaining nine metropolitan areas ranged from 396,000 in Chicago-Naperville-Elgin to 135,000 in Atlanta-Sandy Springs-Roswell.

Over the year, leisure and hospitality lost the most jobs in all 12 metropolitan areas. New York had the largest loss of jobs for this sector (-439,800), followed by Los Angeles (-242,500). Atlanta and Phoenix had the smallest job losses for the leisure and hospitality sector (-48,300 each). The remaining eight areas had job losses ranging from 138,000 in Chicago to 60,500 in Houston-The Woodlands-Sugar Land for this industry sector.

Phoenix had over-the-year employment gains in three industry sectors: trade, transportation, and utilities (5,900); education and health services (4,300); and other services (1,000). Dallas-Fort Worth-Arlington added 10,700 jobs in financial activities. No other area had job gains over 1,000.

**Coronavirus (COVID-19) Pandemic Impact on July 2020 Establishment Survey Data**

BLS has continued to review all estimation and methodological procedures for the establishment survey, which included the review of data, estimation processes, the application of the birth-death model, and seasonal adjustment. Business births and deaths cannot be adequately captured by the establishment survey as they occur. Therefore, the Current Employment Statistics (CES) program uses a model to account for the relatively stable net employment change generated by business births and deaths. Due to the impact of COVID-19, the relationship between business births and deaths is no longer stable. Typically, reports with zero employment are not included in estimation. For the June final and July preliminary estimates, CES included a portion of these reports in the estimates and made modifications to the birth-death model. In addition for both months, the establishment survey included a portion of the reports that returned to reporting

positive employment from reporting zero employment. For more information, see [www.bls.gov/web/empsit/cesbd.htm](http://www.bls.gov/web/empsit/cesbd.htm).

In the establishment survey, workers who are paid by their employer for all or any part of the pay period including the 12th of the month are counted as employed, even if they were not actually at their jobs. Workers who are temporarily or permanently absent from their jobs and are not being paid are not counted as employed, even if they are continuing to receive benefits. The length of the reference period does vary across the respondents in the establishment survey; one-third of businesses have a weekly pay period, slightly over 40 percent a bi-weekly, about 20 percent semi-monthly, and a small amount monthly.

## MIAMI-DADE COUNTY TOP PRIVATE EMPLOYERS

| COMPANY   | NO. OF EMPLOYEES | INDUSTRY                |
|---|------------------|-------------------------|
| Baptist Health South Florida                          | 11,353           | Health Care             |
| University of Miami                                   | 12,818           | Education               |
| American Airlines                                     | 11,031           | Aviation                |
| Florida Power & Light<br>Company                      | 3,011            | Utility                 |
| Carnival Cruise Lines                                 | 3,500            | Hospitality and Tourism |
| Mount Sinai Medical Center                            | 3,321            | Health Care             |
| Miami Childrens Hospital                              | 3,500            | Health Care             |
| Royal Caribbean<br>International/Celebrity<br>Cruises | 2,989            | Hospitality and Tourism |
| Bank of America Merrill Lynch                         | 2,000            | Banking and Finance     |
| Wells Fargo   | 2,050            | Banking and Finance     |
| LATAM Airlines/Lan Cargo                              | 900              | Aviation                |
| AAR Corp.- Aircraft Services                          | 1,160            | Aviation                |
| N.C.L. Corporation                                    | 1,049            | Hospitality and Tourism |
| Federal Express                                       | 1,161            | Trade and Logistics     |
| Eulen America   | 1,205            | Professional Services   |
| Ryder Integrated Logistics                            | 1,106            | Trade and Logistics     |
| Miami Herald Publishing Co.                           | 635              | Publishing              |
| CitiBank  | 1,000            | Banking and Finance     |
| Fountainbleau Miami Beach                             | 1,987            | Hospitality & Tourism   |

Source: The Beacon Council

**MIAMI-DADE COUNTY TOP PUBLIC EMPLOYERS**

| COMPANY                          | NO. OF EMPLOYEES | INDUSTRY            |
|----------------------------------|------------------|---------------------|
| Miami-Dade County Public Schools | 33,477           | Education           |
| Miami-Dade County                | 25,502           | Local Government    |
| Federal Government               | 19,200           | National Government |
| Florida State Government         | 17,100           | State Government    |
| Jackson Health System            | 9,797            | Health Care         |
| Florida International University | 3,534            | Education           |
| Miami Dade College               | 2,390            | Education           |
| City of Miami                    | 3,997            | Local Government    |
| Homestead AFB                    | 3,250            | Military            |
| Miami VA Healthcare System       | 2,500            | Health Care         |
| City of Miami Beach              | 1,971            | Local Government    |
| U.S. Southern Command            | 1,600            | Military            |
| City of Hialeah                  | 1,578            | Local Government    |
| City of North Miami Beach        | 420              | Local Government    |
| City of Coral Gables             | 730              | Local Government    |

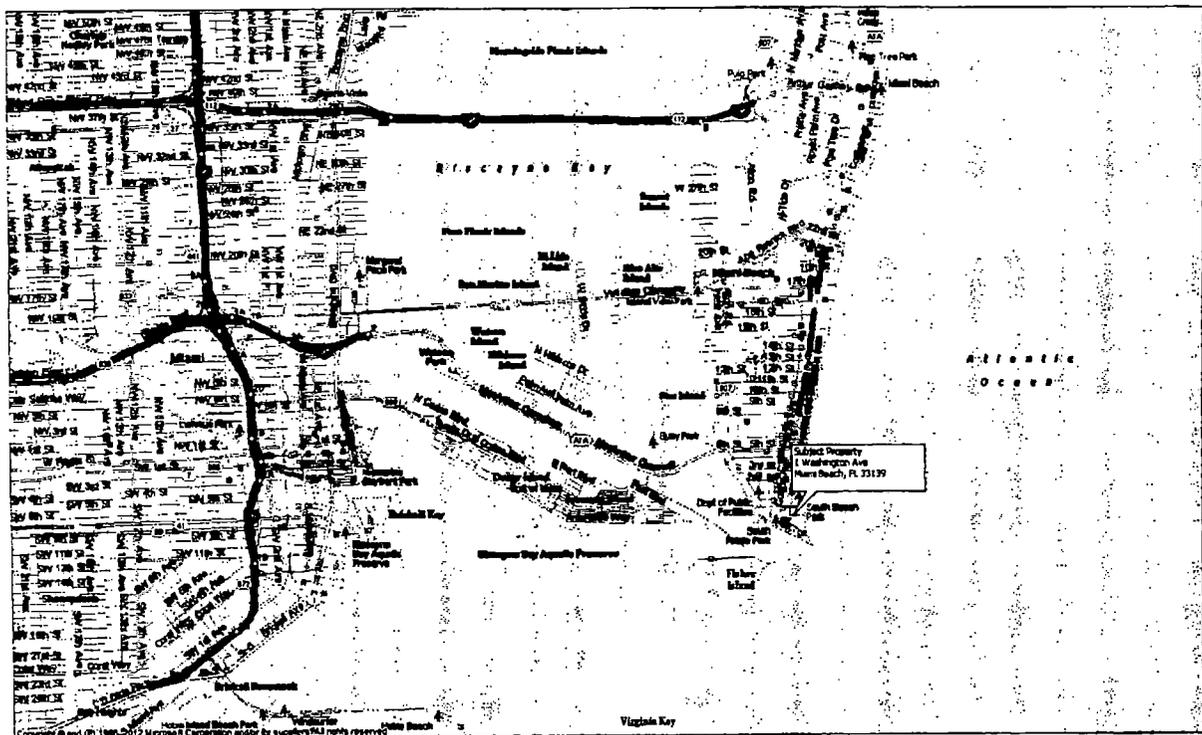
## **OPENING DAY**

Growth in nonresidential construction jobs will also be robust because groundbreakings on major projects have become routine in MIA. Phase one of the MiamiCentral train station, which will eventually connect a new intercity train line with local transit options, debuted in May 2019. The \$2 billion Miami Worldcenter is transforming 27 acres of parking lots into a vast collection of residential, retail, office and hotel buildings. Over the next few years, the "tallest building in Florida" distinction will pass among multiple skyscrapers in downtown Miami. And county commissioners recently gave final approval to a \$4 billion mega-mall that will be America's largest shopping complex if it is completed as planned.

## **CONCLUSION**

The economy in Miami-Dade County will continue to experience an increase in population, an increase in household income, and an increase in household values. In addition, MIA's international character and its high-skilled, bilingual workforce will help it exceed the U.S. in income growth over the long term.

# Neighborhood Analysis



## LOCATION

The subject property is located along the south side of Inlet Boulevard and the north side of Government Cut in the South of 5<sup>th</sup> neighborhood on South Beach in the City of Miami Beach, Miami-Dade County, Florida 33139. The City of Miami Beach is a barrier island approximately one mile wide, ten miles long and extends in a north-south direction along the eastern seaboard parallel to mainland Miami-Dade County between Biscayne Bay and the Atlantic Ocean. The subject is located approximately 5 miles northeast of the Miami Central Business District (CBD).

## BOUNDARIES

The subject property is located in the "South Beach" area of Miami Beach, which is bounded by Arthur Godfrey Road to the north, Biscayne Bay to the west, the Atlantic Ocean to the east and Government Cut to the south. The neighborhood boundaries may be generally described as follows:

- North: Arthur Godfrey Road
- South: Atlantic Ocean/Government Cut
- East: Atlantic Ocean/beach
- West: Biscayne Bay

## LAND USE

Land uses within the subject neighborhood consist of a wide variety of commercial and residential developments. Residential uses are largely concentrated west of Washington Avenue, with retail and office uses clustered along the Alton Road, 5th Street and Dade Boulevard/Venetian Causeway corridors, as well as the pedestrian-only areas of Lincoln Road Mall. Hotels, condominiums, restaurants and retail are primarily concentrated along Collins Avenue and Ocean Drive with additional retail uses, nightclubs and restaurants on Washington Avenue. Residential uses in the neighborhood are primarily multifamily in design, with smaller buildings housing from eight to 80 units in one- to eight-story buildings. The exception to this situation is found along the Atlantic Ocean/beach and Biscayne Bay shorelines, where several large-scale multifamily residential projects are located, including rental apartments and condominiums.

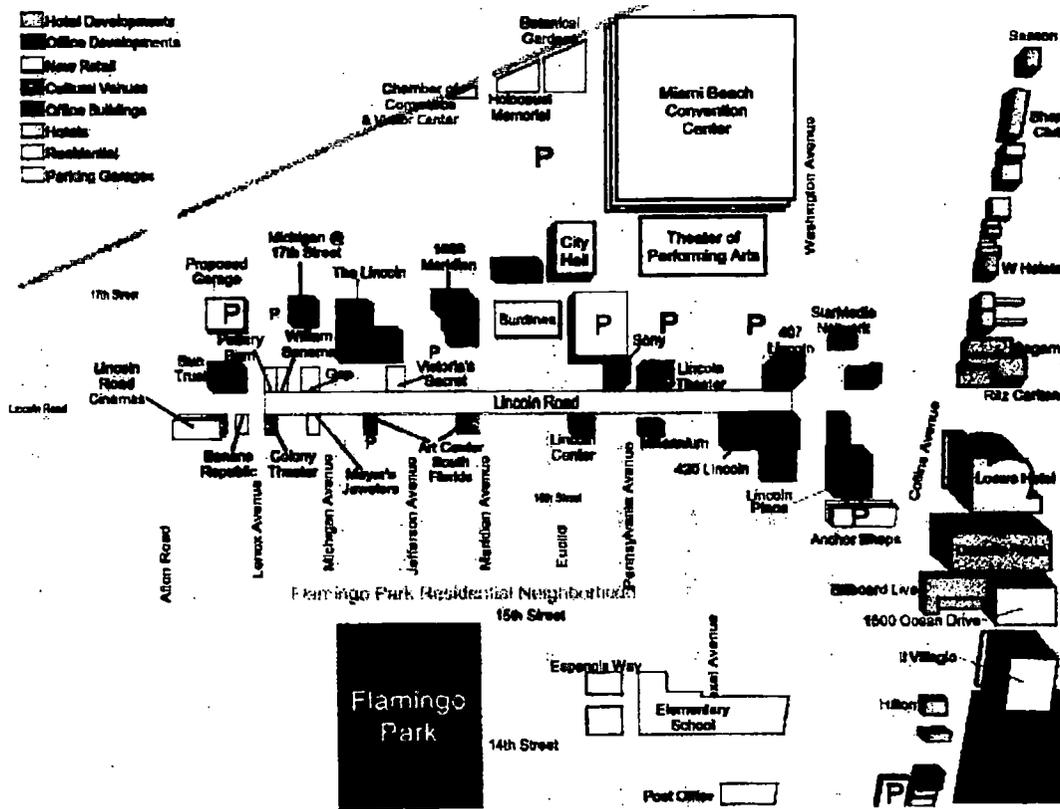
Land uses in the immediate vicinity of the subject include high density, residential condominium towers including the Murano Grande at Portofino (2003), Icon South Beach (2005), The Yacht Club (1999) and Murano Portofino (2002), which line the west side of Alton Road and front Biscayne Bay. Across the street from the subject property on the east side of Alton Road is the South Pointe Elementary School, several blocks of low-to-mid-rise residential apartment, condominium and hotel properties than Ocean Drive and the Atlantic Ocean front with beach front resort hotels.

The subject location is also identified as the South of Fifth submarket (a.k.a. SoFi) and is an affluent neighborhood in South Beach that spans from South Pointe Park north to fifth street and east-west from Biscayne Bay to the Atlantic Ocean.

Several notable features of the neighborhood include the South Pointe Park, a 17-acre park and bay front promenade that features a play area, open green space and walkways for outdoor exercising and direct access to the beach. There are also several well-known restaurants including the historic Smith & Wollensky, Joe's Stone Crab, Prime 112, Prime Italian and Milos.

The South of Fifth residential condominium tower is well known for luxury with Glass, Portofino Tower, Apogee South Beach, Icon, Murano Grande, Murano at Portofino, Continuum Towers, Ocean House, South Pointe Tower and the Yacht Club at Portofino.

The Miami Beach market north of 5<sup>th</sup> Street is anchored by the Lincoln Road Mall. The Lincoln Road pedestrian mall runs east-west from Collins Avenue to Alton Road between 16<sup>th</sup> and 17<sup>th</sup> Streets with storefronts on Lincoln Road and to a lesser extent along the side streets.



Since the capital improvement project in 1996, Lincoln Road has experienced substantial changes in tenant mix, including more restaurants and sidewalk cafes, and a shift to traditional retail shopping. At the west end of the mall, Regal Cinema opened an 18-screen stadium style movie theater in 1999. This development was strongly supported by the local municipality and has proved vital in attracting national retailers, such as Banana Republic, Pottery Barn, Williams-Sonoma, Bebe, Swatch, Victoria's Secret's, Ann Taylor Loft, Sunglass Hut, Anthropologie, Books & Books, Chicos, Foot Locker, I. Strada, Morgan Miller, Payless ShoeSource, Quicksilver, White House/Black Market and Express to the pedestrian promenade. The addition of the Regal Cinemas solidified the Lincoln Road redevelopment and began to make it very attractive to the national retailers and high-end restaurateurs. While Lincoln Road is in and of itself a destination location, the cinemas also serve to attract year-round Miami-Dade residents to Lincoln Road. The Regal Cinemas is one of the most heavily patronized cinemas in South Florida.

Anchoring the east end of Lincoln Road Mall was the former New World Symphony which was housed within the subject property, also known as the Lincoln Theatre building. Established in 1987 under the artistic direction of Michael Tilson Thomas, the New World Symphony provides an instructional program to prepare graduates of distinguished music programs for leadership positions in orchestras and ensembles around the world. The New World Symphony recently relocated to 500 17th Street, just north of the subject's Lincoln Theatre location into a Frank Gehry designed concert hall and a 7,000 square foot projection wall on which concerts, video art

and films are shown free-of-charge to audiences in Soundscape, a 2.5-acre public park, designed by Dutch architectural firm West 8.

Other primary influences in close proximity to the subject also include the Miami Beach Convention Center which provides about one million square feet of exhibition space and meeting hall facilities and is rated as one of the top convention centers in the United States; the Jackie Gleason Theater of the Performing Arts at the intersection of Washington Avenue and 17<sup>th</sup> Street; Alton Road, a commercially oriented, north-south primary arterial street; and the aforementioned Lincoln Road Pedestrian Mall which provides retail shops, restaurants, cafés and a movie theater complex located at Lincoln Road and Alton Road, just southwest of the subject property.

To the east is Ocean Drive, which runs parallel to the Atlantic Ocean and South Beach and is one of the area's premier attractions. The pristine beaches and warm waters of the Atlantic Ocean are to the east side of Ocean Drive, while a host of al fresco dining establishments and some of Florida's most luxurious, high-end hotels such as the Ritz-Carlton, The Delano, The Setai, The Shore Club and The Tides.

#### **ACCESS**

Overall, access to and throughout the subject neighborhood is considered good. The major east-west thoroughfares providing direct access to the subject area from the Miami mainland include the Venetian Causeway that becomes 17<sup>th</sup> Street, located immediately north of the subject; 5th Street/MacArthur Causeway (US Highway No. 41/State Road A1A), located roughly two miles south of the subject property; and Arthur Godfrey/Julia Tuttle Causeway (I-195 located approximately two miles north of the subject property). The Miami Tunnel opened in 2014 to alleviate congestion from PortMiami along the MacArthur Causeway. These arteries connect South Beach to mainland Miami to the west, as well as intersect with the primary north-south arteries of Alton Road, Collins Avenue, Washington Avenue and Ocean Drive.

Interstate 95 is the major north-south expressway providing direct access to Miami-Dade County, as well as points north along the eastern seaboard. Biscayne Boulevard (U.S. Highway No. 1) is a well-traveled artery providing north-south access from S.E. 3rd street in downtown Miami to the Broward County line to the north. Direct access to the subject property is provided via Lenox Avenue which acts as the subject's western boundary line and is a two-way, two-lane, north-south city street. The immediate subject area has average access via the local artery/highway network, and good access to the area business and commercial community.

In addition to the existing access points, there is a proposal to connect Miami Beach with downtown Miami via a monorail line. The elevated monorail would include three (3) stations and run along the south side of the MacArthur Causeway. One station would be built on the Miami side of the line and close to where the causeway begins, while the other two stations would be on Miami Beach near the end of the causeway, and the other at the intersection of Washington Avenue and 5th Street.

**DEMOGRAPHICS**

Selected neighborhood demographics in 1-, 3- and 5-mile radius from the subject are shown in the following table:

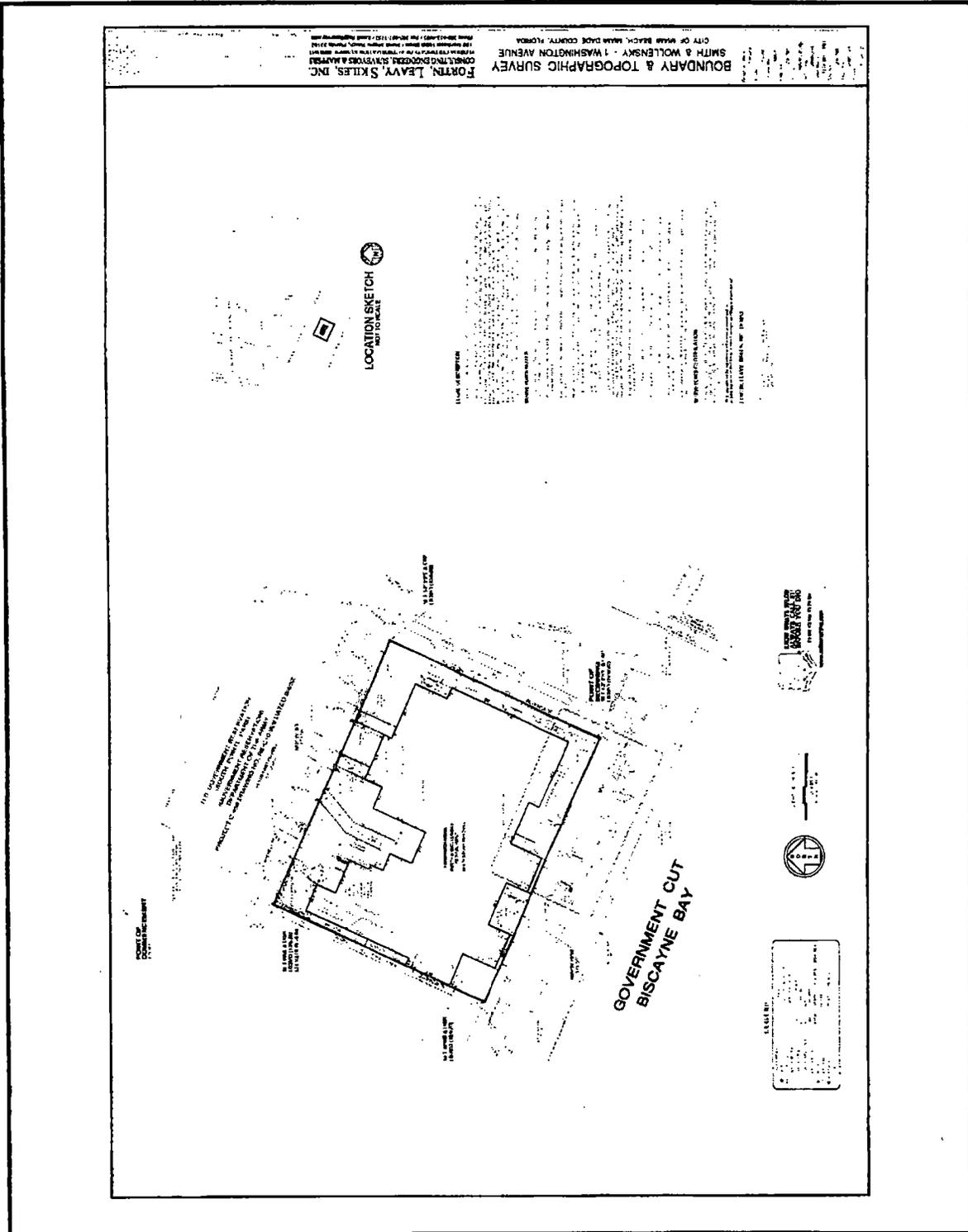
| <b>SELECTED NEIGHBORHOOD DEMOGRAPHICS</b>    |                  |                  |                  |                        |            |                      |
|--|------------------|------------------|------------------|------------------------|------------|----------------------|
| 1 Washington Avenue<br>Miami Beach, FL 33139 | 1 Mile<br>Radius | 3 Mile<br>Radius | 5 Mile<br>Radius | 33139 - Miami<br>Beach | Florida    | Miami-Dade<br>County |
| <b>Population</b>                            |                  |                  |                  |                        |            |                      |
| 2025 Total Population                        | 13,987           | 48,505           | 227,763          | 41,612                 | 23,056,641 | 2,894,298            |
| 2020 Total Population                        | 13,338           | 46,935           | 203,380          | 40,156                 | 21,587,015 | 2,759,670            |
| 2010 Total Population                        | 12,533           | 44,736           | 160,305          | 38,179                 | 18,801,310 | 2,496,435            |
| 2000 Total Population                        | 11,513           | 44,099           | 129,967          | 37,950                 | 15,982,378 | 30,982               |
| Annual Growth 2020 - 2025                    | 0.95%            | 0.66%            | 2.29%            | 0.71%                  | 1.33%      | 0.96%                |
| Annual Growth 2010 - 2020                    | 0.62%            | 0.48%            | 2.41%            | 0.51%                  | 1.39%      | 1.01%                |
| Annual Growth 2000 - 2010                    | 0.85%            | 0.14%            | 2.12%            | 0.06%                  | 1.64%      | N/A                  |
| <b>Households</b>                            |                  |                  |                  |                        |            |                      |
| 2025 Total Households                        | 8,200            | 28,133           | 116,300          | 24,766                 | 8,989,496  | 995,690              |
| 2020 Total Households                        | 7,850            | 27,369           | 103,966          | 24,030                 | 8,438,100  | 951,252              |
| 2010 Total Households                        | 7,546            | 26,510           | 81,510           | 23,221                 | 7,420,802  | 867,352              |
| 2000 Total Households                        | 6,911            | 26,060           | 63,406           | 23,125                 | 6,337,929  | 776,774              |
| Annual Growth 2020 - 2025                    | 0.88%            | 0.55%            | 2.27%            | 0.61%                  | 1.27%      | 0.92%                |
| Annual Growth 2010 - 2020                    | 0.40%            | 0.32%            | 2.46%            | 0.34%                  | 1.29%      | 0.93%                |
| Annual Growth 2000 - 2010                    | 0.88%            | 0.17%            | 2.54%            | 0.04%                  | 1.59%      | 1.11%                |
| <b>Income</b>                                |                  |                  |                  |                        |            |                      |
| 2020 Median Household Income                 | \$49,850         | \$59,098         | \$60,615         | \$58,146               | \$56,362   | \$53,726             |
| 2020 Average Household Income                | \$98,530         | \$99,485         | \$97,500         | \$98,025               | \$81,549   | \$80,823             |
| 2020 Per Capita Income                       | \$58,245         | \$58,152         | \$50,300         | \$58,754               | \$31,970   | \$27,939             |
| 2020 Pop 25+ College Graduates               | 5,903            | 21,756           | 82,867           | 18,600                 | 4,839,094  | 604,612              |
| Age 25+ Percent College Graduates - 2020     | 51.6%            | 55.0%            | 52.4%            | 54.5%                  | 31.0%      | 30.8%                |

Source: ESRI

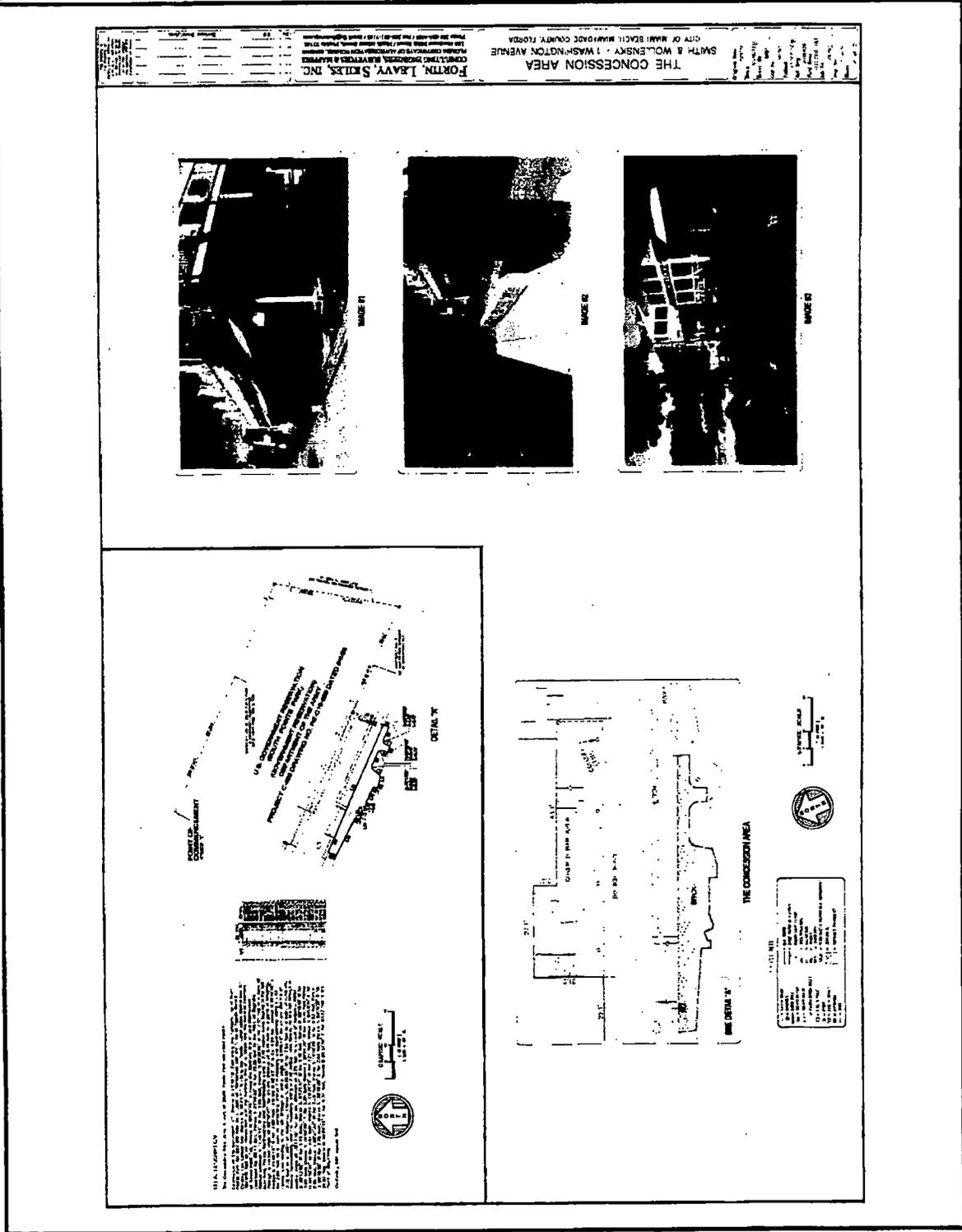
**CONCLUSION**

The neighborhood is expected to have growth in population and households through high density, in-fill redevelopment opportunities and reflects a middle-to-upper-middle-income demographic profile. The outlook for the neighborhood is for favorable performance over the foreseeable future. Many neighborhood improvements are new and in good-to-excellent condition. Access to the neighborhood is good and utility services are adequate. Supporting commercial uses are good and surrounding land uses are compatible. Overall, it is our opinion that the subject neighborhood will continue to remain a very desirable area, with continued potential for appreciation. In addition, the Miami Beach submarket is a destination resort community and international "hot spot" that continues to flourish over the long term despite adverse macro-economic cycles.

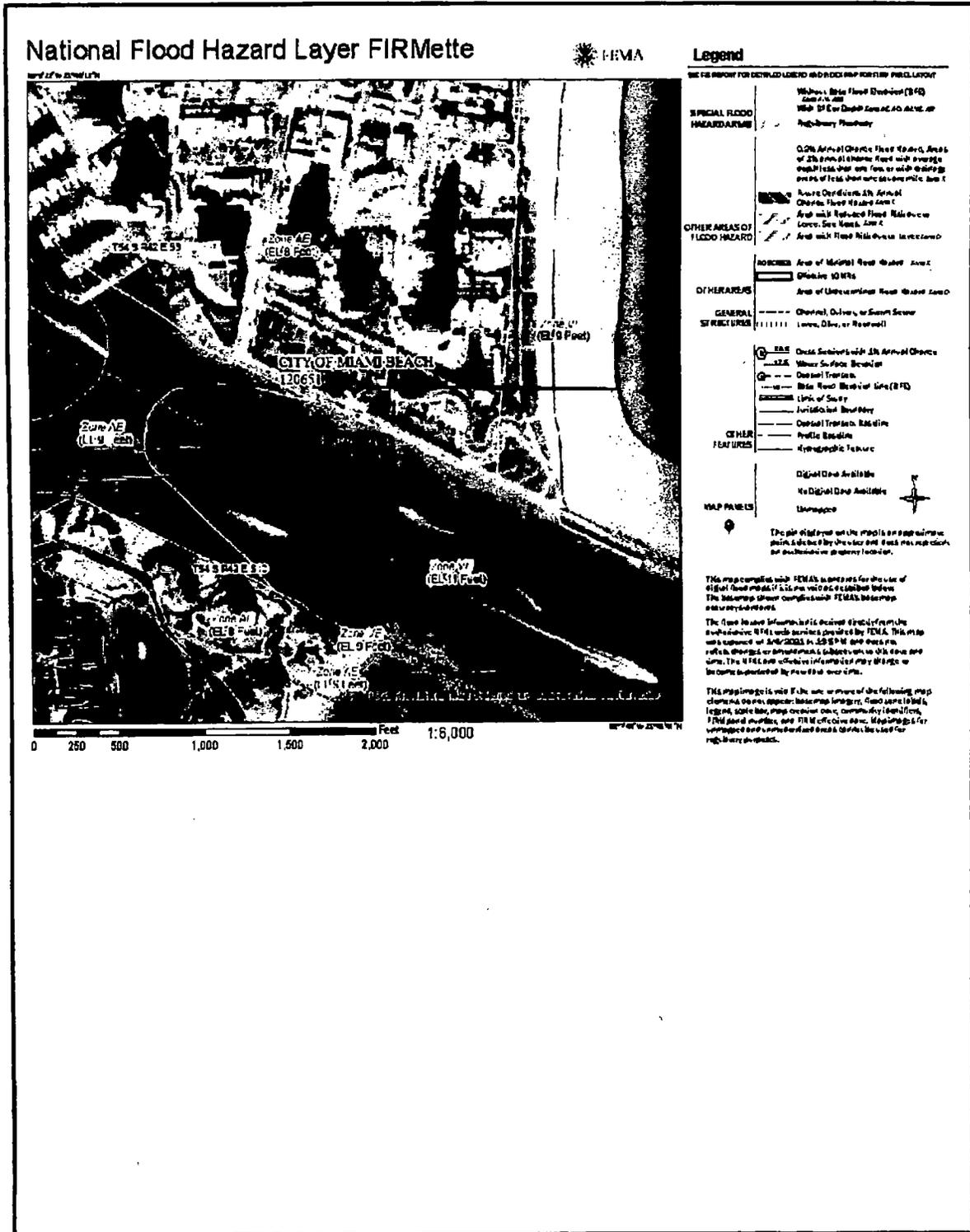
**SURVEY EXHIBIT - RESTAURANT SITE**



**SURVEY EXHIBIT – CONCESSION AREA**



FLOOD PLAIN MAP



# Site Analysis

The following chart summarizes the salient characteristics of the subject site.

| <b>SITE SUMMARY AND ANALYSIS</b>               |  |                     |                |
|--|--|---------------------|----------------|
| <b>Physical Description</b>                    |  |                     |                |
| Gross Site Area - Restaurant & Concession Area | 0.56 Acres   |                     | 24,591 Sq. Ft. |
| Net Site Area - Restaurant                     | 0.55 Acres   |                     | 24,010 Sq. Ft. |
| Primary Road Frontage                          | Washington Avenue/Inlet Boulevard  |                     | 172 Feet       |
| Secondary Road Frontage                        | South Pointe Park  |                     | 172 Feet       |
| Additional Frontage                            | Government Cut - Biscayne Bay  |                     | 172 Feet       |
| Surplus Land Area - Concession Area            | 0.01 Acres   |                     | 581 Sq. Ft.    |
| Zoning District                                | GU, Government Use District  |                     |                |
| Flood Map Panel No. & Date                     | 12086C0319L  |                     | 11-Sep-09      |
| Flood Zone                                     | Zone AE  |                     |                |
| Adjacent Land Uses                             | South Pointe Park, deepwater inlet, luxury mid-to-high-rise residential condominium towers |                     |                |
| <b>Comparative Analysis</b>                    |  | <b>Rating</b>       |                |
| Visibility                                     | Setback from Washington Avenue and excellent from Government Cut                           |                     |                |
| Functional Utility                             | Good   |                     |                |
| Traffic Volume                                 | Neighborhood, commuter & heavy seasonal traffic  |                     |                |
| Adequacy of Utilities                          | Good   |                     |                |
| Landscaping                                    | Good   |                     |                |
| Drainage                                       | Assumed adequate   |                     |                |
| <b>Utilities</b>                               | <b>Provider</b>  | <b>Availability</b> |                |
| Water  | City of Miami Beach  | Yes                 |                |
| Sewer  | City of Miami Beach  | Yes                 |                |
| Natural Gas                                    | Contract service   | Yes                 |                |
| Electricity                                    | FPL  | Yes                 |                |
| Telephone                                      | AT&T land lines  | Yes                 |                |
| Mass Transit                                   | Miami-Dade Transit (MDT) Metrobus service & Miami Beach Trolley                            | Yes                 |                |
| <b>Other</b>                                   | <b>Yes</b>   | <b>No</b>           | <b>Unknown</b> |
| Detrimental Easements                          |  |                     | X              |
| Encroachments                                  |  |                     | X              |
| Deed Restrictions                              |  |                     | X              |
| Reciprocal Parking Rights                      | See Comments   |                     |                |
| Various sources compiled by CBRE               |  |                     |                |

## SITE AREA

The subject site is reported to be 0.55-acres plus a 0.01-acre concession area within a 16.5-acre public park. The original contract lease & addendum agreements report a site area of 16,000-SF, while a more recent boundary survey, dated October 6, 2020, represents a site area of 24,010-SF plus 581-SF for the concession area.

## **INGRESS/EGRESS**

Ingress and egress is available to the site via Washington Avenue to Inlet Boulevard and the South Pointe Park surface parking lot drive.

Street improvements include asphalt pavement, concrete sidewalks & gutters, stormwater drainage, and street lighting.

Government Cut improvements include a public bay walk/linear park, concrete, pavers and large stone boulders on bank.

## **RECIPROCAL PARKING**

The subject site is supported by the South Pointe Park municipal, metered parking lot, of which 105-spaces are allocated to the subject property plus an additional 32 spaces subject to a parking impact fee.

## **EASEMENTS AND ENCROACHMENTS**

The Bay walk is a system of public pedestrian pathways along the Biscayne Bay shoreline that spans from 5th Street to Lincoln Road, linking residential and commercial areas, public street-end parks and other existing pedestrian and bicycle facilities including beach walk. The Bay walk system is part of the larger Atlantic Greenway Network as well as a component of the Blueways Master Plan and the Bicycle Pedestrian Master Plan.

There are no other known easements or encroachments impacting the site that are considered to affect the marketability or highest and best use. It is recommended that the client/reader obtain a current title policy outlining all easements and encroachments on the property, if any, prior to making a business decision.

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

There are no other known covenants, conditions or restrictions impacting the site that are considered to affect the marketability or highest and best use. It is recommended that the client/reader obtain a copy of the current covenants, conditions and restrictions, if any, prior to making a business decision.

## **ENVIRONMENTAL ISSUES**

According to the Environmental Assessment prepared by EMG, dated May 17, 2017, there was no evidence of recognized environmental conditions (RECs), historical recognized environmental conditions (HRECs), controlled recognized environmental conditions (CRECs), significant data gaps or significant business environmental risks in connection with the property. However, the assessment did reveal evidence of a Historical Recognized Environmental Condition and a potential Business Environmental Risk in connection with the subject property and the entire report should be referenced and considered in its entirety.

The existence of hazardous materials or underground storage tanks may affect the value of the property. For this appraisal, CBRE, Inc. has specifically assumed that the property is not affected by any hazardous materials that may be present on or near the property.

### **ADJACENT PROPERTIES**

The adjacent land uses are summarized as follows:

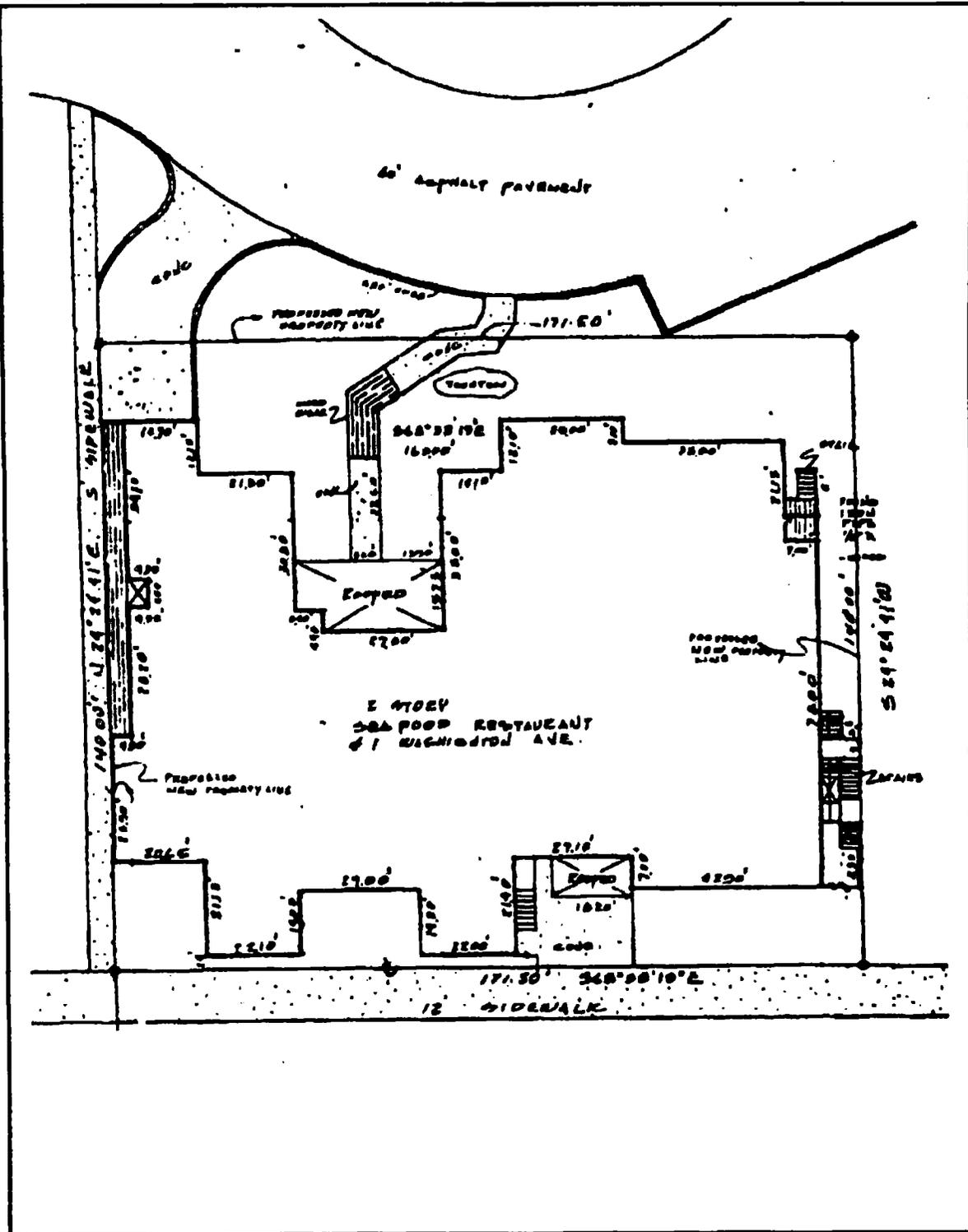
- North: South Pointe Park, Inlet Boulevard, and the Portofino and Continuum residential condominium communities
- South: Government Cut and Fisher Island
- East: South Pointe Park and Atlantic Ocean
- West: South Pointe Park, the Apogee residential condominium, the Miami Beach Marina and Biscayne Bay

The adjacent properties are reflective of a high quality residential and recreational lifestyle.

### **CONCLUSION**

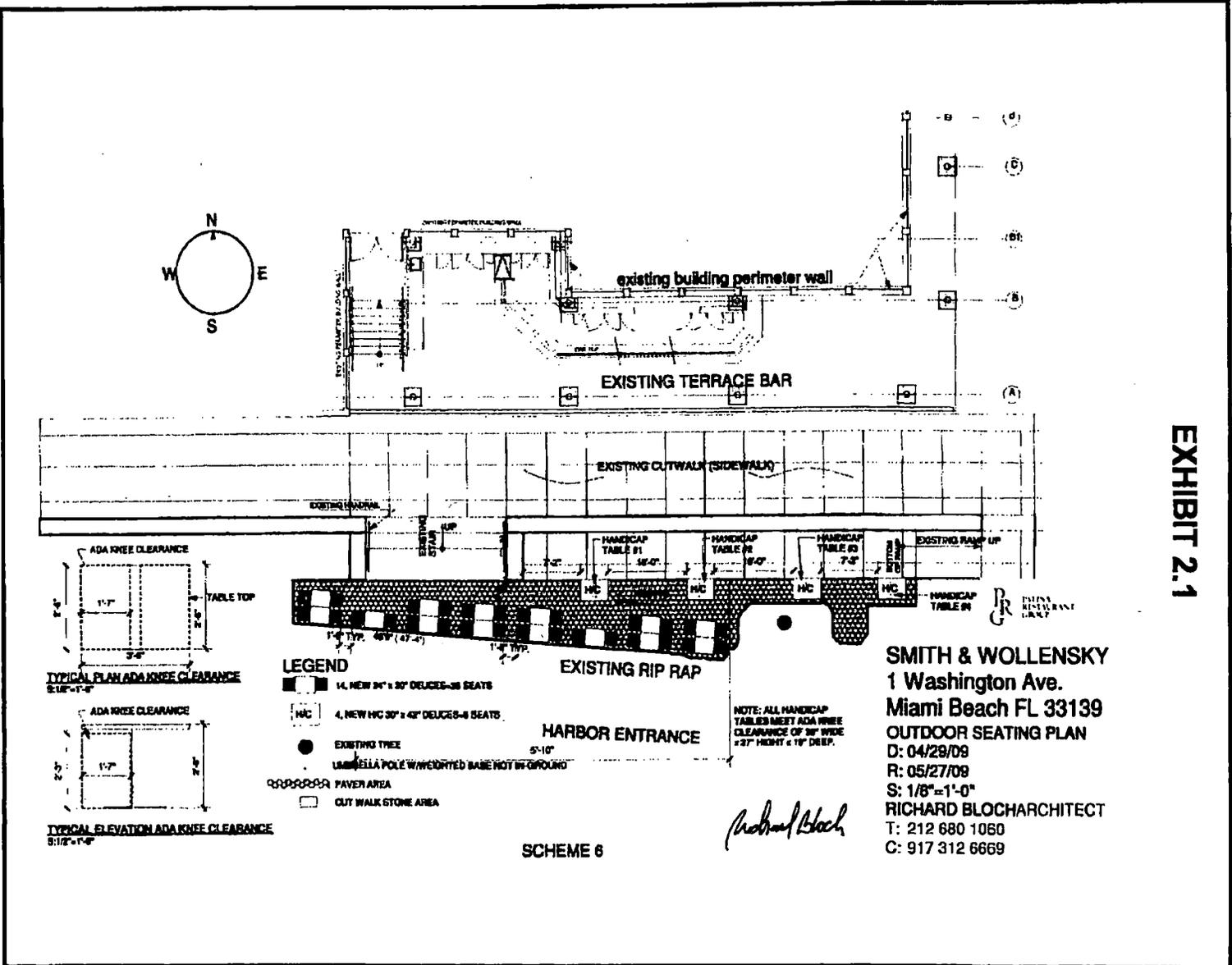
The site is strategically located along Government Cut, a deep water, ocean access inlet that connects Biscayne Bay to the Atlantic Ocean, as well as, being located within the affluent, South of 5<sup>th</sup>, high density residential community in South Beach.

BUILDING EXHIBIT



CONCESSION AREA EXHIBIT

EXHIBIT 2.1



SMITH & WOLLENSKY  
 1 Washington Ave.  
 Miami Beach FL 33139  
 OUTDOOR SEATING PLAN  
 D: 04/29/09  
 R: 05/27/09  
 S: 1/8"=1'-0"  
 RICHARD BLOCH ARCHITECT  
 T: 212 680 1080  
 C: 917 312 6669

SCHEME 6

## Improvements Analysis

The following chart shows a summary of the improvements.

| <b>IMPROVEMENTS SUMMARY AND ANALYSIS</b>     |                  |                  |                   |
|--|------------------|------------------|-------------------|
| Property Type                                | Retail           | (Restaurant)     |                   |
| Number of Buildings                          | 1                |                  |                   |
| Number of Stories                            | 2                |                  |                   |
| Gross Leasable Area                          | 20,851 SF        |                  |                   |
| Seating Capacity - Indoor                    | 268 Seats        |                  |                   |
| Seating Capacity - Outdoor Patio & Deck      | 154 Seats        |                  |                   |
| Seating Capacity - Concession Area - Outdoor | <u>36 Seats</u>  |                  |                   |
| Seating Capacity - Total Indoor/Outdoor      | 458 Seats        |                  |                   |
| Floor Area Ratio (FAR)                       | 0.87             |                  |                   |
| Land-to-Building Ratio                       | 1.15 : 1         |                  |                   |
| Parking Improvements                         | Surface          |                  |                   |
| Parking Spaces:                              | 105              |                  |                   |
| Parking Ratio (per 1,000 SF GLA )            | 5.04             |                  |                   |
| Component                                    | Location         | Seating Capacity | Standing Capacity |
| Indoor Seating                               | 1st & 2nd Floors | 268              | 350               |
| Outdoor Patio                                | 1st Floor        | 54               | 54                |
| Outdoor Patio Deck                           | 2nd Floor        | 100              | 150               |
| Concession Area                              | Ground Level     | 36               | 36                |
| <b>Total</b>                                 |                  | <b>458</b>       | <b>590</b>        |

Source: Various sources compiled by CBRE

The subject is a 2-story, 20,851-square foot restaurant property constructed in 1987, renovated in 1997 & 2017 and are situated on a 0.55-acre waterfront site. The subject is presently tenant occupied by Smith & Wollensky with 268-indoor seats, 154-outdoor seats plus 36-outdoor seats on 581-SF along the bay walk that is operated via a concession agreement.

The subject property is currently leased to the NY Restaurant Group who operates the Smith & Wollensky restaurant as a successor to One Washington Avenue Corp. with 59-months remaining on the last 10-year renewal option lease term. The original lease dates back to February 1985 with an initial 20-year term plus two, 10-year renewal options that will expire on November 6, 2025.

According to interviews with the general manager, several capital improvements have been completed in the past 1-to-3 years including a new copper seam roof, roof mounted HVAC system, grease traps and added underground tanks. In addition, in January 2017, the tenant/operator completed an extensive renovation, including upgraded and modernized dining and private event spaces, an expanded indoor bar and lounge and a new Overlook Deck, i.e. an uncovered 2<sup>nd</sup> story terrace that features unobstructed views of South Pointe Park, Government Cut, Biscayne Bay , Fisher Island and the Atlantic Ocean plus a full bar, lounge and table seating.

The first floor main bar has been improved with marble-top bar with new barstools, dining chairs and other furnishings including new textures and colors, floors, wall coverings and lighting have been refinished and upgraded.

**ECONOMIC AGE AND LIFE**

CBRE, Inc.'s estimate of the subject improvements effective age and remaining economic life is depicted in the following chart:

| <b>ECONOMIC AGE AND LIFE</b>            |          |
|---|----------|
| Actual Age                              | 33 Years |
| Effective Age                           | 20 Years |
| MVS Expected Life                       | 40 Years |
| Remaining Economic Life                 | 20 Years |
| Accrued Physical Incurable Depreciation | 50.0%    |
| Compiled by CBRE                        |          |

The remaining economic life is based upon our on-site observations and a comparative analysis of typical life expectancies as published by Marshall and Swift, LLC, in the Marshall Valuation Service cost guide. While CBRE, Inc. did not observe anything to suggest a different economic life, a capital improvement program could extend the life expectancy.

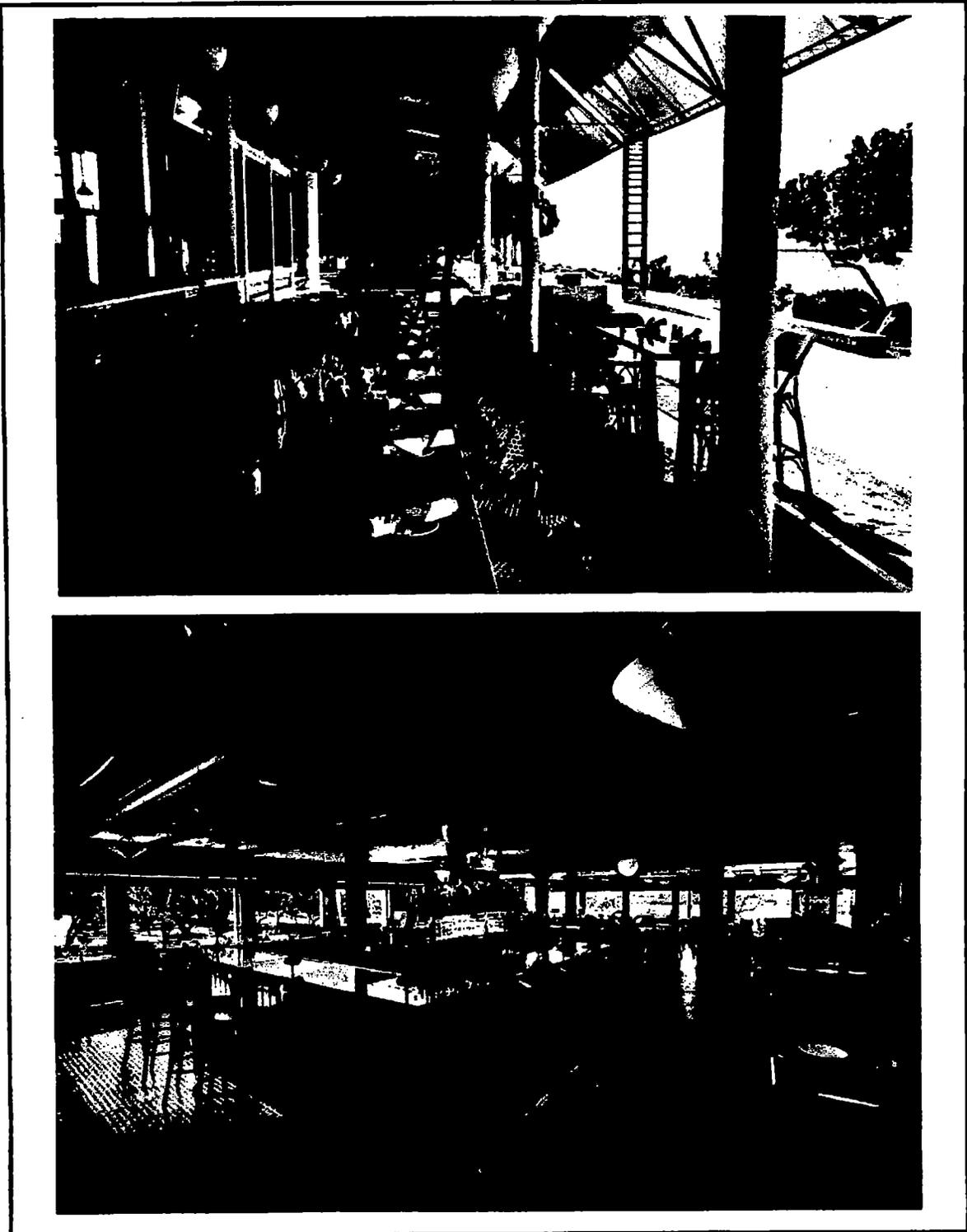
**CONCLUSION**

The improvements are in good overall condition. Overall, there are no known factors that adversely impact the marketability of the improvements.

RENOVATION FILE PHOTOGRAPHS



CONCESSION AREA EXHIBIT



**CONCESSION AREA EXHIBIT**



# Zoning

The following chart summarizes the subject's zoning requirements.

| <b>ZONING SUMMARY</b>          |   |
|--------------------------------|---|
| <b>Current Zoning</b>          | GU, Government Use District   |
| <b>Intent &amp; Purpose</b>    | Any land or air rights owned by or leased to the city or other governmental agency for no less than an initial term of 20 years shall automatically convert to a GU government use district.  |
| <b>Uses Permitted</b>          | The main permitted uses in the GU government use district are government buildings and uses, including but not limited to parking lots and garages; parks and associated parking; schools; performing arts and cultural facilities; monuments and memorials. Any use not listed above shall only be approved after the city commission holds a public hearing. See subsection 142-425(e) for public notice requirements.  |
| <b>Private Uses</b>            | Private or joint government/private uses in the GU government use district, including air rights, shall be reviewed by the planning board prior to approval by the city commission. See subsection 142-425(e) for public notice requirements.   |
| <b>Accessory Uses</b>          | Accessory uses in the GU government use district are as required in section 142-903.  |
| <b>Development Regulations</b> | <p>(a) The development regulations (setbacks, floor area ratio, signs, parking, etc.) in the GU government use district shall be the average of the requirements contained in the surrounding zoning districts as determined by the planning and zoning director, which shall be approved by the city commission.</p> <p>Upon the sale of GU property, the zoning district classification shall be determined, after public hearing with notice pursuant to Florida Statutes, by the city commission in a manner consistent with the comprehensive plan. Upon the (b) expiration of a lease to the city or other government agency, the district shall revert to the zoning district and its regulations in effect at the initiation of the lease.</p> <p>(c) Setback regulations for parking lots and garages when they are the main permitted use are listed in subsection 142-1132(n).</p> <p>(d) Following a public hearing, the development regulations required by these land development regulations, except for the historic preservation and design review processes, may be waived by a five-sevenths vote of the city commission for developments pertaining to governmental owned or leased buildings, uses and sites which are wholly used by, open and accessible to the general public, or used by not-for-profit, educational, or cultural organizations, or for convention center hotels, or convention center hotel accessory garages, or city utilized parking lots, provided they are continually used for such purposes. Notwithstanding the above, no GU property may be used in a manner inconsistent with the comprehensive plan. In all cases involving the use of GU property by the private sector, or joint government/private use, development shall conform to all development regulations in addition to all applicable sections contained in these land development regulations and shall be reviewed by the planning board prior to approval by the city commission. All such private or joint government/private uses are allowed to apply for any permittee variances and shall not be eligible to waive any regulations as described in this paragraph. However, not-for-profit, educational, or cultural organizations as forth herein, shall be eligible for a city commission waiver of development regulations as described in this paragraph, except for the historic preservation and design review processes. Additionally, private uses on the GU lots fronting Collins Avenue between 79th and 87th Streets approved by the city commission for a period of less than ten years shall be eligible for a city commission waiver of the development regulations as described in this paragraph, for temporary structures only. Such waivers applicable to GU lots fronting Collins Avenue between 79th and 87th Streets may include, but not be limited to, the design review process, provided the city commission, as part of the waiver</p> <p>(e) When a public hearing is required to waive development regulations before the city commission, the public notice shall be advertised in a newspaper of general paid circulation in the city at least 15 days prior to the hearing. Fifteen days prior to the public hearing date, both a description of the request and the time and place of such hearing shall be posted on the property, and notice shall also be given by mail to the owners of land lying within 375 feet of the property. A five-sevenths vote of the city commission is required to approve a waiver or use that is considered under this regulation.</p> |

Source: City of Miami Beach Planning & Zoning Dept.

## **ANALYSIS AND CONCLUSION**

The improvements represent a legally-conforming use and, if damaged, may be restored without special permit application. Additional information may be obtained from the City of Miami Beach Planning & Zoning Department. For purposes of this appraisal, CBRE has assumed the information obtained is correct.

## Tax and Assessment Data

The following summarizes the local assessor's estimate of the subject's market value, assessed value, and taxes, and does not include any furniture, fixtures or equipment. The CBRE estimated tax obligation is also shown.

| <b>AD VALOREM TAX INFORMATION</b> |  |                    |                     |                     |
|-----------------------------------|--|--------------------|---------------------|---------------------|
| Parcel                            | Assessor's Parcel No.                    | Parcel Description | 2019                | 2020                |
| 1                                 | 02-4210-000-0040                         |                    | 37,023,848          | 37,031,395          |
|                                   | <b>Subtotal</b>                          |                    | <b>\$37,023,848</b> | <b>\$37,031,395</b> |
|                                   | <b>% of Assessed Value</b>               |                    | <b>100%</b>         | <b>100%</b>         |
|                                   | <b>Final Assessed Value</b>              |                    | <b>37,023,848</b>   | <b>37,031,395</b>   |
|                                   | <b>General Tax Rate (per \$100 A.V.)</b> |                    | <b>1.937850</b>     | <b>1.935960</b>     |
|                                   | <b>Total Taxes</b>                       |                    | <b>\$717,467</b>    | <b>\$716,913</b>    |
|                                   | <b>Less: 4% Early Pay Discount</b>       |                    | <b>(\$28,699)</b>   | <b>(\$28,677)</b>   |
|                                   | <b>Total Taxes</b>                       |                    | <b>Exempt</b>       | <b>Exempt</b>       |

Source: Assessor's Office

The subject property is exempt from real estate property taxes based on municipal government ownership. However, if the subject property were sold-off to a third-party the exemption would be rescinded. In addition, under the current lease agreement, the land component remains exempt while the third-party leasehold improvements could become taxable, unless a non-profit or municipal government entity owned and operated the leasehold improvements.

According to the "just value" statute for all Counties within the State of Florida, the assessment for taxation purposes, is supposed to reflect 100% of market value, less cost of sale, i.e. marketing & real estate commissions, transaction & mortgage recording fees, etc., which typically equates to 65% to 85% of a recorded sale price and/or a market value estimate.

According to a representative of Miami-Dade County Revenue Collector, there are no delinquent property taxes encumbering the subject.

## Market Analysis

The market analysis forms a basis for assessing market area boundaries, supply and demand factors, and indications of financial feasibility. Primary data sources used for this analysis includes CBRE, Inc., PriceWaterhouseCoopers (PWC), Market Research, Econometric Advisors (a subsidiary of CBRE, Inc.), Costar Group, Inc., and Esri.

The subject is in the Miami Beach submarket and is considered a Class A, single tenant retail restaurant property.

### DEMOGRAPHIC ANALYSIS

Demand for retail properties is a direct function of demographic characteristics analyzed on the following pages.

#### Housing, Population and Household Formation

The following table illustrates the population and household changes for the subject neighborhood with primary focus on the 1-, 3- and 5-mile radius.

| POPULATION AND HOUSEHOLD PROJECTIONS |                  |                  |                  |                        |            |                      |
|--------------------------------------|------------------|------------------|------------------|------------------------|------------|----------------------|
|                                      | 1 Mile<br>Radius | 3 Mile<br>Radius | 5 Mile<br>Radius | 33139 - Miami<br>Beach | Florida    | Miami-Dade<br>County |
| <b>Population</b>                    |                  |                  |                  |                        |            |                      |
| 2025 Total Population                | 13,987           | 48,505           | 227,763          | 41,612                 | 23,056,641 | 2,894,298            |
| 2020 Total Population                | 13,338           | 46,935           | 203,380          | 40,156                 | 21,587,015 | 2,759,670            |
| 2010 Total Population                | 12,533           | 44,736           | 160,305          | 38,179                 | 18,801,310 | 2,496,435            |
| 2000 Total Population                | 11,513           | 44,099           | 129,967          | 37,950                 | 15,982,378 | 2,253,362            |
| Annual Growth 2020 - 2025            | 0.95%            | 0.66%            | 2.29%            | 0.71%                  | 1.33%      | 0.96%                |
| Annual Growth 2010 - 2020            | 0.62%            | 0.48%            | 2.41%            | 0.51%                  | 1.39%      | 1.01%                |
| Annual Growth 2000 - 2010            | 0.85%            | 0.14%            | 2.12%            | 0.06%                  | 1.64%      | 1.03%                |
| <b>Households</b>                    |                  |                  |                  |                        |            |                      |
| 2025 Total Households                | 8,200            | 28,133           | 116,300          | 24,766                 | 8,989,496  | 995,690              |
| 2020 Total Households                | 7,850            | 27,369           | 103,966          | 24,030                 | 8,438,100  | 951,252              |
| 2010 Total Households                | 7,546            | 26,510           | 81,510           | 23,221                 | 7,420,802  | 867,352              |
| 2000 Total Households                | 6,911            | 26,060           | 63,406           | 23,125                 | 6,337,929  | 776,774              |
| Annual Growth 2020 - 2025            | 0.88%            | 0.55%            | 2.27%            | 0.61%                  | 1.27%      | 0.92%                |
| Annual Growth 2010 - 2020            | 0.40%            | 0.32%            | 2.46%            | 0.34%                  | 1.29%      | 0.93%                |
| Annual Growth 2000 - 2010            | 0.88%            | 0.17%            | 2.54%            | 0.04%                  | 1.59%      | 1.11%                |

Source: ESRI

As shown, the subject's neighborhood is experiencing positive increases in both population and households based on high density, in-fill redevelopment projects. In addition, the subject property draws from a broader national & international tourist demographic.

#### Income Distributions

Household income available for expenditure on consumer items is a primary factor in determining the retail supply and demand levels in a given market area. In the case of this study, a projection of household income identifies (in gross terms) the market from which the subject

submarket draws. The following table illustrates estimated household income distribution for the subject neighborhood.

| <b>HOUSEHOLD INCOME DISTRIBUTION</b>     |               |               |               |                     |         |                   |
|--|---------------|---------------|---------------|---------------------|---------|-------------------|
| Households by Income Distribution (2020) | 1 Mile Radius | 3 Mile Radius | 5 Mile Radius | 33139 - Miami Beach | Florida | Miami-Dade County |
| <\$15,000                                | 19.12%        | 13.90%        | 14.62%        | 14.22%              | 10.63%  | 12.84%            |
| \$15,000 - \$24,999                      | 10.85%        | 9.70%         | 9.50%         | 9.60%               | 9.81%   | 11.35%            |
| \$25,000 - \$34,999                      | 9.29%         | 9.13%         | 8.36%         | 9.42%               | 9.76%   | 9.58%             |
| \$35,000 - \$49,999                      | 10.82%        | 10.75%        | 9.88%         | 10.80%              | 13.61%  | 12.57%            |
| \$50,000 - \$74,999                      | 11.18%        | 14.52%        | 14.92%        | 14.61%              | 18.33%  | 17.64%            |
| \$75,000 - \$99,999                      | 10.69%        | 10.88%        | 11.30%        | 10.72%              | 12.34%  | 11.29%            |
| \$100,000 - \$149,999                    | 9.75%         | 12.24%        | 12.90%        | 11.99%              | 13.76%  | 12.20%            |
| \$150,000 - \$199,999                    | 5.08%         | 7.06%         | 7.45%         | 7.24%               | 5.48%   | 5.83%             |
| \$200,000+                               | 13.21%        | 11.81%        | 11.07%        | 11.41%              | 6.27%   | 6.70%             |

Source: ESRI

The following table illustrates the median and average household income levels for the subject neighborhood.

| <b>HOUSEHOLD INCOME LEVELS</b> |               |               |               |                     |          |                   |
|--------------------------------|---------------|---------------|---------------|---------------------|----------|-------------------|
| Income                         | 1 Mile Radius | 3 Mile Radius | 5 Mile Radius | 33139 - Miami Beach | Florida  | Miami-Dade County |
| 2020 Median Household Income   | \$49,850      | \$59,098      | \$60,615      | \$58,146            | \$56,362 | \$53,726          |
| 2020 Average Household Income  | \$98,530      | \$99,485      | \$97,500      | \$98,025            | \$81,549 | \$80,823          |
| 2020 Per Capita Income         | \$58,245      | \$58,152      | \$50,300      | \$58,754            | \$31,970 | \$27,939          |

Source: ESRI

An analysis of the income data indicates that the submarket is generally comprised of middle and upper-middle income economic cohort groups, which include the target groups to which the subject is oriented. In addition, the subject property draws from a broader national & international tourist demographic.

### Employment

An employment breakdown typically indicates the working-class characteristics for a given market area. The specific employment population within the indicated radii of the subject is as follows:

| <b>EMPLOYMENT BY INDUSTRY</b>  |               |               |               |                     |         |                   |
|--------------------------------|---------------|---------------|---------------|---------------------|---------|-------------------|
| Occupation (2020)              | 1 Mile Radius | 3 Mile Radius | 5 Mile Radius | 33139 - Miami Beach | Florida | Miami-Dade County |
| Agric/Forestry/Fishing/Hunting | 0.00%         | 0.24%         | 0.21%         | 0.27%               | 0.90%   | 0.59%             |
| Construction                   | 4.21%         | 4.62%         | 6.56%         | 4.05%               | 8.59%   | 8.84%             |
| Manufacturing                  | 3.98%         | 2.99%         | 4.02%         | 3.29%               | 5.56%   | 4.96%             |
| Wholesale Trade                | 2.00%         | 3.56%         | 3.93%         | 3.67%               | 2.74%   | 3.82%             |
| Retail Trade                   | 7.58%         | 7.67%         | 8.73%         | 7.84%               | 11.71%  | 10.86%            |
| Transportation/Warehousing     | 6.54%         | 6.05%         | 5.64%         | 6.15%               | 5.60%   | 8.56%             |
| Information                    | 3.18%         | 2.96%         | 2.57%         | 2.92%               | 1.70%   | 1.81%             |
| Finance/Insurance              | 7.13%         | 5.18%         | 7.26%         | 5.09%               | 5.18%   | 4.86%             |
| Prof/Scientific/Tech Services  | 11.82%        | 13.78%        | 13.51%        | 13.53%              | 8.04%   | 8.02%             |
| Mgmt of Companies/Enterprises  | 0.25%         | 0.26%         | 0.17%         | 0.17%               | 0.14%   | 0.12%             |
| Admin/Support/Waste Mgmt Svcs  | 4.88%         | 3.92%         | 4.07%         | 3.77%               | 5.76%   | 5.70%             |
| Educational Services           | 8.17%         | 7.05%         | 5.85%         | 6.89%               | 7.96%   | 7.51%             |
| Health Care/Social Assistance  | 8.26%         | 9.61%         | 11.95%        | 9.90%               | 14.92%  | 14.00%            |
| Arts/Entertainment/Recreation  | 3.53%         | 3.32%         | 2.79%         | 3.41%               | 2.59%   | 1.77%             |
| Accommodation/Food Services    | 21.36%        | 22.27%        | 14.08%        | 22.44%              | 8.58%   | 8.59%             |
| Other Services (excl Publ Adm) | 4.88%         | 4.49%         | 6.11%         | 4.59%               | 5.52%   | 6.42%             |
| Public Administration          | 2.24%         | 2.05%         | 2.57%         | 2.04%               | 4.53%   | 3.57%             |

Source: ESRI

The previous table illustrates the employment character of the submarket, indicating a predominantly middle and upper-middle income employment profile, with the majority of the population holding retail trade, financial/insurance, professional, health care, hospitality and food service related jobs.

#### Outlook

Based on this analysis, the immediate area surrounding the subject is projected to experience positive growth relative to households and population into the near future. Given the area demographics, it appears that demand for both comparable surrounding area residential units and the subject restaurant use will be favorable.

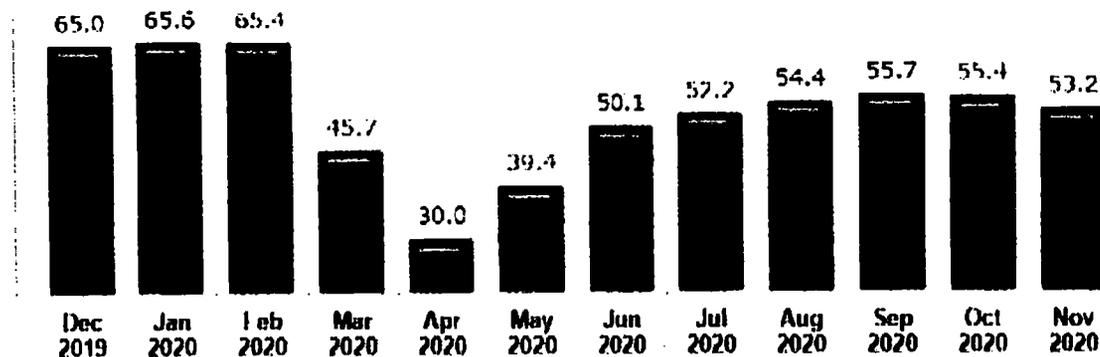
## 2020 NATIONAL RESTAURANT MARKET ANALYSIS

According to the *National Restaurant Association's 2020 Restaurant Industry Forecast* report, restaurant and foodservice sales were projected to total \$899 billion in 2020, the 11<sup>th</sup> consecutive year of sales growth for the restaurant industry. However, the COVID-19 pandemic shook the industry to the core and many projections will be skewed as restaurants were forced to endure shutdowns and limit capacity.

Restaurant sales plummeted from \$65.4 billion in February to just \$30.0 billion in April. While the industry was given a lifeline though takeout and online orders, sales once again fell for two consecutive months in October and November. The following table shows all reported sales of eating and drinking places over the last year:

### Total Eating and Drinking Place Sales

(in billions of current dollars)



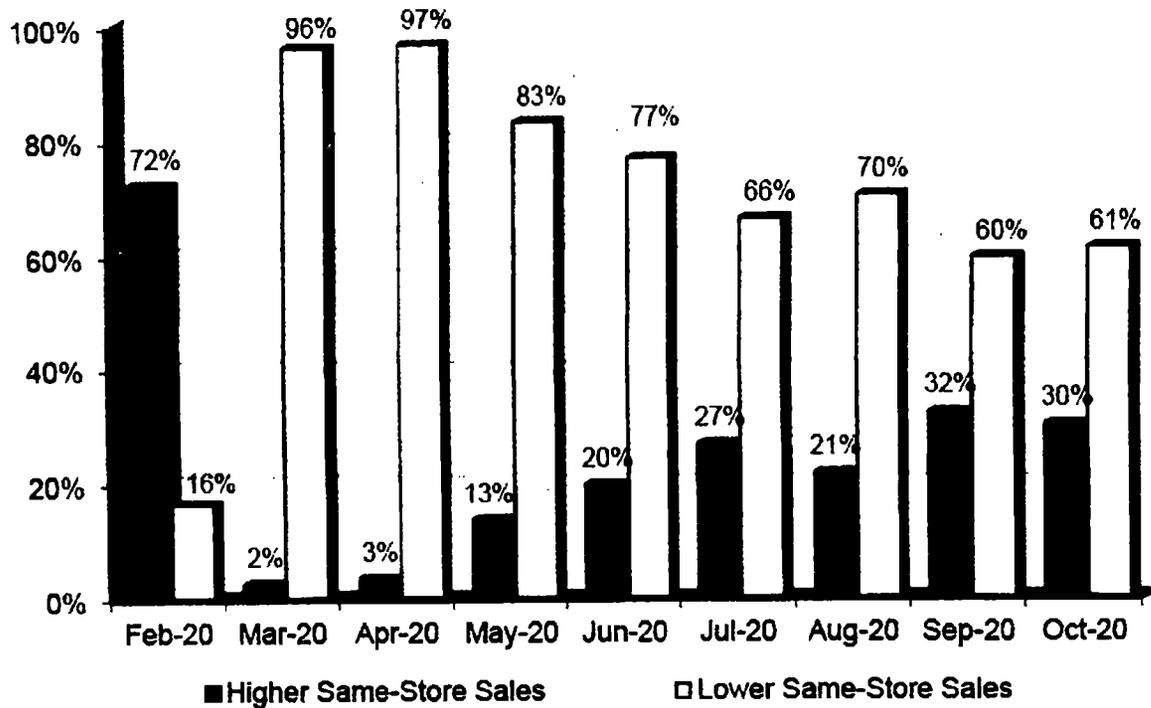
Source: U.S. Census Bureau. figures are seasonally-adjusted

Based on the data, not only has the restaurant sales recovery stalled, but it has likely entered a double dip recession for the year. Sales also remain more than 19% below the pre-pandemic levels. The end of the outdoor dining season in many parts of the country may be a contributing factor, but large increases in COVID-19 cases in parts of the country have led to tighter restrictions and increased capacity limitations.

Although there is some hope with the release of approved vaccines, it will likely be several more months before business conditions even begin to resemble some normalcy in the restaurant industry. According to a recent survey, 83% of full service operators expect their sales to decrease from current levels during the next 3 months, while only 3% think their sales will increase. Conversely, limited service operators reported that 67% believe their sales will decline during the next 3 months while only 9% expect sales to rise.

Restaurant operators continued to report negative same-store sales and customer traffic through October as shown in the following chart:

## Restaurant Operators' Reporting of Same-Store Sales versus Same Month in Previous Year

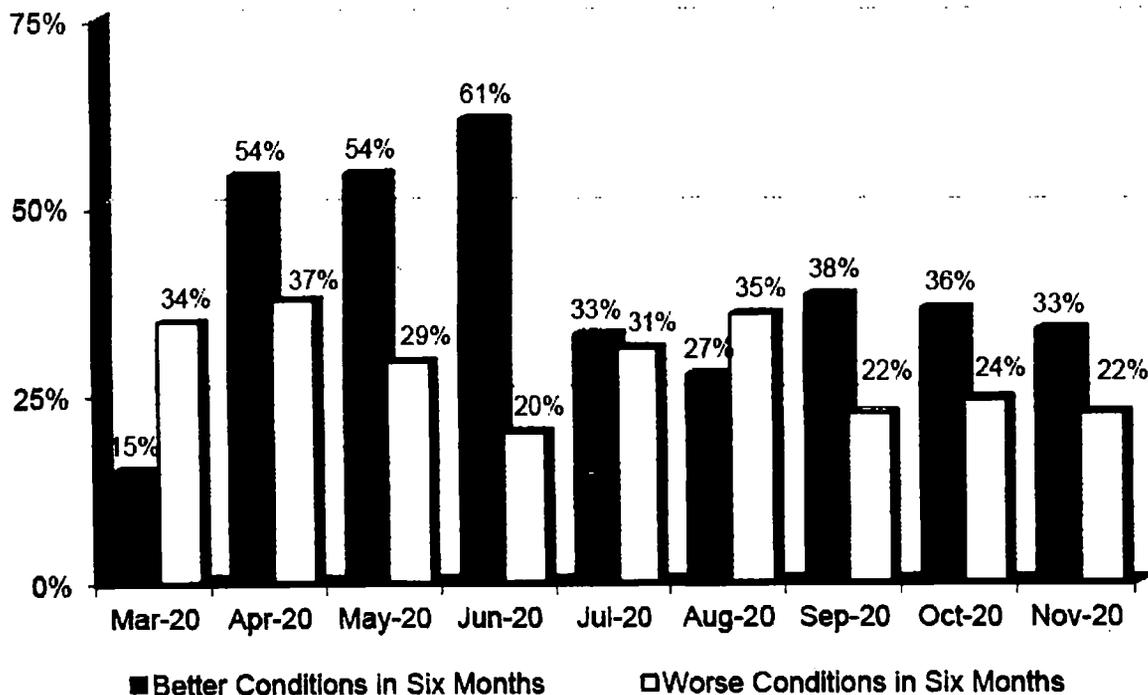


Source: National Restaurant Association, Restaurant Industry Tracking Survey

As has been the case throughout the pandemic, limited service operators were much more likely to report higher same-store sales as their full service counterparts.

However, operators continued to have a mixed outlook for the economy in the coming months. The following chart shows operators' outlook for general condition in the next six months:

## Restaurant Operators' Outlook for General Economic Conditions in Six Months



Source: National Restaurant Association, Restaurant Industry Tracking Survey

The pandemic is clearly have a negative impact on this market segment and it will likely be some time before the industry recovers to pre-pandemic levels. The following information was largely gathered from the NRA 2020 forecast data which was primarily based on information from 2019 before the on-set of the pandemic.

### 2020 STATE AND REGIONAL OUTLOOK

Regions of the country with the most favorable economic conditions and the strongest population growth are expected to fare the best in restaurant sales. The following chart illustrates the breakdown of the U.S. into regions along with individual state performance:

|                      | 2019<br>LOCATIONS | 2019<br>SALES<br>(BILLIONS) |                | 2019<br>LOCATIONS | 2019<br>SALES<br>(BILLIONS) |
|----------------------|-------------------|-----------------------------|----------------|-------------------|-----------------------------|
| ALABAMA              | 8,776             | \$9.8                       | NEW JERSEY     | 19,329            | \$20.2                      |
| ALASKA               | 1,482             | \$2.0                       | NEW MEXICO     | 3,550             | \$4.4                       |
| ARIZONA              | 10,876            | \$15.6                      | NEW YORK       | 49,032            | \$54.5                      |
| ARKANSAS             | 5,411             | \$5.5                       | NORTH CAROLINA | 19,891            | \$23.9                      |
| CALIFORNIA           | 81,516            | \$102.8                     | NORTH DAKOTA   | 1,725             | \$1.5                       |
| COLORADO             | 12,084            | \$15.0                      | OHIO           | 23,036            | \$25.6                      |
| CONNECTICUT          | 8,511             | \$8.9                       | OKLAHOMA       | 7,040             | \$8.1                       |
| DELAWARE             | 2,042             | \$2.5                       | OREGON         | 10,697            | \$10.2                      |
| DISTRICT OF COLUMBIA | 2,444             | \$4.8                       | PENNSYLVANIA   | 26,546            | \$23.7                      |
| FLORIDA              | 42,275            | \$52.3                      | RHODE ISLAND   | 2,991             | \$2.8                       |
| GEORGIA              | 18,933            | \$24.9                      | SOUTH CAROLINA | 9,845             | \$11.7                      |
| HAWAII               | 3,779             | \$5.7                       | SOUTH DAKOTA   | 1,896             | \$1.6                       |
| IDAHO                | 3,577             | \$3.1                       | TENNESSEE      | 12,086            | \$15.1                      |
| ILLINOIS             | 25,851            | \$32.1                      | TEXAS          | 49,666            | \$70.6                      |
| INDIANA              | 12,210            | \$14.1                      | UTAH           | 5,324             | \$6.1                       |
| IOWA                 | 6,381             | \$4.9                       | VERMONT        | 1,421             | \$1.3                       |
| KANSAS               | 5,322             | \$5.5                       | VIRGINIA       | 15,757            | \$19.9                      |
| KENTUCKY             | 7,628             | \$9.2                       | WASHINGTON     | 15,764            | \$14.8                      |
| LOUISIANA            | 9,818             | \$11.0                      | WEST VIRGINIA  | 3,282             | \$3.0                       |
| MAINE                | 3,229             | \$2.7                       | WISCONSIN      | 13,025            | \$10.7                      |
| MARYLAND             | 11,503            | \$14.5                      | WYOMING        | 1,337             | \$1.2                       |
| MASSACHUSETTS        | 15,727            | \$19.5                      |                |                   |                             |
| MICHIGAN             | 17,557            | \$19.0                      |                |                   |                             |
| MINNESOTA            | 10,833            | \$11.6                      |                |                   |                             |
| MISSISSIPPI          | 4,906             | \$5.5                       |                |                   |                             |
| MISSOURI             | 11,343            | \$12.9                      |                |                   |                             |
| MONTANA              | 2,770             | \$2.4                       |                |                   |                             |
| NEBRASKA             | 4,163             | \$3.4                       |                |                   |                             |
| NEVADA               | 6,113             | \$10.9                      |                |                   |                             |
| NEW HAMPSHIRE        | 3,208             | \$3.3                       |                |                   |                             |

Source: NRA 2020 SOI report

The bold states are the top 10 in locations and highest sales in 2019.

## OUTLOOK FOR THE NEXT DECADE

The US Economic growth is expected to be more moderate over the next decade, due in large part to a slower population growth and labor-force growth. The labor-force growth is projected to slow over the next decade, but this will vary by age group. Older adults are expected to register the largest inflows to the labor force while the number of teenage workers is expected to decline by 2030 to its lowest level in 65 years. The following also lists the NRA's 25 most likely developments over the next decade:

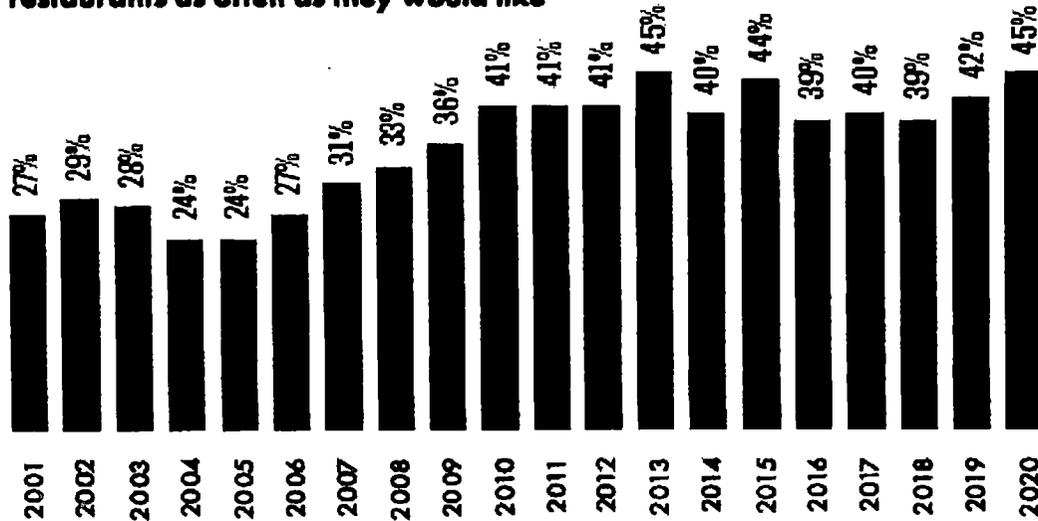
- 1.** Competition for customers will intensify.
- 2.** It will be commonplace for restaurants to accept mobile payments.
- 3.** Handheld payment terminals that allow for pay-at-the-table will be commonplace.
- 4.** The vast majority of takeout and delivery orders will be placed digitally.
- 5.** Packaging designed exclusively for delivery and carryout will be more sophisticated and effective.
- 6.** Regardless of the nutritional content of the food, consumers will still want comfort foods.
- 7.** Convenience stores and grocery stores will expand their foodservice offerings.
- 8.** More restaurant layouts will include areas dedicated to delivery and carryout.
- 9.** State and local governments will increase restaurant industry regulation.
- 10.** Total employee compensation costs will increase as a percent of sales.
- 11.** More training will be provided online and on smartphones.
- 12.** The restaurant industry will continue to be a breeding ground for entrepreneurialism.
- 13.** Equipment used in restaurants will be more energy-efficient.
- 14.** The use of kiosks in limited-service restaurants will be commonplace.
- 15.** There will be increased regulation around third-party delivery.
- 16.** More employees will be certified in safe food handling through ServSafe products.
- 17.** Video menu boards in limited-service restaurants will be commonplace.
- 18.** More restaurants will be designed to reduce use of energy and water and minimize waste.
- 19.** Turning point-of-sale (POS) data into actionable knowledge for operators will become easier.
- 20.** Restaurant operators will be more likely to implement more local, targeted and customized promotions.
- 21.** Technology will be more effectively used to control costs and enhance management efficiency.
- 22.** Women will hold a larger proportion of upper management jobs in the restaurant industry.
- 23.** Restaurants will offer more healthy options on their menus.
- 24.** Restaurant inspection results will be readily available to the public.
- 25.** The federal government will enact more data-privacy rules to regulate how businesses handle customer data.

Source: National Restaurant Association, *Restaurant Industry 2030*,  
[Restaurant.org/Restaurants2030](http://Restaurant.org/Restaurants2030)

The 2015 economy was the strongest year yet in the aftermath of the Great Recession. The national economy added a net 2.9 million jobs on an annual basis in 2015, and the 2.11% employment increase was the strongest gain in 15 years.

One takeaway from the 2020 survey was that almost half of all adults said that their frequency to restaurants was not enough. This has been increasing over the last several years indicating that there was pent-up demand for restaurants even before the pandemic.

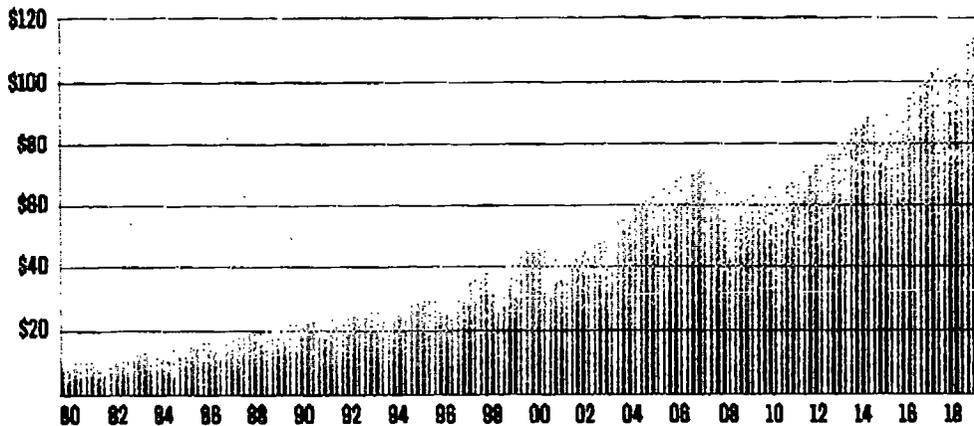
**Percent of adults who say they are *not eating at restaurants as often as they would like***



Source: National Restaurant Association, National Household Surveys, 2001-2020

Household net worth has also been on a steady rise over the last decade up to 2019. The following table tracks the growth in household net worth:

**TOTAL HOUSEHOLD NET WORTH (\$ TRILLIONS)**



Source: Federal Reserve

## Operational Trends

Operators report that the top challenge remains the recruiting and retaining of employees. However, delivery competition topped the list of concerns for some operators ranking fifth overall and reflecting the rapid growth in this side of the industry which is likely to grow even further during and post pandemic.

Nearly half of responding restaurant operators say their customers' loyalty is more difficult to maintain that it was two years ago. Consumers are being drawn to loyalty programs and more than 80% say they are more likely to visit a restaurant that offers a customer loyalty program.

Technology will also be a driving force for the industry in the coming years. Ninety percent of consumers says they would pay attention to restaurant specials communicated via an app to a restaurant that they patronize. Variable pricing may become more prevalent with 75% of adults saying they would likely pay attention to variable pricing by restaurants that they visit. Flexible pricing could be implemented in real time, depending on how busy or slow business is. During days or periods of time that are very busy, prices could be higher and during days or periods of time that are very slow, prices could be lower. Electronic menus on tablets or video boards allow price flexibility. Pricing changes could be communicated to the public using a smartphone app and social media.

Fifty-two percent of adults say purchasing takeout or delivery food is essential to the way they live. Ten years ago, only 27% of adults held this sentiment. New technology has fueled this change, giving consumers what they want at a push of a button. This new technology also introduces more fast-paced change to the industry, and restaurant operators must work to keep up. This section provides an overview of the latest off-premises trends, as well as insights into consumers' wants and needs to help give operators a competitive advantage. Three in four operators say off-premises business is their best opportunity for growth in the years ahead, but only about half of all restaurant operators initially plan to devote more resources to expanding the off-premises side of their business in 2020. This has likely changed in the post-pandemic world however, as off-premises business has been the only way many operators have stayed in business during the crisis.

Finally, operators are reportedly boosting marketing efforts across all channels to reach consumers in this highly competitive environment.

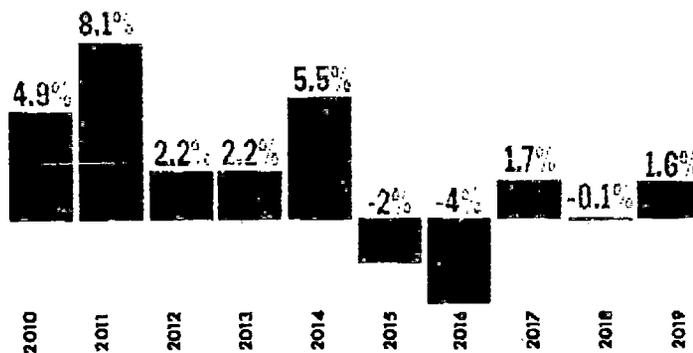
| MARKETING TECHNIQUE   | FAMILY DINING | CASUAL DINING | FINE DINING | 2019 | 2020 |
|---|---------------|---------------|-------------|------|------|
| SOCIAL MEDIA MARKETING SUCH AS FACEBOOK ADS OR SPECIAL OFFERS VIA TWITTER AND FOURSCQUARE | 76%           | 76%           | 64%         | 73%  | 81%  |
| ELECTRONIC MARKETING SUCH AS EMAIL OR ONLINE ADS  | 72%           | 71%           | 67%         | 74%  | 74%  |
| TRADITIONAL MARKETING SUCH AS DIRECT MAIL & NEWSPAPER ADS                                 | 52%           | 42%           | 30%         | 57%  | 47%  |

**TOP TAKEAWAY:**  
A solid majority of operators in each of the six major segments say they will devote more resources to social media and electronic marketing in 2020.

The off-premises category is made up of delivery, takeout, curbside pickup, drive-thru, food trucks and catering. Now more than ever, consumers rely on off-premises options in their daily lives.

**Food Costs**

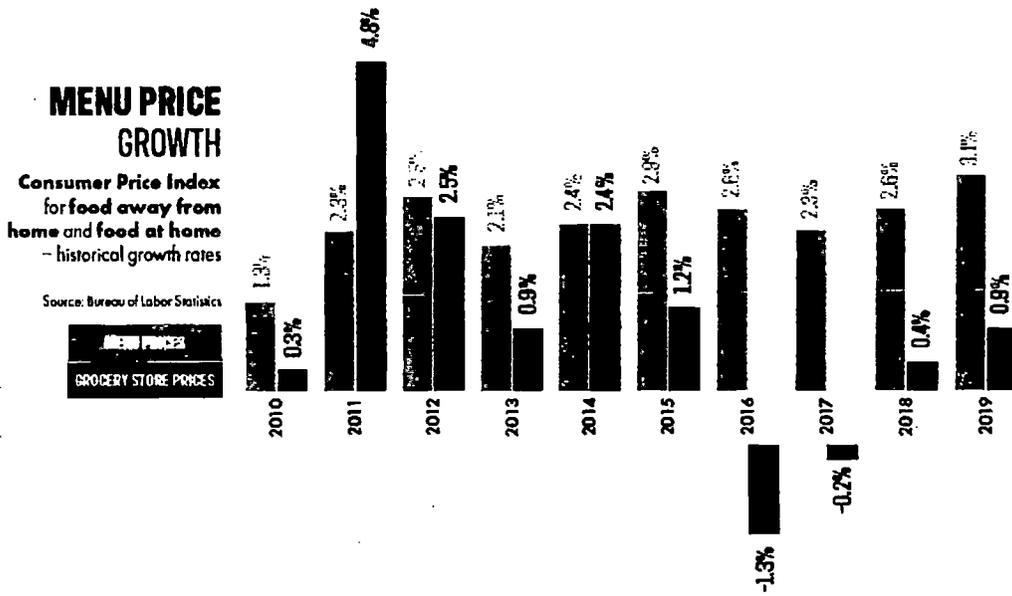
The recent rate of change in the producer price index for all foods is presented in the following table:



Source: Bureau of Labor Statistics Note: Figures represent the average change in prices paid to domestic producers for their output

Average wholesale food costs rose 1.6% in 2019, after remaining essentially flat in 2018. Food costs will likely continue to trend higher in 2020, with the U.S. Department of Agriculture projecting sizable gains in pork and poultry prices. Nearly half of operators expect their average food costs to rise in 2020. To help cut costs and enhance the efficiency of their operations, a solid majority of restaurant operators plan to improve food waste management in 2020. Most operators say they plan to take steps to improve the management of food waste in their operation in 2020.

Menu prices rose 3.1% in 2019, the strongest annual increase since 2009 (3.5%). The gain was well above the modest 0.9% increase in grocery store prices in 2019, the fourth consecutive year in which grocery store inflation remained below 1%.



### MENU PRICE GROWTH BY REGION

Consumer Price Index for food away from home and food at home – historical growth rates

| REGION               | 2016  | 2017  | 2018 | 2019 |
|----------------------|-------|-------|------|------|
| <b>NORTHEAST</b>     |       |       |      |      |
| MENU PRICES          | 2.7%  | 2.4%  | 2.8% | 2.9% |
| GROCERY STORE PRICES | -1.3% | 0.2%  | 1.2% | 0.8% |
| <b>MIDWEST</b>       |       |       |      |      |
| MENU PRICES          | 2.6%  | 1.7%  | 2.4% | 2.7% |
| GROCERY STORE PRICES | -1.3% | -0.4% | 0.0% | 0.5% |
| <b>SOUTH</b>         |       |       |      |      |
| MENU PRICES          | 2.0%  | 2.0%  | 2.1% | 3.1% |
| GROCERY STORE PRICES | -1.4% | -0.2% | 0.3% | 0.7% |
| <b>WEST</b>          |       |       |      |      |
| MENU PRICES          | 3.3%  | 5.0%  | 3.4% | 3.6% |
| GROCERY STORE PRICES | -1.1% | -0.3% | 0.4% | 1.5% |

Source: Bureau of Labor Statistics

In each of the four U.S. regions, menu price growth outpaced grocery stores. The West region saw a 3.6% gain in menu prices, the country's highest. The following breaks down major cities and the CPI of food away from home historical growth rates:

| CITY   | 2016 | 2017 | 2018 | 2019 |
|--|------|------|------|------|
| BOSTON-CAMBRIDGE-NEWTON, MA-NH                   | 3.6% | 1.8% | 2.4% | 2.2% |
| NEW YORK-NEWARK-JERSEY CITY, NY-NJ-PA            | 3.3% | 2.4% | 3.0% | 2.8% |
| PHILADELPHIA-CAMDEN-<br>WILMINGTON, PA-NJ-DE-MD  | 1.6% | 1.9% | 1.6% | 2.7% |
| BALTIMORE-COLUMBIA-TOWSON, MD                    | 2.2% | 2.2% | 1.6% | 3.4% |
| WASHINGTON-ARLINGTON-<br>ALEXANDRIA, DC-VA-MD-WV | 2.5% | 2.4% | 1.8% | 2.0% |
| MIAMI-FORT LAUDERDALE-<br>WEST PALM BEACH, FL    | 2.6% | 2.5% | 1.8% | 1.7% |
| ATLANTA-SANDY SPRINGS-ROSWELL, GA                | 1.6% | 2.3% | 2.7% | 2.8% |
| TAMPA-ST. PETERSBURG-CLEARWATER, FL              | 1.5% | 0.1% | 3.3% | 3.7% |
| CHICAGO-NAPERVILLE-ELGIN, IL-IN-WI               | 3.6% | 1.8% | 3.4% | 3.1% |
| DETROIT-WARREN-DEARBORN, MI                      | 0.7% | 1.7% | 2.4% | 1.4% |
| MINNEAPOLIS-ST. PAUL-<br>BLOOMINGTON, MN-WI      | 3.7% | 2.4% | 3.8% | 2.8% |
| ST. LOUIS, MO-IL                                 | 1.9% | 2.6% | 1.7% | 3.6% |
| DALLAS-FORT WORTH-ARLINGTON, TX                  | 2.2% | 1.8% | 2.4% | 4.6% |
| HOUSTON-THE WOODLANDS-<br>SUGAR LAND, TX         | 1.3% | 1.8% | 3.0% | 2.4% |
| PHOENIX-MESA-SCOTTSDALE, AZ                      | 4.6% | 4.0% | 2.7% | 3.0% |
| DENVER-AURORA-LAKEWOOD, CO                       | 0.8% | 4.8% | 3.1% | 3.2% |
| SEATTLE-TACOMA-BELLEVUE, WA                      | 3.3% | 3.0% | 3.0% | 3.1% |
| LOS ANGELES-LONG BEACH-ANAHEIM, CA               | 3.8% | 3.9% | 3.6% | 5.0% |
| SAN FRANCISCO-OAKLAND-<br>HAYWARD, CA            | 4.3% | 2.8% | 4.7% | 6.6% |
| SAN DIEGO-CARLSBAD, CA                           | 3.5% | 0.8% | 3.1% | 2.1% |

Source: Bureau of Labor Statistics

### Labor Costs

Labor costs will continue to rise in 2020, as the tight labor market and unfilled job openings put upward pressure on wages.

These three factors will continue to put upward pressure on wages:

- The national unemployment rate is near a five-decade low.
- The rate of job openings in the overall restaurant industry remains well above historical averages.
- Three in 10 restaurant operators say they have job openings that are difficult to fill

Wage growth of restaurant employees outpaced their counterparts in the overall private sector for the sixth consecutive year in 2019. During the last six years, average hourly earnings of restaurant employees jumped 25%. In the overall private sector, the gain was 17%. The following shows the growth in average hourly earnings for all employees, by restaurant industry segment:

| SEGMENT                                   | 2016  | 2017  | 2018 | 2019 |
|---|-------|-------|------|------|
| Fullservice restaurants                   | 5.0%  | 4.6%  | 3.9% | 3.3% |
| Quick-service and fast-casual restaurants | 4.5%  | 4.9%  | 4.5% | 4.5% |
| Cafeterias, grill buffets, and buffets    | 1.7%  | 4.7%  | 5.1% | 9.7% |
| Snack and nonalcoholic beverage bars      | 1.5%  | 4.5%  | 4.7% | 5.2% |
| Foodservice contractors                   | -0.1% | 0.8%  | 0.5% | 1.5% |
| Caterers and mobile food services         | 4.2%  | -1.0% | 3.1% | 7.1% |
| Drinking places                           | 8.6%  | 6.7%  | 3.6% | 5.2% |

Source: Bureau of Labor Statistics

The restaurant and foodservice industry added 3.4 million jobs during the last decade. Although job growth will slow somewhat in the years ahead, the industry will still add another 1.6 million jobs by 2030.

## CONCLUSION

Employed adults say they are working and commuting longer than ever, which means less time available to cook meals at home. Employed adults are also reporting less time available to prepare meals at home than they previously did as well.

As consumer demand for delivery options continues to rise, look for more restaurants to enter this line of business in 2020. Despite the consumer demand, only about half of restaurant operators say they offer delivery. This trend will likely change in the post pandemic world.

Restaurant operators looking to grow their off-premise business will likely encounter strengthening competition from retail store visits where a customer purchases a foodservice item.

Convenience stores, where 60% of foodservice traffic occurs during the breakfast and PM snack dayparts, are among the chief competitors.

The COVID-19 pandemic has clearly had a disastrous effect on the food services and restaurant industry. The challenges ahead remain strong for the industry to regain pre-pandemic sales figures and many restaurants may not survive. However, the outlook remains good for industry over the long-term as consumers report pent up demand for these services.

### MIAMI-DADE COUNTY RETAIL MARKET ANALYSIS

The following table summarizes historical and projected performance for the overall Miami-Dade County retail market, as defined by CoStar Group, Inc.

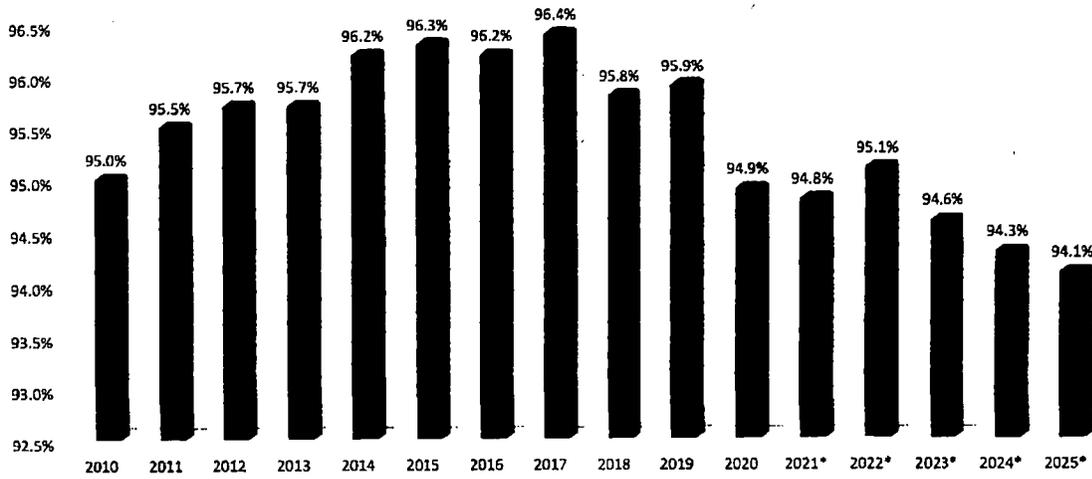
| MIAMI-DADE COUNTY - FL RETAIL MARKET |                |                  |                     |           |                         |                    |                     |                                 |
|--------------------------------------|----------------|------------------|---------------------|-----------|-------------------------|--------------------|---------------------|---------------------------------|
| Year Ending                          | Inventory (SF) | Completions (SF) | Occupied Stock (SF) | Occupancy | Asking Rent (\$/SF NNN) | Asking Rent Change | Net Absorption (SF) | Transaction Price Per Area (SF) |
| 2010                                 | 126,340,988    | 611,994          | 120,046,584         | 95.0%     | \$26.74                 | -0.82%             | 891,950             | \$226.35                        |
| 2011                                 | 127,104,549    | 763,561          | 121,448,160         | 95.5%     | \$27.05                 | 1.14%              | 1,401,576           | \$367.66                        |
| 2012                                 | 127,872,111    | 767,562          | 122,355,184         | 95.7%     | \$28.29                 | 4.59%              | 2,609,018           | \$284.46                        |
| 2013                                 | 128,261,368    | 389,257          | 122,729,424         | 95.7%     | \$29.30                 | 3.56%              | 374,242             | \$242.87                        |
| 2014                                 | 129,494,185    | 1,232,817        | 124,561,648         | 96.2%     | \$31.20                 | 6.49%              | 1,832,223           | \$361.32                        |
| 2015                                 | 130,521,182    | 1,026,997        | 125,707,232         | 96.3%     | \$32.71                 | 4.85%              | 1,123,488           | \$332.71                        |
| 2016                                 | 131,445,878    | 863,789          | 126,465,096         | 96.2%     | \$33.99                 | 3.93%              | 717,634             | \$328.25                        |
| 2017                                 | 132,975,412    | 1,529,534        | 128,229,016         | 96.4%     | \$35.41                 | 4.18%              | 1,693,027           | \$334.80                        |
| 2018                                 | 133,833,018    | 848,043          | 128,162,744         | 95.8%     | \$36.75                 | 3.77%              | -5,707              | \$339.60                        |
| 2019                                 | 134,561,221    | 714,692          | 129,004,224         | 95.9%     | \$37.83                 | 2.93%              | 829,066             | \$335.82                        |
| 2020 Q1                              | 135,620,937    | 1,059,716        | 130,200,584         | 96.0%     | \$37.98                 | 2.60%              | 1,196,361           | \$268.76                        |
| 2020 Q2                              | 135,592,023    | -28,914          | 129,858,336         | 95.8%     | \$37.61                 | 0.61%              | -342,251            | \$365.95                        |
| 2020 Q3                              | 135,650,747    | 58,724           | 129,674,248         | 95.6%     | \$37.60                 | 0.26%              | -176,186            | \$291.48                        |
| 2020 Q4                              | 136,385,403    | 734,656          | 129,445,664         | 94.9%     | \$37.36                 | -1.24%             | -177,305            | \$109.21                        |
| 2021*                                | 136,940,772    | 555,369          | 129,845,344         | 94.8%     | \$37.76                 | 1.07%              | 400,683             | \$0.00                          |
| 2022*                                | 137,191,899    | 251,127          | 130,479,888         | 95.1%     | \$39.36                 | 4.23%              | 635,300             | \$0.00                          |
| 2023*                                | 138,133,590    | 941,691          | 130,640,328         | 94.6%     | \$40.59                 | 3.13%              | 151,787             | \$0.00                          |
| 2024*                                | 139,538,591    | 1,405,001        | 131,556,080         | 94.3%     | \$41.32                 | 1.81%              | 896,256             | \$0.00                          |
| 2025*                                | 140,569,879    | 1,031,288        | 132,243,096         | 94.1%     | \$41.85                 | 1.27%              | 667,554             | \$0.00                          |

\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

Miami-Dade County Historical & Projected Occupancy

**HISTORICAL OCCUPANCY: MIAMI-DADE COUNTY - FL RETAIL MARKET**



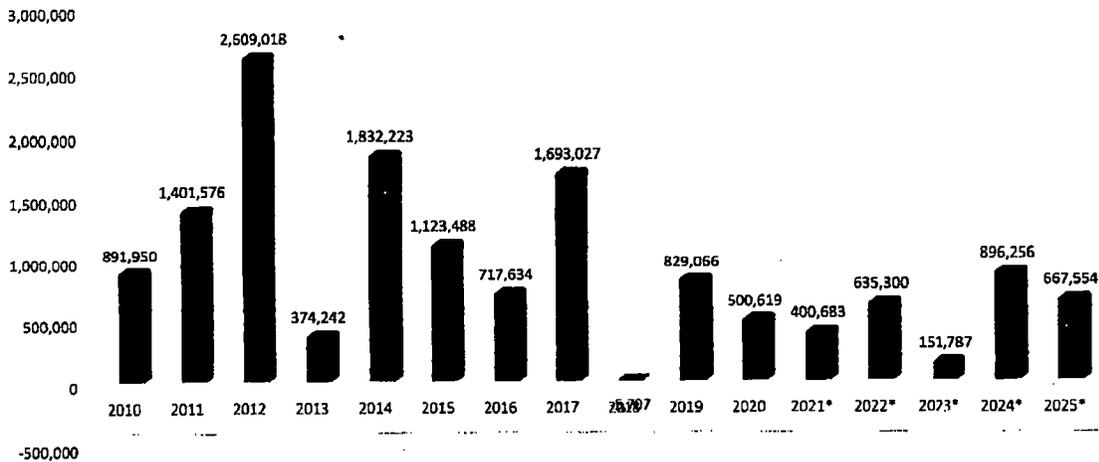
\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The Miami-Dade County market's occupancy rate declined to 94.9% from 95.9% between yearend 2019 and the 4th quarter 2020, while 2014 through 2017 proved to peak occupancy years. The forward looking occupancy is projected to trend downwards into 2021 through 2025 with a bottom of projected to be 94.1%.

Miami-Dade County Historical & Projected Net Absorption

**HISTORICAL NET ABSORPTION: MIAMI-DADE COUNTY - FL RETAIL MARKET**



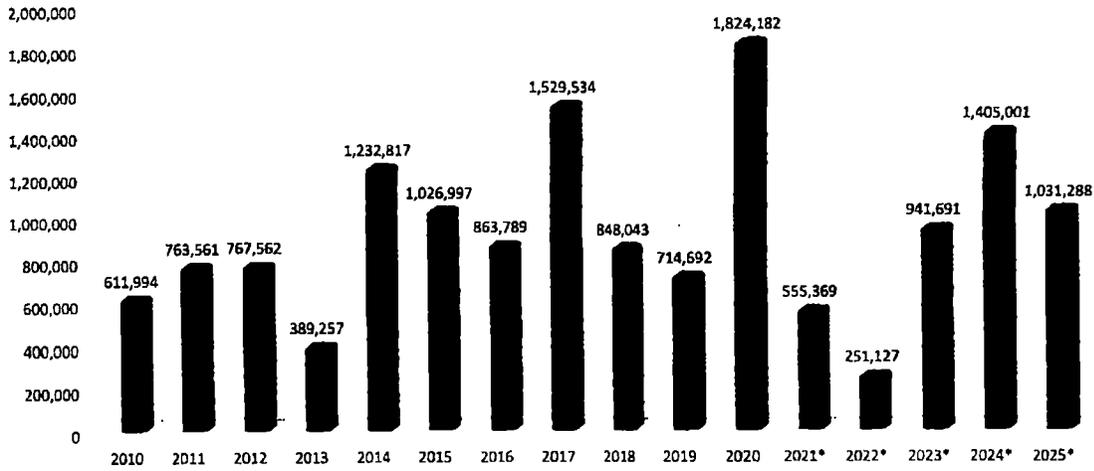
\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The overall market area has experienced positive net absorption since 2010 with a decline into the negative in 2018. However, there was a return to positive net absorption in 2019 followed by positive projections for year end 2020 and more modest positive projection for 2021.

**Miami-Dade County Historical Completions & Projections**

**HISTORICAL COMPLETIONS: MIAMI-DADE COUNTY - FL RETAIL MARKET**



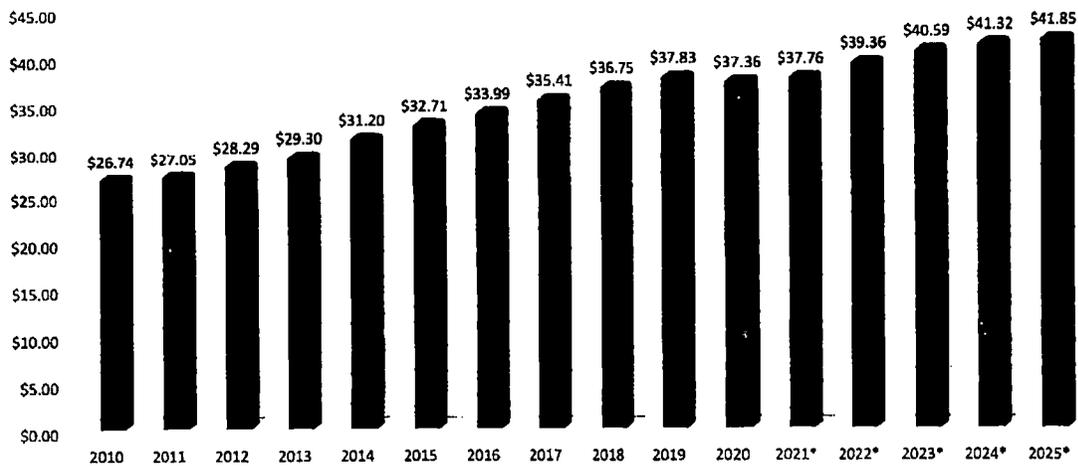
\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The overall market area had substantial completions of new retail delivered to market since 2010 with a spike of 1,824,182-SF to be completed by year end 2020, while forward looking to 2021 to 2025 are projected for a modest completion schedule in the wake of the Covid-19 pandemic.

**Miami-Dade County Historical Asking Rent Growth**

**HISTORICAL ASKING RENT: MIAMI-DADE COUNTY - FL RETAIL MARKET**



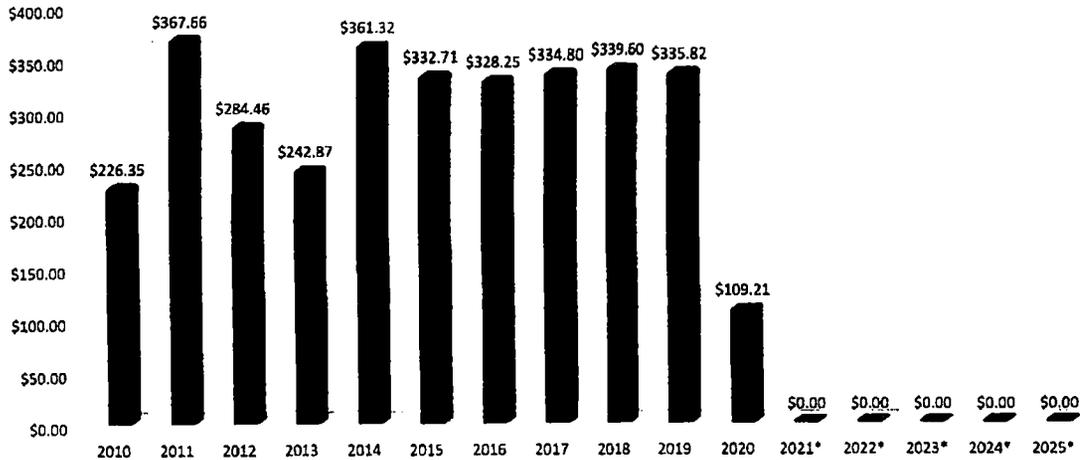
\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The overall market achieved average peak asking rents at \$37.83-PSF in 2019 with growth of 3.9% compounded annually between 2010 to 2019, while 2020 is expected to retract by (1.2%) at year end 2020 in the wake of the Covid-19 pandemic.

**Miami-Dade County Historical Transaction Price Per Building Area**

**HISTORICAL TRANSACTION PRICE PER AREA: MIAMI-DADE COUNTY - FL RETAIL MARKET**



\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The overall market achieved average peak transaction pricing in 2011 at \$367.66-PSF of rentable area and the last recorded transaction history is from 2019 at \$335.82-PSF, while 2020 and forward looking projections are not yet available in the wake of the Covid-19 pandemic.

**MIAMI-DADE COUNTY SUBMARKET SNAPSHOT**

The following table summarizes the inventory, completions, average asking rent and occupancy for each submarket within the Miami-Dade County market as of the 4th quarter 2020.

| MIAMI-DADE COUNTY - FL SUBMARKET SNAPSHOT |                  |                   |                         |              |
|---|------------------|-------------------|-------------------------|--------------|
| Submarket                                 | Inventory (SF)   | Completions* (SF) | Asking Rent (\$/SF NNN) | Occupancy    |
| Aventura                                  | 5,568,045        | 0                 | \$59.09                 | 96.2%        |
| Biscayne Corridor                         | 1,979,524        | 0                 | \$33.78                 | 92.4%        |
| Brickell                                  | 1,570,695        | 27,000            | \$62.74                 | 90.7%        |
| Coconut Grove                             | 1,788,943        | 87,000            | \$53.63                 | 89.4%        |
| Coral Gables                              | 3,862,444        | 125,000           | \$46.37                 | 91.8%        |
| Coral Way                                 | 2,724,877        | 2,163             | \$38.15                 | 96.9%        |
| Downtown Miami                            | 4,083,019        | 306,144           | \$38.68                 | 75.0%        |
| Hialeah                                   | 12,663,376       | 4,976             | \$28.08                 | 97.6%        |
| Kendall                                   | 21,612,354       | 18,853            | \$37.75                 | 95.1%        |
| Miami                                     | 12,293,482       | 48,321            | \$24.51                 | 95.8%        |
| Miami Airport                             | 12,887,687       | 13,829            | \$34.72                 | 96.7%        |
| <b>Miami Beach</b>                        | <b>9,113,034</b> | <b>161,612</b>    | <b>\$82.84</b>          | <b>92.2%</b> |
| Miami Gardens/Opa Locka                   | 3,612,402        | 48,004            | \$23.63                 | 98.0%        |
| Miami Lakes                               | 4,958,714        | 0                 | \$27.18                 | 97.3%        |
| Northeast Dade                            | 13,514,073       | 814,957           | \$27.88                 | 96.1%        |
| Outlying Miami-Dade Cnty                  | 776,227          | 71,785            | \$29.48                 | 94.8%        |
| South Dade                                | 12,416,381       | 81,878            | \$26.58                 | 96.5%        |
| West Miami                                | 7,180,838        | 8,500             | \$32.26                 | 97.8%        |
| Wynwood-Design District                   | 3,673,088        | 4,160             | \$49.49                 | 88.1%        |

\*Completions include trailing 4 quarters

Source: Costar, 4th Quarter 2020

As presented, in the foregoing table, the subject Miami Beach submarket comprises 9,113,034-SF or approximately 6.7% of the total Miami-Dade County market inventory with average asking rent of \$82.84-PSF that is above all of the 19 other submarkets, while overall submarket occupancy below 13 of the same 19 submarkets.

#### Miami Beach Submarket

The Miami Beach submarket consists of approximately 9,113,034-SF of retail space with the historical and projected inventory for the submarket indicated in the following table:

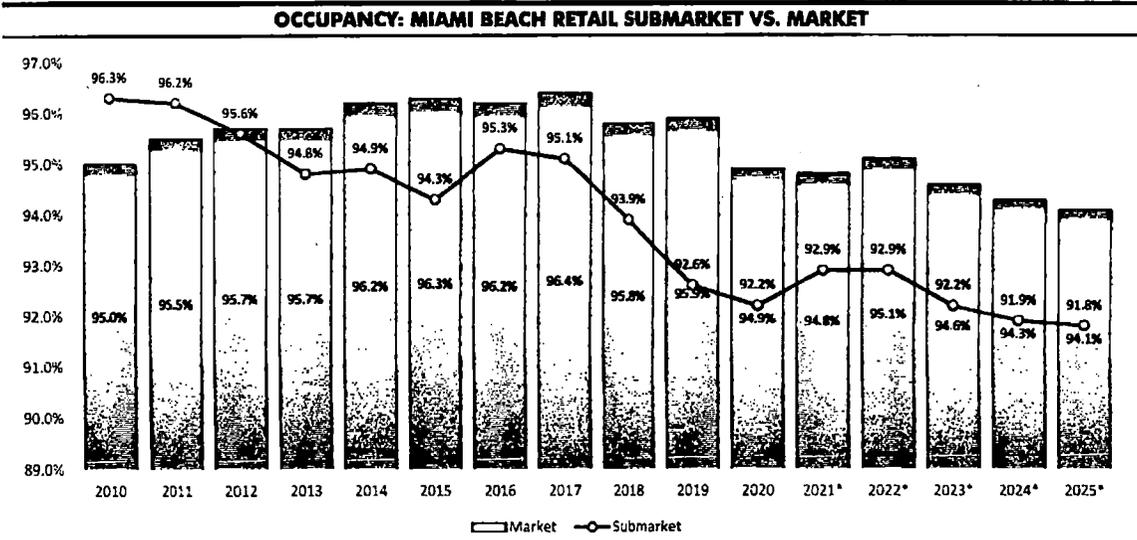
| MIAMI BEACH RETAIL SUBMARKET |                |                  |                     |           |                         |                    |                     |                                    |
|------------------------------|----------------|------------------|---------------------|-----------|-------------------------|--------------------|---------------------|------------------------------------|
| Year Ending                  | Inventory (SF) | Completions (SF) | Occupied Stock (SF) | Occupancy | Asking Rent (\$/SF NNN) | Asking Rent Change | Net Absorption (SF) | Transaction Price Per Area (\$/SF) |
| 2010                         | 8,240,457      | 7,619            | 7,934,169           | 96.3%     | \$58.17                 | 1.30%              | 74,782              | \$524.97                           |
| 2011                         | 8,344,217      | 103,760          | 8,030,621           | 96.2%     | \$58.68                 | 0.88%              | 96,452              | \$460.35                           |
| 2012                         | 8,470,932      | 126,715          | 8,098,591           | 95.6%     | \$61.12                 | 4.16%              | 67,970              | \$1,772.71                         |
| 2013                         | 8,480,074      | 9,142            | 8,041,500           | 94.8%     | \$62.90                 | 2.92%              | -57,091             | \$1,383.41                         |
| 2014                         | 8,564,355      | 84,281           | 8,125,291           | 94.9%     | \$66.93                 | 6.41%              | 83,791              | \$1,838.93                         |
| 2015                         | 8,594,421      | 30,086           | 8,108,528           | 94.3%     | \$70.46                 | 5.28%              | -13,857             | \$862.55                           |
| 2016                         | 8,646,995      | 52,574           | 8,239,752           | 95.3%     | \$72.89                 | 3.45%              | 131,224             | \$531.22                           |
| 2017                         | 8,758,879      | 111,884          | 8,328,902           | 95.1%     | \$77.30                 | 6.05%              | 89,150              | \$901.18                           |
| 2018                         | 8,852,000      | 93,121           | 8,313,735           | 93.9%     | \$81.56                 | 5.51%              | -15,167             | \$340.04                           |
| 2019                         | 8,951,422      | 97,422           | 8,293,444           | 92.6%     | \$83.59                 | 2.49%              | -21,891             | \$453.71                           |
| 2020 Q1                      | 9,050,861      | 99,439           | 8,525,576           | 94.2%     | \$84.59                 | 1.20%              | 232,132             | \$810.66                           |
| 2020 Q2                      | 9,050,861      | 0                | 8,450,750           | 93.4%     | \$83.84                 | -0.89%             | -74,826             | \$598.29                           |
| 2020 Q3                      | 9,050,861      | 0                | 8,403,481           | 92.8%     | \$83.40                 | -0.53%             | -47,269             | \$569.32                           |
| 2020 Q4                      | 9,113,034      | 62,173           | 8,406,001           | 92.2%     | \$82.84                 | -0.67%             | 8,953               | \$0.00                             |
| 2021*                        | 9,087,025      | -26,009          | 8,440,380           | 92.9%     | \$83.61                 | 0.94%              | 34,511              | \$0.00                             |
| 2022*                        | 9,093,220      | 6,195            | 8,444,496           | 92.9%     | \$87.05                 | 4.11%              | 4,202               | \$0.00                             |
| 2023*                        | 9,155,961      | 62,741           | 8,439,173           | 92.2%     | \$89.67                 | 3.00%              | -5,693              | \$0.00                             |
| 2024*                        | 9,568,507      | 412,546          | 8,797,192           | 91.9%     | \$91.17                 | 1.68%              | 357,083             | \$0.00                             |
| 2025*                        | 9,637,995      | 69,488           | 8,850,632           | 91.8%     | \$92.22                 | 1.14%              | 52,499              | \$0.00                             |

\*Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The current submarket inventory represents approximately 6.7% of the overall market inventory and 8.9% of the completions reported for yearend 2020.

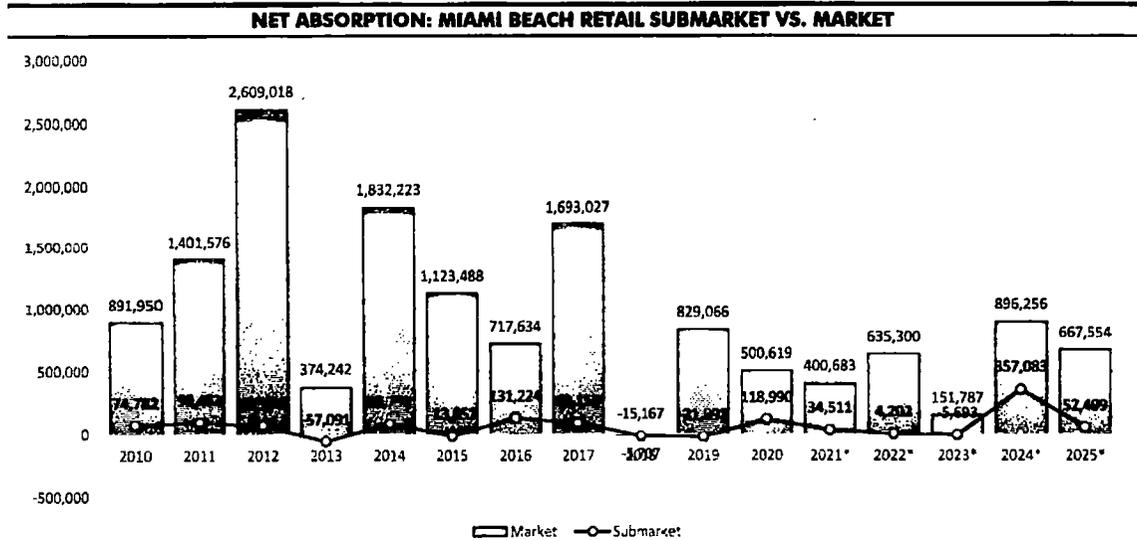
**Miami Beach Submarket Occupancy**



\* Future Projected Data according to Costar  
 Source: Costar, 4th Quarter 2020

As of the 4th Quarter 2020, the overall submarket occupancy was reported to be 92.2% in comparison to 94.9% for the overall market area. The forward-looking projection for the submarket is to bottom out by 2025 in concert with the Miami-Dade County market in the wake of the Covid-19 pandemic.

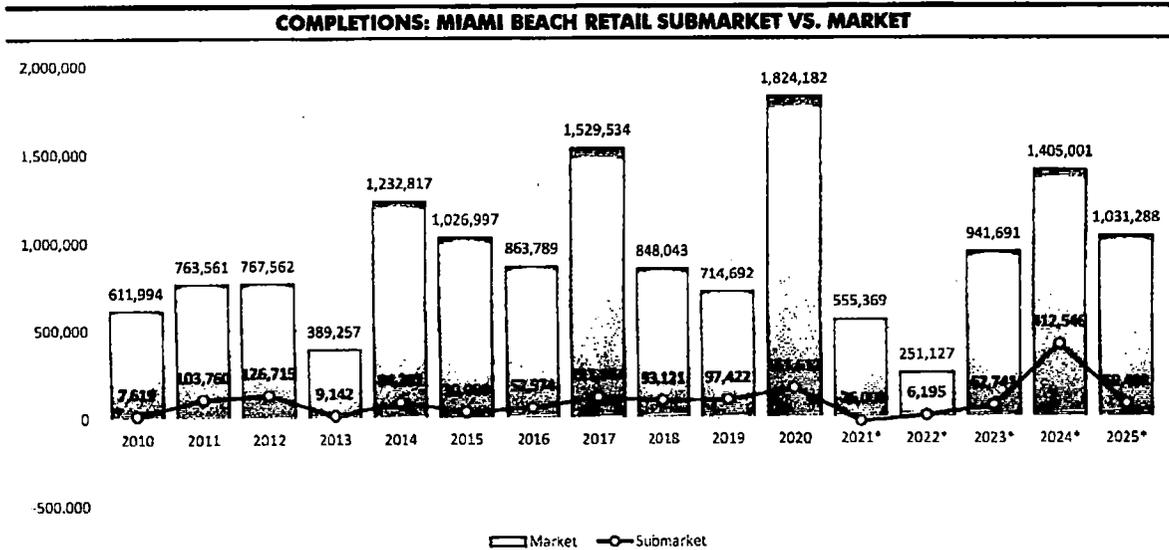
**Miami Beach Submarket Net Absorption**



\* Future Projected Data according to Costar  
 Source: Costar, 4th Quarter 2020

The subject submarket experienced a positive net absorption from 2010 through 2017 with the exception of 2018. The forward looking net absorption is projected to be a modest positive as a result of the Covid-19 pandemic.

**Miami Beach Submarket Completions**

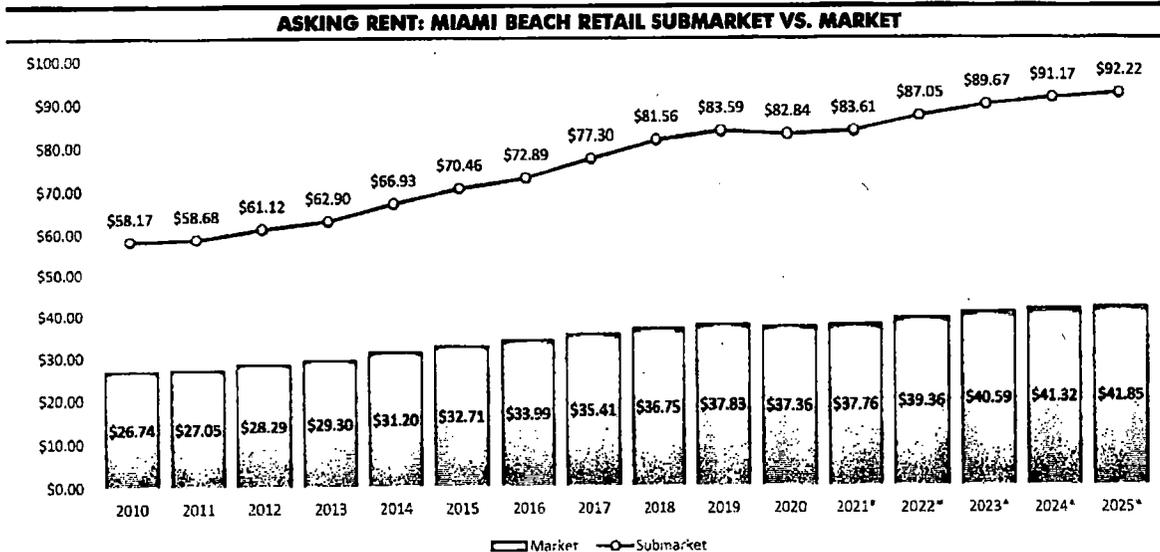


\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The subject submarket had 161,612-SF of completions in 2020 with only 26,009-SF projected for completion in 2021 in the wake of the Covid-19 pandemic.

**Miami Beach Submarket Effective Rent**



\* Future Projected Data according to Costar

Source: Costar, 4th Quarter 2020

The Miami Beach submarket achieved average asking rent growth of +4.1% compounded annually between 2010 to 2019, while 2020 is expected to decline by (0.9%) in the wake of the Covid-19 pandemic.

## COMPETITIVE PROPERTIES

Comparable properties were surveyed in order to identify the current occupancy within the competitive market. The comparable data is summarized in the following table:

| <b>SUMMARY OF COMPARABLE RESTAURANT RENTALS</b> |                      |  |                       |                   |
|---|----------------------|--|-----------------------|-------------------|
| Comp. No.                                       | Name                 | Location                                       | Distance from Subject | Overall Occupancy |
| 1   | JB's on the Beach    | 300 North Ocean Boulevard, Deerfield Beach, FL | 38 Miles              | 100%              |
| 2   | etta Las Olas        | 1002 E Las Olas Boulevard, Fort Lauderdale, FL | 24 Miles              | 90%               |
| 3   | Grove Ink Restaurant | 3490 Main Highway, Miami, FL                   | 7.4 Miles             | 100%              |
| 4   | Tigertail + Mary     | 3321 Mary Street, Miami, FL                    | 7.0 Miles             | 100%              |
| 5   | Moxie's Grill & Bar  | 900 S Miami Avenue, Miami, FL                  | 3.7 Miles             | 83%               |
| 6   | Amara at Parioso     | 3101 NE 7th Avenue, Miami, FL                  | 4.3 Miles             | 100%              |
| 7   | Red, The Steakhouse  | 801 South Pointe Drive, Miami Beach, FL        | 0.2 Miles             | 43%               |
| Subject   | Smith & Wollensky    | 1 Washington Avenue, Miami Beach, Florida      |                       | 100%              |
| Compiled by CBRE                                |                      |  |                       |                   |

The majority of comparable properties surveyed reported occupancy rates of 43% or better, and all are currently in average-to-good condition. Comparables 2, 5 & 7 are multi-tenant properties with vacancy, while the remainder of the comparables are single tenant, triple net leased properties that are 100% occupied with long term lease commitments.

## SUBJECT ANALYSIS

### Tenant Analysis

The subject property is tenant occupied by Smith & Wollensky, which is owned by the Irish investment firm Danu Partners. In February 2020, the company announced last week that it has acquired most of the Strega properties from Nick Varano's restaurant group including Strega Waterfront, Strip by Strega, Strega Prime, several cafes, and a catering business. Danu operates Smith & Wollensky and the new acquisitions under a new Medford-based subsidiary called PPX Hospitality Brands.

The Smith & Wollensky brand started in 1977 and has been known as the quintessential New York steakhouse. In 1997, Smith & Wollensky Restaurants expanded into major cities across the US, including Miami Beach, Chicago, New Orleans, Las Vegas, Washington, D.C., Philadelphia, Columbus, Ohio, Dallas, Houston, and Boston. Smith & Wollensky Restaurant Group also operates five other restaurants including Cité, Maloney & Porcelli, Manhattan Ocean Club, Park Avenue Café and The Post House.

**Tenant Store Sales Comparison Analysis**

The subject is considered to be a nationally recognized restaurant brand with 170,000 guests per annum. The retail sales reported for the subject property in the past 5-years is presented in the following table.

| <b>SUBJECT'S RETAIL SALES</b>  |                 |                 |                 |                 |                 |             |                 |
|--------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------|-----------------|
|                                | 2015            | 2016            | 2017            | 2018            | 2019            | % Chg./Yr.  | 2019 Per Seat   |
| Smith & Wollensky - Restaurant | \$657/SF        | \$592/SF        | \$625/SF        | \$684/SF        | \$715/SF        | 2.1%        | \$32,541        |
| Concession Area                | \$168/SF        | \$151/SF        | \$158/SF        | \$204/SF        | \$209/SF        | 5.6%        | \$121,248       |
| <b>Totals</b>                  | <b>\$825/SF</b> | <b>\$743/SF</b> | <b>\$783/SF</b> | <b>\$888/SF</b> | <b>\$924/SF</b> | <b>2.9%</b> | <b>\$42,071</b> |

Compiled by CBRE

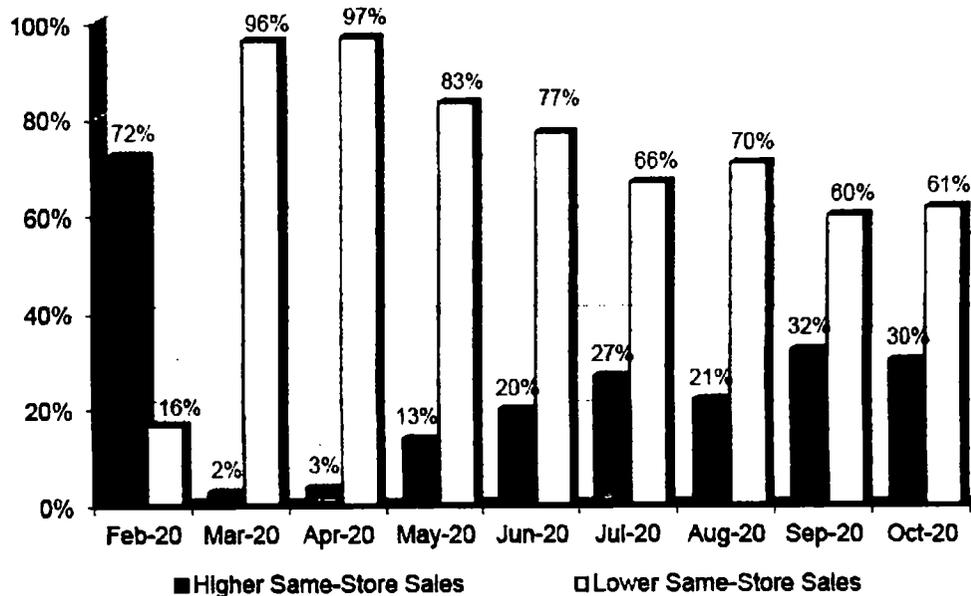
As presented, the subject tenant has enjoyed positive sales growth from 2015 through 2019, while 2020 figures were not available for this analysis due to the Covid-19 pandemic. According to management, the restaurant closed in March 2020 as a result of the pandemic and executive order from the State of Florida governor and re-opened at the end of May 2020 with a 50% maximum capacity mandate.

**Cost to Achieve Stabilized Operations**

As of the effective date of this market study, the general manager reports business operations at 35% versus 2019. Therefore, a market rent abatement should be considered in order to achieve stabilized operations & occupancy during the Covid-19 pandemic and 50% maximum capacity mandate.

As previously presented in the National Restaurant 2020 Market Analysis, restaurant operators continued to report negative same-store sales and customer traffic through October as shown in the following chart:

### Restaurant Operators' Reporting of Same-Store Sales versus Same Month in Previous Year



Source: National Restaurant Association, Restaurant Industry Tracking Survey

As has been the case throughout the pandemic, limited service operators were much more likely to report higher same-store sales as their full service counterparts.

Based on the foregoing actual micro and macro analyses, CBRE has projected the subject property operations will have a phased increase in customer capacity, as follows:

- January through June 2021 at 35% capacity; and,
- July through December 2021 at 45% to 95% capacity.

Based on the foregoing, we would expect temporary rent reduction to off-set the impact of the Covid-19 pandemic and a market rental rate abatement for the restaurant & concession area, calculated as follows:

**RESTAURANT RENT & CONCESSION FEE ABATEMENT CALCULATION FOR 2021**

2019 Gross Sales - Restaurant &amp; Concession \$19,268,644

2019 Average Monthly Sales \$1,605,720

| Month                                | Average Sales | % of Monthly Sales | Estimated Sales Projections | % Rent @ 10% of Sales | Market Rent | Rent Loss          |
|--------------------------------------|---------------|--------------------|-----------------------------|-----------------------|-------------|--------------------|
| 1                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 2                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 3                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 4                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 5                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 6                                    | \$1,605,720   | 35.0%              | \$562,002                   | \$56,200              | \$145,033   | (\$88,833)         |
| 7                                    | \$1,605,720   | 45.0%              | \$722,574                   | \$72,257              | \$145,033   | (\$72,776)         |
| 8                                    | \$1,605,720   | 55.0%              | \$883,146                   | \$88,315              | \$145,033   | (\$56,719)         |
| 9                                    | \$1,605,720   | 65.0%              | \$1,043,718                 | \$104,372             | \$145,033   | (\$40,662)         |
| 10                                   | \$1,605,720   | 75.0%              | \$1,204,290                 | \$120,429             | \$145,033   | (\$24,604)         |
| 11                                   | \$1,605,720   | 85.0%              | \$1,364,862                 | \$136,486             | \$145,033   | (\$8,547)          |
| 12                                   | \$1,605,720   | 95.0%              | \$1,525,434                 | \$152,543             | \$145,033   | \$7,510            |
| <b>TOTAL RENT LOSS FOR ABATEMENT</b> |               |                    |                             |                       |             | <b>(\$728,796)</b> |
| <b>ROUNDED</b>                       |               |                    |                             |                       |             | <b>(\$729,000)</b> |

Source: Tenant Sales Report &amp; Covid-19 Restaurant Industry Reports

And, a market rental rate abatement for the restaurant, excluding the concession area, calculated as follows:

**RESTAURANT RENT ABATEMENT CALCULATION FOR 2021**

2019 Gross Sales - Restaurant \$14,903,719

2019 Average Monthly Sales \$1,241,977

| Month                                | Average Sales | % of Monthly Sales | Estimated Sales Projections | % Rent @ 10% of Sales | Market Rent | Rent Loss          |
|--------------------------------------|---------------|--------------------|-----------------------------|-----------------------|-------------|--------------------|
| 1                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 2                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 3                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 4                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 5                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 6                                    | \$1,241,977   | 35.0%              | \$434,692                   | \$43,469              | \$101,983   | (\$58,514)         |
| 7                                    | \$1,241,977   | 45.0%              | \$558,889                   | \$55,889              | \$101,983   | (\$46,094)         |
| 8                                    | \$1,241,977   | 55.0%              | \$683,087                   | \$68,309              | \$101,983   | (\$33,675)         |
| 9                                    | \$1,241,977   | 65.0%              | \$807,285                   | \$80,728              | \$101,983   | (\$21,255)         |
| 10                                   | \$1,241,977   | 75.0%              | \$931,482                   | \$93,148              | \$101,983   | (\$8,835)          |
| 11                                   | \$1,241,977   | 85.0%              | \$1,055,680                 | \$105,568             | \$101,983   | \$3,585            |
| 12                                   | \$1,241,977   | 95.0%              | \$1,179,878                 | \$117,988             | \$101,983   | \$16,004           |
| <b>TOTAL RENT LOSS FOR ABATEMENT</b> |               |                    |                             |                       |             | <b>(\$441,355)</b> |
| <b>ROUNDED</b>                       |               |                    |                             |                       |             | <b>(\$441,000)</b> |

Source: Tenant Sales Report &amp; Covid-19 Restaurant Industry Reports

### Rent As a Percentage of Sales

Typically, rent as a percentage of sales is cross analyzed as a health ratio and as an occupancy cost ratio. An occupancy cost ratio is defined as the total cost of occupying the premises (i.e., rents, overages, recoveries, etc.) divided by its total sales. This ratio is relevant as the amount of rent a tenant will potentially pay is closely related to their ability to generate adequate sales volume while also maintaining a desired profit margin.

However, when only base rent is known, and none of the cost recoveries or reimbursements are known, then the analysis becomes base rent as a percentage of sales. Furthermore, with regards to the subject property, the real estate tax obligation is currently an exempt status on both land & leasehold building improvements. Therefore, the base rent as a percentage of sales can parallel an occupancy cost analysis.

Information obtained from published data regarding occupancy cost ratios is presented as follows:

| Tenant Classification            | National Median Occupancy Costs |              |               |              |
|----------------------------------|---------------------------------|--------------|---------------|--------------|
|                                  | Super                           | Regional     | Community     | Neighbor-    |
|                                  | Regional                        | Regional     | Community     | hood         |
| Traditional Dept. Store          | 3.13%                           | 3.24%        | -----         | -----        |
| Home Improvements                | -----                           | -----        | 5.80%         | -----        |
| Discount Department Store        | -----                           | -----        | 2.88%         | -----        |
| Supermarket                      | -----                           | -----        | 2.56%         | 2.34%        |
| Discount Mixed Apparel           | 8.79%                           | -----        | 6.61%         | -----        |
| Bath Shop/Linens                 | 12.85%                          | -----        | 10.81%        | -----        |
| Drugstore/Pharmacy               | 9.64%                           | -----        | 3.32%         | 3.50%        |
| Home Accessories                 | 15.18%                          | 16.00%       | 12.52%        | -----        |
| Dollar Store/Novelties           | 10.78%                          | -----        | 8.76%         | 9.82%        |
| Mixed Apparel                    | 11.34%                          | 12.12%       | 8.81%         | -----        |
| <b>Restaurant with Liquor</b>    | <b>8.21%</b>                    | <b>9.54%</b> | <b>7.82%</b>  | <b>8.99%</b> |
| <b>Restaurant without Liquor</b> | <b>9.94%</b>                    | <b>8.73%</b> | <b>10.49%</b> | <b>9.85%</b> |
| Cards and Gifts                  | 17.29%                          | 15.55%       | 13.73%        | 15.66%       |
| Family Shoes                     | 14.68%                          | 15.82%       | 9.31%         | 9.33%        |
| Cosmetics/Beauty Supplies        | 14.57%                          | 13.64%       | 7.84%         | 8.05%        |
| Jewelry                          | 12.87%                          | 12.21%       | 6.31%         | 8.21%        |
| Health Food                      | 15.84%                          | 16.13%       | 13.22%        | 15.49%       |
| Unisex Hair                      | 16.95%                          | 13.17%       | 15.35%        | 13.15%       |
| Nail Salon                       | 26.12%                          | 25.39%       | 17.87%        | 27.76%       |

Source: Dollars and Cents of Shopping Centers: 2008

As presented, occupancy costs for restaurants with & without liquor produced an overall range from 7.82% to 10.49%. Because we do not have the additional cost recoveries for the subject property, which exclude the highest fixed expense for real estate taxes through municipal

ownership & exemption, the appropriate base rent as a percent of sales should fall within the midpoint of the range at say, 7.5% to 10.5%.

Based on the foregoing tenant gross sales report and rent as a percentage of sales, we have calculated market rent range for the subject property as follows:

| <b>MARKET RENT AS A % OF GROSS SALES</b> |                   |                             |                          |
|--|-------------------|-----------------------------|--------------------------|
| <b>Component</b>                         | <b>2019 Sales</b> | <b>Rent as a % of Sales</b> | <b>Market Rent Range</b> |
| Restaurant & Concession Area             | \$19,268,644      | 7.5% to 10.5%               | <b>PSF</b>               |
|  |                   |                             | \$69.31 to \$97.03       |
|  |                   |                             | <b>Per Seat</b>          |
|  |                   |                             | \$3,155 to \$4,417       |
| Restaurant Only                          | \$14,903,719      | 7.5% to 10.5%               | <b>PSF</b>               |
|  |                   |                             | \$53.61 to \$75.05       |
|  |                   |                             | <b>Per Seat</b>          |
|  |                   |                             | \$2,441 to \$3,417       |
| <b>Compiled by CBRE</b>                  |                   |                             |                          |

#### Occupancy

Based on the foregoing analysis, CBRE, Inc.'s conclusion of stabilized occupancy for the subject is illustrated in the following table. This estimate considers both the physical and economic factors of the market.

| <b>OCCUPANCY CONCLUSIONS</b>       |              |
|------------------------------------|--------------|
| Miami-Dade County                  | 94.9%        |
| Miami Beach Submarket              | 92.2%        |
| Rent Comparables - Overall Average | 88.9%        |
| Rent Comparables - Stable Range    | 90.0% - 100% |
| Subject's Current Occupancy        | 100.0%       |
| Subject's Stabilized Occupancy     | 100.0%       |
| <b>Compiled by CBRE</b>            |              |

The foregoing stabilized occupancy conclusion is premised on the long term operating history reported for the subject property dating to at least 1997, i.e. 23 years +/- of no vacancy, the strong tenant sales growth reported in the preceding 5-year period, and assuming a minimum 10-year prospective lease term going forward.

## Highest and Best Use

In appraisal practice, the concept of highest and best use represents the premise upon which value is based. The four criteria the highest and best use must meet are:

- Legal permissibility;
- Physical possibility;
- Financial feasibility; and
- Maximum productivity.

The highest and best use analysis of the subject is discussed below.

### **AS VACANT**

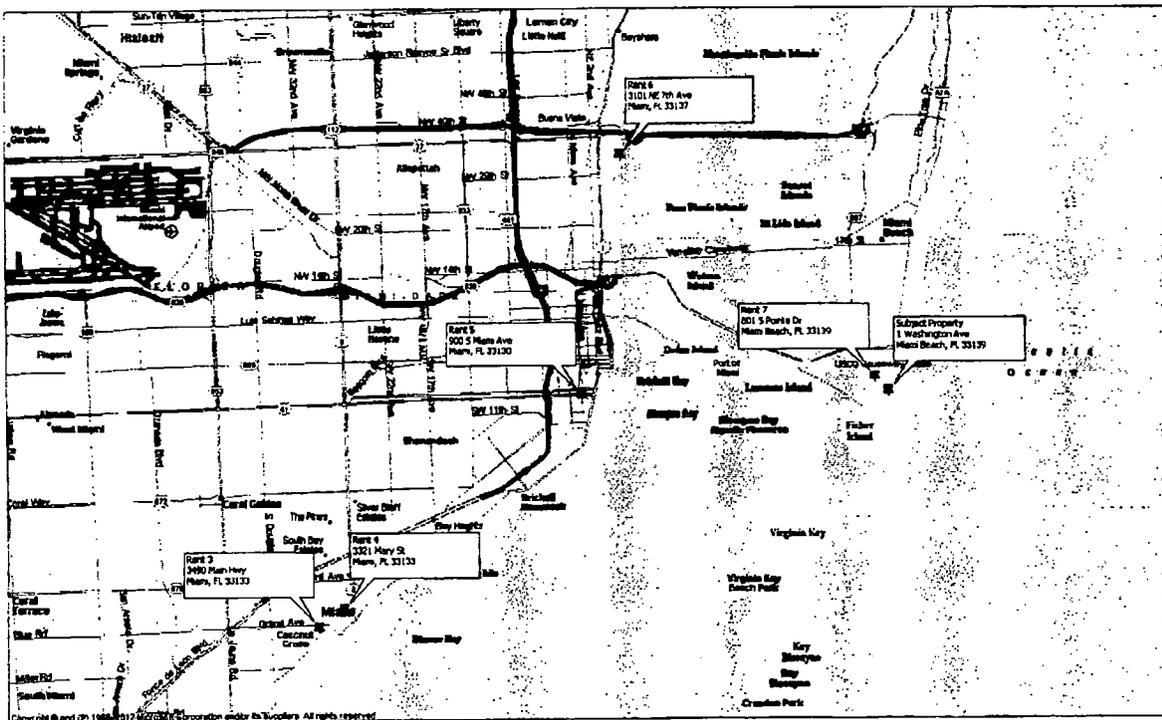
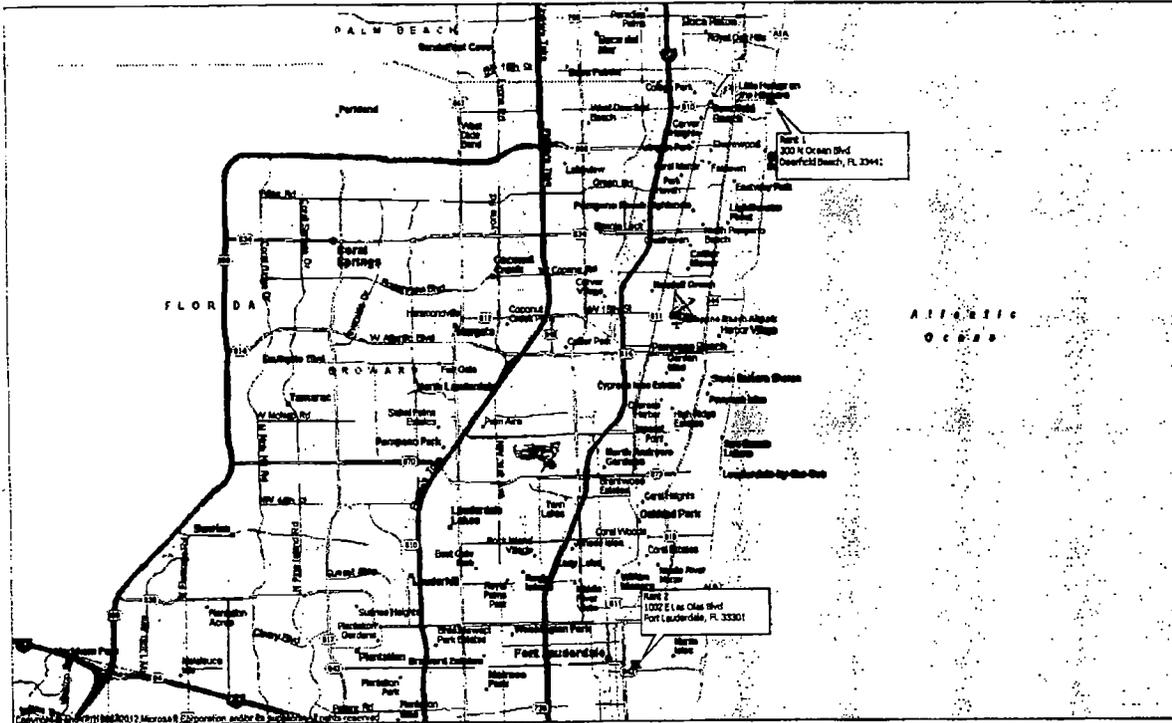
The property is zoned for government uses and is of sufficient size to accommodate various types of development. The immediate area includes high density, luxury residential condominium towers and recreational uses. Considering the surrounding land uses, the very desirable waterfront location, legal restrictions and other factors, it is our opinion that a restaurant or recreation & leisure oriented use would be reasonable and appropriate.

### **AS IMPROVED**

As improved, the subject restaurant is a legally permissible and physically possible. The improvements continue to contribute substantial value to the property and based on our analysis, the existing use is financially feasible and the maximally productive use. Therefore, it is our opinion that the highest and best use of the subject, as improved, is for continued restaurant related use.

# Income Capitalization Approach

The following map and table summarize the primary comparable data used in the valuation of the subject. A detailed description of each transaction is included in the addenda.



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<br>300 North Ocean Boulevard,<br>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     | elta Las Olas<br>1002 E Las Olas Boulevard,<br>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<br>3490 Main Highway,<br>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<br>3321 Mary Street,<br>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     | Maxie's Grill & Bar<br>900 S Miami Avenue,<br>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 Parioso<br>3101 NE 7th Avenue,<br>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<br>801 South Pointe Drive,<br>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<br>1 Washington Avenue,<br>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

The rentals utilized represent the best data available for comparison with the subject. They were selected from our research within the greater Miami Beach area and similar waterfront and beach front locations in south Florida.

## **DISCUSSION/ANALYSIS OF RENT COMPARABLES**

### **Rent Comparable One**

This comparable is a 6,470-square foot beach & oceanfront restaurant located at 300 North Ocean Boulevard in the City of Deerfield Beach in northeast Broward County, Florida. The restaurant building has direct Atlantic Ocean with significant outdoor, covered patio seating and is supported by an 0.94-acre, open surface parking lot located across the street at 301 NE 21st Street. The oceanfront site was acquired in October 2001 for \$3,000,000 by the original owner/operator, John & Janet Boyle, who developed the building in 2002 and assembled the surface parking lot in November 2003 for \$3,375,000. In the 1st quarter 2019, ARK Restaurants (NASDAQ: ARKR) acquired the operating entity from the Boyle's and executed a new, 20-year lease with one, 5-year renewal option with Boyle Beach House LLC as the fee simple owner/landlord. The initial base rent is \$600,000 per annum with 10% escalations every 5-years plus percentage rent at 5.0% of gross sales with a \$12,000,000 breakpoint. The property features an indoor/outdoor seating capacity of 300-seats and reported gross sales at \$11,500,000 in 2019.

In comparison to the subject property, Rental 1 is similar based on an exclusive beach front location, surface parking lot support, and high density residential & resort hotel demographics.

### **Rent Comparable Two**

This comparable rental is a 2-story, 8,526-SF restaurant plus 1,014-SF of front & back patio deck area on the 2nd floor within a 24,590-square foot high street retail property located at 1002 - 1032 East Las Olas Boulevard in Fort Lauderdale, Florida. The improvements were originally constructed in 1966 and are situated on a 0.81-acre business zoned site with the owner/developer in process of repositioning & redeveloping a portion of the property by razing an existing 3,800-square foot retail building and replacing it with the new, 8,526-square foot, restaurant building that is pre-leased to etta, an upscale table service restaurant & bar.

The approvals are reportedly in-hand with the demolition occurring in November 2020 and occupation anticipated in the 1st quarter 2021 but no later than June 1, 2021 at which time etta will begin paying base rent at \$70.00-PSF less free rent adjustments, on a triple net plus an operating expense pass through of \$11.87-PSF in Year 1 with a 3% cap on controllable expenses plus percentage rent at 5% of gross revenue with an \$8,500,000 breakpoint. The initial lease term is 10-years plus two, 5-year renewal terms. The budgeted hard & soft construction costs total \$2,610,000, or \$306.12 per square foot, plus an additional \$1,250,000 or \$146.61-PSF for the new restaurant tenant improvement allowance. The Fire Marshall capacity is for 429 customer seats including indoor/outdoor & bar areas, while the operators floor plan design is for

365-capacity, of which 233-seats are indoors and 132-seats are outdoors on the 2nd floor front & back patio decks. Off-street parking for the restaurant will be 3-covered spaces plus a pedestrian breezeway connecting to municipal public parking lots.

The existing tenants include Blue Mercury, Stokehouse Unlimited (pop-up), Jamail Chelsea Gallery (month-to-month), and Louis Bossi's Ristorante Bar.

In comparison to the subject property, Rental 2 is inferior with regards to non-exclusive & non-waterfront location, while superior with respect to newer age/construction and similar municipal parking lot support.

#### **Rent Comparable Three**

This comparable reflects 6,975-square feet of ground floor restaurant space with a 695-square foot rooftop terrace situated within a 52,998-square foot, five-story, suburban office building located at 480 Main Highway in Miami, Florida. The improvements were completed in the third quarter of 2020 and are situated on a 0.32-acre site. The restaurant space is leased to Grove Ink Restaurant at \$70.00 per square foot, triple net, with a 10-year term, 3% annual increases, no tenant improvement allowance and 6-months free rent, outside term.

In comparison to the subject property, Rental 3 is inferior with regards to non-exclusive & non-waterfront location, while superior with respect to new age/construction and similar high density residential demographic support.

#### **Rent Comparable Four**

This comparable restaurant rental is located at the base of the Club Residences at Park Grove condominium tower in the Coconut Grove submarket in Miami, Florida. The lease commencement was on October 30th 2018 for a 10-year term plus three, 10-year renewal options with 2% annual escalations. Percentage rent is based on 10% of gross sales between \$3.5 to \$5.5 million; 9% of gross sales between \$5.5 to \$7.5 million; and, 7.5% of gross sales over \$7.5 million. The tenant operator is Michael Schwartz of the Genuine Hospitality Group. The floor plan design has a capacity for 120-seats including main dining room, bar, private dining room, patio and front lawn. The Park Grove master site plan overlooks Regatta Park, Dinner Key Marina and Biscayne Bay, and includes One Park Grove (67-units), Two Park Grove (67-units) and The Club Residences (129-units).

In comparison to the subject property, Rental 4 is inferior with regards to non-exclusive & non-waterfront location, while superior with respect to new age/construction and similar high density residential demographic support.

#### **Rent Comparable Five**

This comparable is a class A, mixed-use, urban lifestyle center located at 900 South Miami Avenue in the off-Brickell submarket in downtown Miami, Florida. The retail comprises 3-levels with escalator & elevator access is connected to a multi-family rental tower, Publix supermarket

and structured parking garage. The retail component comprises of 147,014-square feet and with units ranging from 535 to 35,500 square feet. The most recent lease commences in January 2020 for a 8,157-square foot space leased to Moxie's Grill & Bar at \$60.00-PSF, NNN for a 10-year term with \$100/SF for TI. However, the tenant is spending \$2.5 million or \$306.49-PSF on demo & buildout. This is the former Rosa Mexicana end cap space on the ground floor with outdoor, sidewalk seating and directly below Blue Martini. Moxie's Grill & Bar is a contemporary Canadian concept owned by Tom Gaglardi of Eatz Hospitality and is designed for a total of 375-seats including 150-outdoor patio seats with a historic Banyan tree, indoor bar, high-tops, booths and standard seating tables.

In comparison to the subject property, Rental 5 is inferior with regards to non-exclusive & non-waterfront location, while superior with respect to newer age/construction and similar high density residential demographic support.

#### Rent Comparable Six

This comparable rental represents the 2-story beach club building within the Pariaso District master site plan comprising One Pariaso (273-units), Pariaso Bay (368-units), GranPariaso (321-units) and Pariaso Bayviews (388-units) in the Edgewater submarket in Miami, Florida. The beach club is a freestanding building completed in 2017 and leased to Amara by Michael Schwartz in 2018. The lease was initially executed in 2018 with rent commencement in January 1, 2019. However, the Covid-19 pandemic state ordered closures provided for abatement & lease renegotiations. The new lease commenced January 1, 2021 for a 10-year term plus three, 10-year renewal options. The new annual rent is \$1,050,000 with 2% annual increases plus percentage rent at 10% gross revenues with an \$12.0 million breakpoint. The tenant operator reportedly approached \$8.0 million in sales in 2019 from 1st floor operations only and is now able to expand into the 2nd floor area, which is set-up for bar & events. After the re-opening in June 2020, the tenant operator shifted to dinner & takeout only and is reportedly doing 90% of the prior sales revenue. The landlord is responsible for roof & structural repairs & replacements. Off-street parking is provided in the residential condo tower structured parking garages and on-street, metered parking.

The building site plan & design fronts Biscayne Bay with unobstructed water front views and access to transient boat dockage. The total capacity is 367-seats, of which 119-indoor dining room & bar seats are on the 1st floor plus 90-outdoor patio seats. The 2nd floor has 158-seats including 32-lounge seats, 12-meeting room seats, 101-outdoor patio seats and 13-bar seats and a small plunge pool.

The property is also listed "for sale," unpriced, as a triple net investment by Fabio Faerman, CCIM of FA Commercial.

In comparison to the subject property, Rental 6 is similar based on an exclusive Biscayne Bay waterfront location, shared structured garage parking and high density residential demographics.

### Rent Comparable Seven

This comparable rental is a ground floor restaurant comprising 6,458-SF plus 3,000-SF +/- of outdoor patio space located in the Marea condominium at the northeast corner intersection of South Pointe Drive and Alton Road in the South of 5th submarket in Miami Beach, Florida. The Marea condominium is a 6-story, 70-unit boutique residential condominium tower overlooking South Pointe Park with 30,240-SF of ground floor retail & restaurant space including a 6,389-SF Kosushi Thai restaurant. Red South Beach is relocating from a long term Washington Avenue location and is operated by owner/Chef Peter Vauthy who signed a 10-year, \$4.5 million lease for the fully built-out former Mira Five Stars restaurant with 140-indoor seating capacity and 70-outdoor seats on the cover patio area which is necessary to operate during the pandemic and was not available at the prior Washington Avenue location. The tenant/chef modified the kitchen and the interior space design includes open dining area, a glass enclosed VIP room, two (2) private dining rooms, and a bar.

The Red, The Steakhouse commercial Unit CU1 was listed "for sale" and "for rent" at \$11,500,000 and \$95.00-PSF, triple net. Several of the other, available commercial units range from 1,000 to 5,770 square feet and are quoted at \$89.00 to \$120.00 per square foot on a triple net basis.

In comparison to the subject property, Rental 7 is inferior with regards to non-exclusive & non-waterfront location, while superior with respect to newer age/construction and similar South of 5<sup>th</sup> submarket location and high density residential demographics.

### MARKET RENT CONCLUSIONS

Based on the foregoing presentation and analysis, the appropriate market rent for the subject property should fall within the mid-to-upper end of the base rent produced by the most comparable waterfront restaurants on a per square foot basis of \$85.00 to \$90.00; and, on a per seat basis of \$2,500 to \$4,400 as presented in the Market Study section and the comparable rental survey.

In addition to base rent, a percentage rent clause should also be included at 10% of gross sales with a natural breakpoint. The natural breakpoint is the point where the fixed base rent equals the percentage rent and the tenant pays the greater of the fixed base rent or percentage rent.

The following chart shows the market rent conclusion for the subject restaurant & concession area:

| <b>MARKET RENT CONCLUSIONS</b>       |   |
|--------------------------------------|---|
| <b>Category</b>                      | <b>Restaurant &amp; Concession Area</b> |
| Gross Leasable Area (SF)             | 20,851                                  |
| Percent of Total SF                  | 100.0%                                  |
| Market Rent (\$/SF/Yr.)              | \$83.47                                 |
| Market Rent (\$/Seat/Yr.)            | \$3,800                                 |
| Percentage Rent - Natural Breakpoint | 10% of Gross Sales                      |
| No. Seats                            | 458 Seats                               |
| Concessions (New Tenants)            | Zero to 6 Months                        |
| Concessions (Renewals)               | None                                    |
| Reimbursements                       | NNN                                     |
| Escalations                          | 10% Every 5-Years                       |
| Tenant Improvements (New Tenants)    | None                                    |
| Tenant Improvements (Renewals)       | None                                    |
| Average Lease Term                   | 120 Months                              |
| Compiled by CBRE                     |   |

The following chart shows the market rent conclusion for the subject restaurant, excluding the concession area:

| <b>MARKET RENT CONCLUSIONS</b>       |                    |
|--------------------------------------|--------------------|
| <b>Category</b>                      | <b>Restaurant</b>  |
| Gross Leasable Area (SF)             | 20,851             |
| Percent of Total SF                  | 100.0%             |
| Market Rent (\$/SF/Yr.)              | \$58.69            |
| Market Rent (\$/Seat/Yr.)            | \$2,900            |
| Percentage Rent - Natural Breakpoint | 10% of Gross Sales |
| No. Seats                            | 422 Seats          |
| Concessions (New Tenants)            | Zero to 6 Months   |
| Concessions (Renewals)               | None               |
| Reimbursements                       | NNN                |
| Escalations                          | 10% Every 5-Years  |
| Tenant Improvements (New Tenants)    | None               |
| Tenant Improvements (Renewals)       | None               |
| Average Lease Term                   | 120 Months         |
| Compiled by CBRE                     |                    |

## Assumptions and Limiting Conditions

1. CBRE, Inc. through its appraiser (collectively, "CBRE") has inspected through reasonable observation the subject property. However, it is not possible or reasonably practicable to personally inspect conditions beneath the soil and the entire interior and exterior of the improvements on the subject property. Therefore, no representation is made as to such matters.
2. The report, including its conclusions and any portion of such report (the "Report"), is as of the date set forth in the letter of transmittal and based upon the information, market, economic, and property conditions and projected levels of operation existing as of such date. The dollar amount of any conclusion as to value in the Report is based upon the purchasing power of the U.S. Dollar on such date. The Report is subject to change as a result of fluctuations in any of the foregoing. CBRE has no obligation to revise the Report to reflect any such fluctuations or other events or conditions which occur subsequent to such date.
3. Unless otherwise expressly noted in the Report, CBRE has assumed that:
  - (i) Title to the subject property is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. CBRE has not examined title records (including without limitation liens, encumbrances, easements, deed restrictions, and other conditions that may affect the title or use of the subject property) and makes no representations regarding title or its limitations on the use of the subject property. Insurance against financial loss that may arise out of defects in title should be sought from a qualified title insurance company.
  - (ii) Existing improvements on the subject property conform to applicable local, state, and federal building codes and ordinances, are structurally sound and seismically safe, and have been built and repaired in a workmanlike manner according to standard practices; all building systems (mechanical/electrical, HVAC, elevator, plumbing, etc.) are in good working order with no major deferred maintenance or repair required; and the roof and exterior are in good condition and free from intrusion by the elements. CBRE has not retained independent structural, mechanical, electrical, or civil engineers in connection with this appraisal and, therefore, makes no representations relative to the condition of improvements. CBRE appraisers are not engineers and are not qualified to judge matters of an engineering nature, and furthermore structural problems or building system problems may not be visible. It is expressly assumed that any purchaser would, as a precondition to closing a sale, obtain a satisfactory engineering report relative to the structural integrity of the property and the integrity of building systems.
  - (iii) Any proposed improvements, on or off-site, as well as any alterations or repairs considered will be completed in a workmanlike manner according to standard practices.
  - (iv) Hazardous materials are not present on the subject property. CBRE is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater, mold, or other potentially hazardous materials may affect the value of the property.
  - (v) No mineral deposit or subsurface rights of value exist with respect to the subject property, whether gas, liquid, or solid, and no air or development rights of value may be transferred. CBRE has not considered any rights associated with extraction or exploration of any resources, unless otherwise expressly noted in the Report.
  - (vi) There are no contemplated public initiatives, governmental development controls, rent controls, or changes in the present zoning ordinances or regulations governing use, density, or shape that would significantly affect the value of the subject property.
  - (vii) All required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, nor national government or private entity or organization have been or can be readily obtained or renewed for any use on which the Report is based.
  - (viii) The subject property is managed and operated in a prudent and competent manner, neither inefficiently or super-efficiently.
  - (ix) The subject property and its use, management, and operation are in full compliance with all applicable federal, state, and local regulations, laws, and restrictions, including without limitation environmental laws, seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits, and licenses.
  - (x) The subject property is in full compliance with the Americans with Disabilities Act (ADA). CBRE is not qualified to assess the subject property's compliance with the ADA, notwithstanding any discussion of possible readily achievable barrier removal construction items in the Report.

- (xi) All information regarding the areas and dimensions of the subject property furnished to CBRE are correct, and no encroachments exist. CBRE has neither undertaken any survey of the boundaries of the subject property nor reviewed or confirmed the accuracy of any legal description of the subject property.

Unless otherwise expressly noted in the Report, no issues regarding the foregoing were brought to CBRE's attention, and CBRE has no knowledge of any such facts affecting the subject property. If any information inconsistent with any of the foregoing assumptions is discovered, such information could have a substantial negative impact on the Report. Accordingly, if any such information is subsequently made known to CBRE, CBRE reserves the right to amend the Report, which may include the conclusions of the Report. CBRE assumes no responsibility for any conditions regarding the foregoing, or for any expertise or knowledge required to discover them. Any user of the Report is urged to retain an expert in the applicable field(s) for information regarding such conditions.

4. CBRE has assumed that all documents, data and information furnished by or behalf of the client, property owner, or owner's representative are accurate and correct, unless otherwise expressly noted in the Report. Such data and information include, without limitation, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any error in any of the above could have a substantial impact on the Report. Accordingly, if any such errors are subsequently made known to CBRE, CBRE reserves the right to amend the Report, which may include the conclusions of the Report. The client and intended user should carefully review all assumptions, data, relevant calculations, and conclusions of the Report and should immediately notify CBRE of any questions or errors within 30 days after the date of delivery of the Report.
5. CBRE assumes no responsibility (including any obligation to procure the same) for any documents, data or information not provided to CBRE, including without limitation any termite inspection, survey or occupancy permit.
6. All furnishings, equipment and business operations have been disregarded with only real property being considered in the Report, except as otherwise expressly stated and typically considered part of real property.
7. Any cash flows included in the analysis are forecasts of estimated future operating characteristics based upon the information and assumptions contained within the Report. Any projections of income, expenses and economic conditions utilized in the Report, including such cash flows, should be considered as only estimates of the expectations of future income and expenses as of the date of the Report and not predictions of the future. Actual results are affected by a number of factors outside the control of CBRE, including without limitation fluctuating economic, market, and property conditions. Actual results may ultimately differ from these projections, and CBRE does not warrant any such projections.
8. The Report contains professional opinions and is expressly not intended to serve as any warranty, assurance or guarantee of any particular value of the subject property. Other appraisers may reach different conclusions as to the value of the subject property. Furthermore, market value is highly related to exposure time, promotion effort, terms, motivation, and conclusions surrounding the offering of the subject property. The Report is for the sole purpose of providing the intended user with CBRE's independent professional opinion of the value of the subject property as of the date of the Report. Accordingly, CBRE shall not be liable for any losses that arise from any investment or lending decisions based upon the Report that the client, intended user, or any buyer, seller, investor, or lending institution may undertake related to the subject property, and CBRE has not been compensated to assume any of these risks. Nothing contained in the Report shall be construed as any direct or indirect recommendation of CBRE to buy, sell, hold, or finance the subject property.
9. No opinion is expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. Any user of the Report is advised to retain experts in areas that fall outside the scope of the real estate appraisal profession for such matters.
10. CBRE assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.
11. Acceptance or use of the Report constitutes full acceptance of these Assumptions and Limiting Conditions and any special assumptions set forth in the Report. It is the responsibility of the user of the Report to read in full, comprehend and thus become aware of all such assumptions and limiting conditions. CBRE assumes no responsibility for any situation arising out of the user's failure to become familiar with and understand the same.
12. The Report applies to the property as a whole only, and any pro ration or division of the title into fractional interests will invalidate such conclusions, unless the Report expressly assumes such pro ration or division of interests.

13. The allocations of the total value estimate in the Report between land and improvements apply only to the existing use of the subject property. The allocations of values for each of the land and improvements are not intended to be used with any other property or appraisal and are not valid for any such use.
14. The maps, plats, sketches, graphs, photographs, and exhibits included in this Report are for illustration purposes only and shall be utilized only to assist in visualizing matters discussed in the Report. No such items shall be removed, reproduced, or used apart from the Report.
15. The Report shall not be duplicated or provided to any unintended users in whole or in part without the written consent of CBRE, which consent CBRE may withhold in its sole discretion. Exempt from this restriction is duplication for the internal use of the intended user and its attorneys, accountants, or advisors for the sole benefit of the intended user. Also exempt from this restriction is transmission of the Report pursuant to any requirement of any court, governmental authority, or regulatory agency having jurisdiction over the intended user, provided that the Report and its contents shall not be published, in whole or in part, in any public document without the written consent of CBRE, which consent CBRE may withhold in its sole discretion. Finally, the Report shall not be made available to the public or otherwise used in any offering of the property or any security, as defined by applicable law. Any unintended user who may possess the Report is advised that it shall not rely upon the Report or its conclusions and that it should rely on its own appraisers, advisors and other consultants for any decision in connection with the subject property. CBRE shall have no liability or responsibility to any such unintended user.

ADDENDA

Addendum A

# **RENT COMPARABLE DATA SHEETS**

# Comparable

# Retail - Restaurant

NMI

Property Name JB's on the Beach  
 Address 300 North Ocean Boulevard  
 301 NE 21st Avenue  
 Deerfield Beach, FL 33441  
 United States

Government Tax Agency Broward  
 Govt./Tax ID Multiple

### Site/Government Regulations

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 1.418 | 61,761      |
| Land Area Gross  | 1.418 | 61,761      |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Rectangular  
 Topography Level, At Street Grade  
 Utilities All available

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR 0.16

Frontage Distance/Street 120 ft Atlantic Ocean/Beach  
 Frontage Distance/Street 272 ft Ocean Blvd. (NE 21st Ave.)  
 Frontage Distance/Street 150 ft NE 20th Ave.

Zoning B-1, Business  
 General Plan N/A



|                             |               |                     |                |
|-----------------------------|---------------|---------------------|----------------|
| Gross Leasable Area (GLA)   | 6,470 sf      | Floor Count         | 2              |
| Status                      | Existing      | Parking Type        | Surface        |
| Occupancy Type              | Single Tenant | Parking Ratio       | 18.70/1,000 sf |
| Year Built                  | 2002          | Condition           | Excellent      |
| Year Renovated              | N/A           | Exterior Finish     | Stucco         |
| Total Anchor Rentable Area  | N/A           | Number of Buildings | 1              |
| Total In Line Rentable Area | N/A           |                     |                |
| Anchor                      | N/A           |                     |                |
| Junior Anchor               | N/A           |                     |                |
| National                    | N/A           |                     |                |

|                |     |               |     |
|----------------|-----|---------------|-----|
| Recorded Owner | N/A | Leasing Agent | N/A |
| True Owner     | N/A | Company       | N/A |

|                          |                   |                          |                |
|--------------------------|-------------------|--------------------------|----------------|
| Occupancy                | 100%              | Tenant Size              | 6,470 sf       |
| In Line Retail Occupancy | 100%              | Lease Term               | 240 Mo(s).     |
| Reimbursements           | NNN               | Annual Base Rent         | \$92.74 per sf |
| Rent Changes/Steps       | 10% Every 5-Years | Free Rent                | N/A            |
| Survey Date              | 11/2020           | T1 Allowance             | N/A            |
| Survey Notes             | N/A               | Reimbursement Amount     | N/A            |
|                          |                   | Total Oper. & Fixed Exp. | N/A            |

| <u>Tenant Name</u> | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|--------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| JB's On The Beach  | Retail                  | 6,470            | 240               | New                  | 3/6/2019          | \$92.74                        | NNN            | 10% Every 5-Years           | 0                      | \$0.00                     |



Map data ©2021

This comparable is a 6,470-square foot beach & oceanfront restaurant located at 300 North Ocean Boulevard in the City of Deerfield Beach in northeast Broward County, Florida. The restaurant building has direct Atlantic Ocean with significant outdoor, covered patio seating and is supported by an 0.94-acre, open surface parking lot located across the street at 301 NE 21st Street. The oceanfront site was acquired in October 2001 for \$3,000,000 by the original owner/operator, John & Janet Boyle, who developed the building in 2002 and assembled the surface parking lot in November 2003 for \$3,375,000. In the 1st quarter 2019, ARK Restaurants (NASDAQ: ARKR) acquired the operating entity from the Boyle's and executed a new, 20-year lease with one, 5-year renewal option with Boyle Beach House LLC as the fee simple owner/landlord. The initial base rent is \$600,000 per annum with 10% escalations every 5-years plus percentage rent at 5.0% of gross sales with a \$12,000,000 breakpoint. The property features an indoor/outdoor seating capacity of 300-seats and reported gross sales at \$11,500,000 in 2019.

**Comparable****Retail - Restaurant****NA 2**

Property Name **Etta Las Olas**  
 Address **1002 E Las Olas Boulevard**  
**Fort Lauderdale, FL 33301**  
**United States**



Government Tax Agency **N/A**  
 Govt./Tax ID **50-42-11-02-0070**

**Site/Government Regulations**

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 0.809 | 35,250      |
| Land Area Gross  | 0.809 | 35,250      |
| Excess Land Area | N/A   | N/A         |

Site Development Status **Finished**  
 Shape **Rectangular**  
 Topography **Level, At Street Grade**  
 Utilities **All available**

Maximum Floor Area **N/A**  
 Maximum FAR **N/A**  
 Actual FAR **0.70**

Frontage Distance/Street **N/A E. Las Olas Blvd.**

Zoning **B-1, Business**

General Plan **N/A**

|                             |               |                     |               |
|-----------------------------|---------------|---------------------|---------------|
| Gross Leasable Area (GLA)   | 8,526 sf      | Floor Count         | 1             |
| Status                      | Existing      | Parking Type        | Surface       |
| Occupancy Type              | Multi-tenant  | Parking Ratio       | 0.82/1,000 sf |
| Year Built                  | 1966          | Condition           | Good          |
| Year Renovated              | 2020          | Exterior Finish     | Stucco        |
| Total Anchor Rentable Area  | 8,526 sf      | Number of Buildings | 2             |
| Total In Line Rentable Area | 16,064 sf     |                     |               |
| Anchor                      | Etta Las Olas |                     |               |
| Junior Anchor               | N/A           |                     |               |
| National                    | N/A           |                     |               |

|                |     |               |             |
|----------------|-----|---------------|-------------|
| Recorded Owner | N/A | Leasing Agent | Rich Lovell |
| True Owner     | N/A | Company       | Amera Corp. |

|                          |         |                          |                          |
|--------------------------|---------|--------------------------|--------------------------|
| Occupancy                | 90%     | Tenant Size              | 1,425 - 8,526 sf         |
| In Line Retail Occupancy | 90%     | Lease Term               | 60 - 120 Mo(s).          |
| Reimbursements           | NNN     | Annual Base Rent         | \$49.15 - \$87.65 per sf |
| Rent Changes/Steps       | 3%/Yr.  | Free Rent                | 0 - 6 Mo(s).             |
| Survey Date              | 01/2021 | TI Allowance             | N/A                      |
| Survey Notes             | N/A     | Reimbursement Amount     | \$14.40 per sf           |
|                          |         | Total Oper. & Fixed Exp. | N/A                      |

| <u>Tenant Name</u> | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|--------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Etta               | Retail                  | 8,526            | 120               | New                  | 2/1/2021          | \$70.00                        | NNN            | 3.0% / year                 | 6                      | \$146.61                   |

NORTH AMERICA



Atlantic Ocean



Map data ©2021

This comparable rental is a 2-story, 8,526-SF restaurant plus 1,014-SF of front & back patio deck area on the 2nd floor within a 24,590-square foot high street retail property located at 1002 - 1032 East Las Olas Boulevard in Fort Lauderdale, Florida. The improvements were originally constructed in 1966 and are situated on a 0.81-acre business zoned site with the owner/developer in process of repositioning & redeveloping a portion of the property by razing an existing 3,800-square foot retail building and replacing it with the new, 8,526-square foot, restaurant building that is pre-leased to etta, an upscale table service restaurant & bar.

The approvals are reportedly in-hand with the demolition occurring in November 2020 and occupation anticipated in the 1st quarter 2021 but no later than June 1, 2021 at which time etta will begin paying base rent at \$70.00-PSF less free rent adjustments, on a triple net plus an operating expense pass through of \$11.87-PSF in Year 1 with a 3% cap on controllable expenses plus percentage rent at 5% of gross revenue with an \$8,500,000 breakpoint. The initial lease term is 10-years plus two, 5-year renewal terms. The budgeted hard & soft construction costs total \$2,610,000, or \$306.12 per square foot, plus an additional \$1,250,000 or \$146.61-PSF for the new restaurant tenant improvement allowance. The Fire Marshall capacity is for 429 customer seats including indoor/outdoor & bar areas, while the operators floor plan design is for 365-capacity, of which 233-seats are indoors and 132-seats are outdoors on the 2nd floor front & back patio decks. Off-street parking for the restaurant will be 3-covered spaces plus a pedestrian breezeway connecting to municipal public parking lots.

The existing tenants include Blue Mercury, Stokehouse Unlimited (pop-up), Jamail Chelsea Gallery (month-to-month), and Louis Bossi's Ristorante Bar.

**Comparable****Retail - Misc. Freestanding Retail****No. 3**

Property Name Grove Ink Restaurant  
 Address 3490 Main Highway  
 Miami, FL 33133  
 United States

Government Tax Agency Miami-Dade  
 Govt./Tax ID N/A

**Site/Government Regulations**

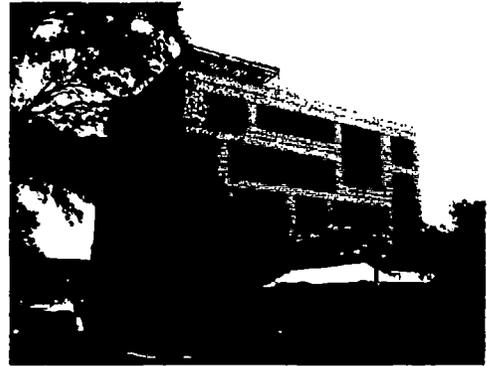
|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 0.318 | 13,858      |
| Land Area Gross  | 0.318 | 13,858      |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Rectangular  
 Topography Level, At Street Grade  
 Utilities All available

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR 0.55

Frontage Distance/Street 1,156 ft Main Hwy.

Zoning T5-O  
 General Plan N/A



|                             |              |                     |                        |
|-----------------------------|--------------|---------------------|------------------------|
| Gross Leasable Area (GLA)   | 7,670 sf     | Floor Count         | 5                      |
| Status                      | Existing     | Parking Type        | Subterranean Structure |
| Occupancy Type              | Multi-tenant | Parking Ratio       | 0.00/1,000 sf          |
| Year Built                  | 2020         | Condition           | New                    |
| Year Renovated              | N/A          | Exterior Finish     | Masonry                |
| Total Anchor Rentable Area  | N/A          | Number of Buildings | 1                      |
| Total In Line Rentable Area | N/A          |                     |                        |
| Anchor                      | N/A          |                     |                        |
| Junior Anchor               | N/A          |                     |                        |
| National                    | N/A          |                     |                        |

|                |     |               |     |
|----------------|-----|---------------|-----|
| Recorded Owner | N/A | Leasing Agent | N/A |
| True Owner     | N/A | Company       | N/A |

|                          |         |                          |                |
|--------------------------|---------|--------------------------|----------------|
| Occupancy                | 100%    | Tenant Size              | 695 - 6,975 sf |
| In Line Retail Occupancy | 100%    | Lease Term               | 120 Mo(s).     |
| Reimbursements           | NNN     | Annual Base Rent         | \$70.00 per sf |
| Rent Changes/Steps       | 3%/Yr.  | Free Rent                | 6 Mo(s).       |
| Survey Date              | 10/2020 | TI Allowance             | \$6.00 per sf  |
| Survey Notes             | N/A     | Reimbursement Amount     | \$22.57 per sf |
|                          |         | Total Oper. & Fixed Exp. | N/A            |

| <u>Tenant Name</u> | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|--------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Grove Ink          | Retail                  | 7,670            | 120               | New                  | 2/1/2021          | \$70.00                        | NNN            | 3%/Yr.                      | 6                      | \$0.00                     |



Map data ©2021

This comparable reflects 6,975-square feet of ground floor restaurant space with a 695-square foot rooftop terrace situated within a 52,998-square foot, five-story, suburban office building located at 480 Main Highway in Miami, Florida. The improvements were completed in the third quarter of 2020 and are situated on a 0.32-acre site. The restaurant space is leased to Grove Ink Restaurant at \$70.00 per square foot, triple net, with a 10-year term, 3% annual increases, no tenant improvement allowance and 6-months free rent, outside term.

**Comparable**

**Retail - Restaurant**

**N/A**

Property Name Tigertail + Mary  
 Address 3321 Mary Street  
 Miami, FL 33133  
 United States

Government Tax Agency Miami-Dade  
 Govt./Tax ID 01-4121-384-0040

**Site/Government Regulations**

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 0.120 | 5,227       |
| Land Area Gross  | N/A   | N/A         |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Irregular  
 Topography Level, At Street Grade  
 Utilities All available to site

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR 1.10

Frontage Distance/Street N/A Mary Street

Zoning T5 O

General Plan High density, mixed-use residential



|                             |               |                     |               |
|-----------------------------|---------------|---------------------|---------------|
| Gross Leasable Area (GLA)   | 5,731 sf      | Floor Count         | 1             |
| Status                      | Existing      | Parking Type        | Garage        |
| Occupancy Type              | Single Tenant | Parking Ratio       | 2.09/1,000 sf |
| Year Built                  | 2018          | Condition           | Good          |
| Year Renovated              | N/A           | Exterior Finish     | Masonry       |
| Total Anchor Rentable Area  | N/A           | Number of Buildings | 1             |
| Total In Line Rentable Area | N/A           |                     |               |
| Anchor                      | N/A           |                     |               |
| Junior Anchor               | N/A           |                     |               |
| National                    | N/A           |                     |               |

|                |     |               |     |
|----------------|-----|---------------|-----|
| Recorded Owner | N/A | Leasing Agent | N/A |
| True Owner     | N/A | Company       | N/A |

|                          |                      |                          |                |
|--------------------------|----------------------|--------------------------|----------------|
| Occupancy                | 100%                 | Tenant Size              | 5,731 sf       |
| In Line Retail Occupancy | 100%                 | Lease Term               | 120 Mo(s).     |
| Reimbursements           | NNN                  | Annual Base Rent         | \$61.07 per sf |
| Rent Changes/Steps       | Greater of 2% or CPI | Free Rent                | N/A            |
| Survey Date              | 12/2021              | TI Allowance             | N/A            |
| Survey Notes             | N/A                  | Reimbursement Amount     | N/A            |
|                          |                      | Total Oper. & Fixed Exp. | N/A            |

| <u>Tenant Name</u> | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|--------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Tigertail + Mary   | Retail                  | 5,731            | 120               | New                  | 10/30/2018        | \$61.07                        | NNN            | 2% / year                   | N/A                    | N/A                        |



Map data ©2021

This comparable restaurant rental is located at the base of the Club Residences at Park Grove condominium tower in the Coconut Grove submarket in Miami, Florida. The lease commencement was on October 30th 2018 for a 10-year term plus three, 10-year renewal options with 2% annual escalations. Percentage rent is based on 10% of gross sales between \$3.5 to \$5.5 million; 9% of gross sales between \$5.5 to \$7.5 million; and, 7.5% of gross sales over \$7.5 million. The tenant operator is Michael Schwartz of the Genuine Hospitality Group. The floor plan design has a capacity for 120-seats including main dining room, bar, private dining room, patio and front lawn. The Park Grove master site plan overlooks Regatta Park, Dinner Key Marina and Biscayne Bay, and includes One Park Grove (67-units), Two Park Grove (67-units) and The Club Residences (129-units).

Property Name Moxie's Grill & Bar  
 Address 900 S Miami Avenue  
 Miami, FL 33130  
 United States



Government Tax Agency N/A  
 Govt./Tax ID 01-0207-010-1010

**Site/Government Regulations**

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 3.065 | 133,517     |
| Land Area Gross  | 3.065 | 133,517     |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Rectangular  
 Topography N/A  
 Utilities N/A

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR 1.10

Frontage Distance/Street N/A S Miami Avenue

Zoning T6-48b-O

General Plan N/A

Gross Leasable Area (GLA) 8,157 sf  
 Status Existing  
 Occupancy Type Multi-tenant  
 Year Built 2007  
 Year Renovated N/A  
 Total Anchor Rentable Area N/A  
 Total In Line Rentable Area N/A  
 Anchor N/A  
 Junior Anchor N/A  
 National N/A

Floor Count 2  
 Parking Type Attached Garages  
 Parking Ratio 0.00/1,000 sf  
 Condition Good  
 Exterior Finish Masonry  
 Number of Buildings 4

Recorded Owner N/A  
 True Owner N/A

Leasing Agent John Ellis  
 Company Newmark Knight Frank

Occupancy 83%  
 In Line Retail Occupancy 83%  
 Reimbursements NNN  
 Rent Changes/Steps 3% Annually  
 Survey Date 01/2021  
 Survey Notes N/A

Tenant Size 535 - 35,500 sf  
 Lease Term 60 Mo(s).  
 Annual Base Rent \$60.00 per sf  
 Free Rent N/A  
 TI Allowance \$100.00 per sf  
 Reimbursement Amount \$43.00 per sf  
 Total Oper. & Fixed Exp. \$43.00 per sf

| <u>Tenant Name</u>  | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|---------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Moxie's Grill & Bar | Retail                  | 8,157            | 120               | New                  | 1/1/2020          | \$60.00                        | NNN            | N/A                         | N/A                    | \$100.00                   |

NORTH AMERICA



Atlantic Ocean



Map data ©2021

This comparable is a class A, mixed-use, urban lifestyle center located at 900 South Miami Avenue in the off-Brickell submarket in downtown Miami, Florida. The retail comprises 3-levels with escalator & elevator access is connected to a multi-family rental tower, Publix supermarket and structured parking garage. The retail component comprises of 147,014-square feet and with units ranging from 535 to 35,500 square feet. The most recent lease commences in January 2020 for a 8,157-square foot space leased to Moxie's Grill & Bar at \$60.00-PSF, NNN for a 10-year term with \$100/SF for TI. However, the tenant is spending \$2.5 million or \$306.49-PSF on demo & buildout. This is the former Rosa Mexicana end cap space on the ground floor with outdoor, sidewalk seating and directly below Blue Martini. Moxie's Grill & Bar is a contemporary Canadian concept owned by Tom Gaglardi of Eatz Hospitality and is designed for a total of 375-seats including 150-outdoor patio seats with a historic Banyan tree, indoor bar, high-tops, booths and standard seating tables.

# Comparable

# Retail - Restaurant

Number

Property Name Amara at Paraiso  
 Address 3101 NE 7th Avenue  
 Miami, FL 33137  
 United States

Government Tax Agency Miami-Dade  
 Govt./Tax ID 01-3230-102-0050

### Site/Government Regulations

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | 0.220 | 9,600       |
| Land Area Gross  | N/A   | N/A         |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Rectangular  
 Topography Level, At Street Grade  
 Utilities All available to site

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR 1.28

Frontage Distance/Street N/A NE 7th Avenue  
 Frontage Distance/Street N/A Biscayne Bay

Zoning T6-36a L  
 General Plan High density, mixed-use residential



|                             |               |                     |                       |
|-----------------------------|---------------|---------------------|-----------------------|
| Gross Leasable Area (GLA)   | 10,798 sf     | Floor Count         | 2                     |
| Status                      | Existing      | Parking Type        | Above Grade Structure |
| Occupancy Type              | Single Tenant | Parking Ratio       | 0.00/1,000 sf         |
| Year Built                  | 2017          | Condition           | Excellent             |
| Year Renovated              | N/A           | Exterior Finish     | Masonry               |
| Total Anchor Rentable Area  | N/A           | Number of Buildings | 1                     |
| Total In Line Rentable Area | N/A           |                     |                       |
| Anchor                      | N/A           |                     |                       |
| Junior Anchor               | N/A           |                     |                       |
| National                    | N/A           |                     |                       |

|                |     |               |     |
|----------------|-----|---------------|-----|
| Recorded Owner | N/A | Leasing Agent | N/A |
| True Owner     | N/A | Company       | N/A |

|                          |         |                          |                |
|--------------------------|---------|--------------------------|----------------|
| Occupancy                | 100%    | Tenant Size              | 10,798 sf      |
| In Line Retail Occupancy | 100%    | Lease Term               | 120 Mo(s).     |
| Reimbursements           | NNN     | Annual Base Rent         | \$85.00 per sf |
| Rent Changes/Steps       | 2%      | Free Rent                | 3 Mo(s).       |
| Survey Date              | 01/2021 | TI Allowance             | N/A            |
| Survey Notes             | N/A     | Reimbursement Amount     | N/A            |
|                          |         | Total Oper. & Fixed Exp. | N/A            |

| <u>Tenant Name</u>        | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|---------------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Amara by Michael Schwartz | Retail                  | 12,316           | 120               | New                  | 1/1/2021          | \$85.25                        | NNN            | 2% / year                   | N/A                    | N/A                        |



Map data ©2021 Google

This comparable rental represents the 2-story beach club building within the Parioso District master site plan comprising One Parioso (273-units), Parioso Bay (368-units), GranParioso (321-units) and Parioso Bayviews (388-units) in the Edgewater submarket in Miami, Florida. The beach club is a freestanding building completed in 2017 and leased to Amara by Michael Schwartz in 2018. The lease was initially executed in 2018 with rent commencement in January 1, 2019. However, the Covid-19 pandemic state ordered closures provided for abatement & lease renegotiations. The new lease commenced January 1, 2021 for a 10-year term plus three, 10-year renewal options. The new annual rent is \$1,050,000 with 2% annual increases plus percentage rent at 10% gross revenues with an \$12.0 million breakpoint. The tenant operator reportedly approached \$8.0 million in sales in 2019 from 1st floor operations only and is now able to expand into the 2nd floor area, which is set-up for bar & events. After the re-opening in June 2020, the tenant operator shifted to dinner & takeout only and is reportedly doing 90% of the prior sales revenue. The landlord is responsible for roof & structural repairs & replacements. Off-street parking is provided in the residential condo tower structured parking garages and on-street, metered parking.

The building site plan & design fronts Biscayne Bay with unobstructed water front views and access to transient boat dockage. The total capacity is 367-seats, of which 119-indoor dining room & bar seats are on the 1st floor plus 90-outdoor patio seats. The 2nd floor has 158-seats including 32-lounge seats, 12-meeting room seats, 101-outdoor patio seats and 13-bar seats and a small plunge pool.

The property is also listed "for sale," unpriced, as a triple net investment by Fabio Faerman, CCIM of FA Commercial.

# Comparable

# Retail - Restaurant

No. 7

Property Name Red, The Steakhouse  
 Address 801 South Pointe Drive  
 Miami Beach, FL 33139  
 United States

Government Tax Agency Miami-Dade  
 Govt./Tax ID 02-4203-368-0310

**Site/Government Regulations**

|                  | Acres | Square feet |
|------------------|-------|-------------|
| Land Area Net    | N/A   | N/A         |
| Land Area Gross  | N/A   | N/A         |
| Excess Land Area | N/A   | N/A         |

Site Development Status Finished  
 Shape Rectangular  
 Topography Level, At Street Grade  
 Utilities All available to site

Maximum Floor Area N/A  
 Maximum FAR N/A  
 Actual FAR N/A

Frontage Distance/Street N/A South Pointe Drive  
 Frontage Distance/Street N/A Alton Road

Zoning N/A

General Plan High density, mixed-use residential



**Property Details**

|                             |               |                     |                       |
|-----------------------------|---------------|---------------------|-----------------------|
| Gross Leasable Area (GLA)   | 6,458 sf      | Floor Count         | 1                     |
| Status                      | Existing      | Parking Type        | Above Grade Structure |
| Occupancy Type              | Single Tenant | Parking Ratio       | 0.00/1,000 sf         |
| Year Built                  | 2015          | Condition           | Good                  |
| Year Renovated              | N/A           | Exterior Finish     | Masonry               |
| Total Anchor Rentable Area  | N/A           | Number of Buildings | 2                     |
| Total In Line Rentable Area | N/A           |                     |                       |
| Anchor                      | N/A           |                     |                       |
| Junior Anchor               | N/A           |                     |                       |
| National                    | N/A           |                     |                       |

**Ownership and Leasing**

|                |     |               |                              |
|----------------|-----|---------------|------------------------------|
| Recorded Owner | N/A | Leasing Agent | Wolfgang Herz                |
| True Owner     | N/A | Company       | Fortune International Realty |

**Financial and Operational Data**

|                          |         |                          |                |
|--------------------------|---------|--------------------------|----------------|
| Occupancy                | 43%     | Tenant Size              | 6,458 sf       |
| In Line Retail Occupancy | 43%     | Lease Term               | 120 Mo(s).     |
| Reimbursements           | NNN     | Annual Base Rent         | \$69.68 per sf |
| Rent Changes/Steps       | N/A     | Free Rent                | N/A            |
| Survey Date              | 09/2020 | TI Allowance             | N/A            |
| Survey Notes             | N/A     | Reimbursement Amount     | N/A            |
|                          |         | Total Oper. & Fixed Exp. | N/A            |

| <u>Tenant Name</u>  | <u>Tenancy Use Type</u> | <u>Size (sf)</u> | <u>Term (Mo.)</u> | <u>Type of Lease</u> | <u>Start Date</u> | <u>Annual Base Rate per sf</u> | <u>Reimbs.</u> | <u>Rent Changes / Steps</u> | <u>Free Rent (Mo.)</u> | <u>TI Allowance per sf</u> |
|---------------------|-------------------------|------------------|-------------------|----------------------|-------------------|--------------------------------|----------------|-----------------------------|------------------------|----------------------------|
| Red, The Steakhouse | Retail                  | 6,458            | 120               | New                  | 9/1/2020          | \$69.68                        | NNN            | N/A                         | N/A                    | N/A                        |

SOUTH OF FIFTH



Map data ©2021

This comparable rental is a ground floor restaurant comprising 6,458-SF plus 3,000-SF +/- of outdoor patio space located in the Marea condominium at the northeast corner intersection of South Pointe Drive and Alton Road in the South of 5th submarket in Miami Beach, Florida. The Marea condominium is a 6-story, 70-unit boutique residential condominium tower overlooking South Pointe Park with 30,240-SF of ground floor retail & restaurant space including a 6,389-SF Kosushi Thai restaurant. Red South Beach is relocating from a long term Washington Avenue location and is operated by owner/Chef Peter Vauthy who signed a 10-year, \$4.5 million lease for the fully built-out former Mira Five Stars restaurant with 140-indoor seating capacity and 70-outdoor seats on the cover patio area which is necessary to operate during the pandemic and was not available at the prior Washington Avenue location. The tenant/chef modified the kitchen and the interior space design includes open dining area, a glass enclosed VIP room, two (2) private dining rooms, and a bar.

The Red, The Steakhouse commercial Unit CU1 was listed "for sale" and "for rent" at \$11,500,000 and \$95.00-PSF, triple net. Several of the other, available commercial units range from 1,000 to 5,770 square feet and are quoted at \$89.00 to \$120.00 per square foot on a triple net basis.

Addendum B

# **CLIENT CONTRACT INFORMATION**

VALUATION & ADVISORY SERVICES



# Proposal and Contract for Services

CBRE, Inc.  
777 Brickell Avenue, Suite 1100  
Miami, FL 33131  
www.cbre.us/valuation

**Stuart J. Lieberman, MAI**  
Vice President

December 7, 2020

Jimmy Morales, City Manager  
**CITY OF MIAMI BEACH**  
1700 Convention Center Drive Miami Beach, FL 33139  
Email: [adrianmorales@miamibeachfl.gov](mailto:adrianmorales@miamibeachfl.gov)

RE: Assignment Agreement for Restaurant & Lounge  
Smith & Wollemsky, 1 Washington Avenue, Miami Beach, FL 33131

Dear Mr. Morales:

We are pleased to submit this proposal and our Terms and Conditions for this assignment.

## PROPOSAL SPECIFICATIONS

- Purpose:** To estimate the Market Rent of the referenced real estate
- Premise:** As Is
- Rights Appraised:** Fee Simple
- Intended Use:** Internal Decision Making purposes for negotiating of lease terms & conditions
- Intended User:** The intended user is CITY OF MIAMI BEACH ("Client"), and such other parties and entities (if any) expressly recognized by CBRE as "Intended Users" (as further defined herein).
- Reliance:** Reliance on any reports produced by CBRE under this Agreement is extended solely to parties and entities expressly acknowledged in a signed writing by CBRE as Intended Users of the respective reports, provided that any conditions to such acknowledgement required by CBRE or hereunder have been satisfied. Parties or entities other than Intended Users who obtain a copy of the report or any portion thereof (including Client if it is not named as an Intended User), whether as a result of its direct dissemination or by any other means, may not rely upon any opinions or conclusions contained in the report or such portions thereof, and CBRE will not be responsible for any unpermitted use of the report, its conclusions or contents or have any liability in connection therewith.
- Inspection:** CBRE will conduct a physical inspection of both the interior and

VALUATION & ADVISORY SERVICES

T. OF MIAMI BEACH  
- Consultant Agreement  
Page 2 of 8  
[Envelope ID: 597A183E-0383-4C6D-B7D1-D33CDFA2110A]

**Valuation Approaches:**  
**Report Type:**  
**Appraisal Standards:**  
**Appraisal Fee:**  
**Expenses:**  
**Retainer:**  
**Payment Terms:**

exterior of the subject property, as well as its surrounding environs on the effective date of appraisal.  
Only the Market Study & Income Approach will be completed.  
Standard Appraisal Report  
USPAP  
\$3,500  
Fee includes all associated expenses  
A retainer is not required for this assignment  
Final payment is due upon delivery of the final report or within thirty (30) days of your receipt of the draft report, whichever is sooner. The fee is considered earned upon delivery of the draft report.

**Delivery Instructions:**

We will invoice you for the assignment in its entirety at the completion of the assignment.  
CBRE encourages our clients to join in our environmental sustainability efforts by accepting an electronic copy of the report.

**Delivery Schedule:**

**Preliminary Value:**  
**Draft Report:**  
**Final Report:**  
**Start Date:**  
**Acceptance Date:**

An Adobe PDF file via email will be delivered to adrianmorales@miamibeachfl.gov. The client has requested Three (3) bound final copy (ies).  
Not Required  
Not Required  
15\_business days / 3-weeks after the Start Date  
The appraisal process will start upon receipt of your signed agreement and the property specific data.  
These specifications are subject to modification if this proposal is not accepted within 20 business days from the date of this letter.

VALUATION &amp; ADVISORY SERVICES

CITY OF MIAMI BEACH  
Assignment Agreement  
Page 3 of 8  
December 7, 2020**Market Volatility:**

The outbreak of the Novel Coronavirus (COVID-19), declared by the World Health Organization as a global pandemic on the 11th March 2020, is causing heightened uncertainty in both local and global market conditions. Our valuation is based on the information available to us at the date of valuation. You acknowledge that our reports may include clauses highlighting heightened uncertainty if appropriate, and we recommend our valuation is kept under frequent review.

Both governments and companies are initiating travel restrictions, quarantine and additional safety measures in response to the COVID-19 pandemic. If, at any point, our ability to deliver the services under this LOE are restricted due to the pandemic, we will inform you within a reasonable timeframe and work with you on how to proceed. Whilst we will endeavor to meet the required timeframe for delivery, you acknowledge any Government or company-imposed restrictions due to the virus may impede our ability to meet the timeframe and/or deliverables of this engagement, and delays may follow. Any delays or inability to deliver on this basis would not constitute a failure to meet the terms of this engagement.

When executed and delivered by all parties, this letter, together with the Terms and Conditions and the Specific Property Data Request attached hereto and incorporated herein, will serve as the Agreement for appraisal services by and between CBRE and Client. Each person signing below represents that it is authorized to enter into this Agreement and to bind the respective parties hereto.

We appreciate this opportunity to be of service to you on this assignment. If you have additional questions, please contact us.

Sincerely,

**CBRE, Inc.**  
**Valuation & Advisory Services**



Stuart J. Lieberman, MAI  
Vice President  
As Agent for CBRE, Inc.  
T 305.381.6472  
stuart.lieberman@cbre.com

## TERMS AND CONDITIONS

1. The Terms and Conditions herein are part of an agreement for appraisal services (the "Agreement") between CBRE, inc. (the "Appraiser") and the client signing this Agreement, and for whom the appraisal services will be performed (the "Client"), and shall be deemed a part of such Agreement as though set forth in full therein. The Agreement shall be governed by the laws of the state where the appraisal office is located for the Appraiser executing this Agreement.
2. Client shall be responsible for the payment of all fees stipulated in the Agreement. Payment of the appraisal fee and preparation of an appraisal report (the "Appraisal Report, or the "report") are not contingent upon any predetermined value or on an action or event resulting from the analyses, opinions, conclusions, or use of the Appraisal Report. Final payment is due as provided in the Proposal Specifications Section of this Agreement. If a draft report is requested, the fee is considered earned upon delivery of the draft report. It is understood that the Client may cancel this assignment in writing at any time prior to delivery of the completed report. In such event, the Client is obligated only for the prorated share of the fee based upon the work completed and expenses incurred (including travel expenses to and from the job site), with a minimum charge of \$500. Additional copies of the Appraisal Reports are available at a cost of \$250 per original color copy and \$100 per photocopy (black and white), plus shipping fees of \$30 per report.
3. If Appraiser is subpoenaed or ordered to give testimony, produce documents or information, or otherwise required or requested by Client or a third party to participate in meetings, phone calls, conferences, litigation or other legal proceedings (including preparation for such proceedings) because of, connected with or in any way pertaining to this engagement, the Appraisal Report, the Appraiser's expertise, or the Property, Client shall pay Appraiser's additional costs and expenses, including but not limited to Appraiser's attorneys' fees, and additional time incurred by Appraiser based on Appraiser's then-prevailing hourly rates and related fees. Such charges include and pertain to, but are not limited to, time spent in preparing for and providing court room testimony, depositions, travel time, mileage and related travel expenses, waiting time, document review and production, and preparation time (excluding preparation of the Appraisal Report), meeting participation, and Appraiser's other related commitment of time and expertise. Hourly charges and other fees for such participation will be provided upon request. In the event Client requests additional appraisal services beyond the scope and purpose stated in the Agreement, Client agrees to pay additional fees for such services and to reimburse related expenses, whether or not the completed report has been delivered to Client at the time of such request.
4. Appraiser shall have the right to terminate this Agreement at any time for cause effective immediately upon written notice to Client on the occurrence of fraud or the willful misconduct of Client, its employees or agents, or without cause upon 5 days written notice.
5. In the event Client fails to make payments when due then, from the date due until paid, the amount due and payable shall bear interest at the maximum rate permitted in the state where the office is located for the Appraiser executing the Agreement. In the event either party institutes legal action against the other to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses. Each party waives the right to a trial by jury in any action arising under this Agreement.
6. Appraiser assumes there are no major or significant items or issues affecting the Property that would require the expertise of a professional building contractor, engineer, or environmental consultant for Appraiser to prepare a valid report. Client acknowledges that such additional expertise is not covered in the Appraisal fee and agrees that, if such additional expertise is required, it shall be provided by others at the discretion and direction of the Client, and solely at Client's additional cost and expense.
7. Client acknowledges that Appraiser is being retained hereunder as an independent contractor to perform the services described herein and nothing in this Agreement shall be deemed to create any other relationship between Client and Appraiser. This engagement shall be deemed concluded and the services hereunder completed upon Appraiser's completion of all services and tasks set forth in this Agreement and the delivery to Client of the final Appraisal Report discussed herein.

8. All statements of fact in the report which are used as the basis of the Appraiser's analyses, opinions, and conclusions will be true and correct to Appraiser's actual knowledge and belief. Appraiser does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information or the condition of the Property furnished to Appraiser by Client or others. TO THE FULLEST EXTENT PERMITTED BY LAW, APPRAISER DISCLAIMS ANY GUARANTEE OR WARRANTY AS TO THE OPINIONS AND CONCLUSIONS PRESENTED ORALLY OR IN ANY APPRAISAL REPORT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE EVEN IF KNOWN TO APPRAISER. Furthermore, the conclusions and any permitted reliance on and use of the Appraisal Report shall be subject to the assumptions, limitations, and qualifying statements contained in the report.
9. Appraiser shall have no responsibility for legal matters, including zoning, or questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The report will not constitute a survey of the Property analyzed.
10. Client shall provide Appraiser with such materials with respect to the assignment as are requested by Appraiser and in the possession or under the control of Client. Client shall provide Appraiser with sufficient access to the Property to be analyzed, and hereby grants permission for entry unless discussed in advance to the contrary.
11. The data gathered in the course of the assignment (except data furnished by Client) and the report prepared pursuant to the Agreement are, and will remain, the property of Appraiser. With respect to data provided by Client, Appraiser shall not violate the confidential nature of the Appraiser-Client relationship by improperly disclosing any proprietary information furnished to Appraiser. Notwithstanding the foregoing, Appraiser is authorized by Client to disclose all or any portion of the report and related data as may be required by statute, government regulation, legal process, or judicial decree, including to appropriate representatives of the Appraisal Institute if such disclosure is required to enable Appraiser to comply with the Bylaws and Regulations of such institute as now or hereafter in effect.
12. Unless specifically noted, in preparing the Appraisal Report the Appraiser will not be considering the possible existence of asbestos, PCB transformers, or other toxic, hazardous, or contaminated substances and/or underground storage tanks (collectively, "Hazardous Material") on or affecting the Property, or the cost of encapsulation or removal thereof. Further, Client represents that there is no major or significant deferred maintenance of the Property that would require the expertise of a professional cost estimator or contractor. If such repairs are needed, the estimates are to be prepared by others, at Client's discretion and direction, and are not covered as part of the Appraisal fee.
13. In the event Client intends to use the Appraisal Report in connection with a tax matter, Client acknowledges that Appraiser provides no warranty, representation or prediction as to the outcome of such tax matter. Client understands and acknowledges that any relevant taxing authority (whether the Internal Revenue Service or any other federal, state or local taxing authority) may disagree with or reject the Appraisal Report or otherwise disagree with Client's tax position, and further understands and acknowledges that the taxing authority may seek to collect additional taxes, interest, penalties or fees from Client beyond what may be suggested by the Appraisal Report. Client agrees that Appraiser shall have no responsibility or liability to Client or any other party for any such taxes, interest, penalties or fees and that Client will not seek damages or other compensation from Appraiser relating to any such taxes, interest, penalties or fees imposed on Client, or for any attorneys' fees, costs or other expenses relating to Client's tax matters.
14. Appraiser shall have no liability with respect to any loss, damage, claim or expense incurred by or asserted against Client arising out of, based upon or resulting from Client's failure to provide accurate or complete information or documentation pertaining to an assignment ordered under or in connection with this Agreement, including Client's failure, or the failure of any of Client's agents, to provide a complete copy of the Appraisal Report to any third party.
15. LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT ARISING FROM SECTION 16 BELOW, OR SECTION 17 IF APPLICABLE, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATE, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS BE LIABLE TO THE OTHER, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES, AND AGGREGATE DAMAGES IN CONNECTION WITH THIS AGREEMENT FOR EITHER PARTY (EXCLUDING THE OBLIGATION TO PAY THE

FEEs REQUIRED HEREUNDER) SHALL NOT EXCEED THE GREATER OF THE TOTAL FEES PAYABLE TO APPRAISER UNDER THIS AGREEMENT OR TEN THOUSAND DOLLARS (\$10,000). THIS LIABILITY LIMITATION SHALL NOT APPLY IN THE EVENT OF A FINAL FINDING BY A COURT OF COMPETENT JURISDICTION THAT SUCH LIABILITY IS THE RESULT OF A PARTY'S FRAUD OR WILLFUL MISCONDUCT.

16. Client shall not disseminate, distribute, make available or otherwise provide any Appraisal Report prepared hereunder to any third party (including without limitation, incorporating or referencing the Appraisal Report, in whole or in part, in any offering or other material intended for review by other parties) except to (i) any third party expressly acknowledged in a signed writing by Appraiser as an "intended User" of the Appraisal Report provided that either Appraiser has received an acceptable release from such third party with respect to such Appraisal Report or Client provides acceptable indemnity protections to Appraiser against any claims resulting from the distribution of the Appraisal Report to such third party, (ii) any third party service provider (including rating agencies and auditors) using the Appraisal Report in the course of providing services for the sole benefit of an Intended User, or (iii) the extent required by statute, government regulation, legal process, or judicial decree, including as required under the Public Records Laws, including, without limitation, Chapter 119, Florida statutes. In the event Appraiser consents, in writing, to Client incorporating or referencing the Appraisal Report in any offering or other materials intended for review by other parties, Client shall not distribute, file, or otherwise make such materials available to any such parties unless and until Client has provided Appraiser with complete copies of such materials and Appraiser has approved all such materials in writing. Client shall not modify any such materials once approved by Appraiser. In the absence of satisfying the conditions of this paragraph with respect to a party who is not designated as an Intended User, in no event shall the receipt of an Appraisal Report by such party extend any right to the party to use and rely on such report, and Appraiser shall have no liability for such unauthorized use and reliance on any Appraisal Report.
17. Time Period for Legal Action. Except to the extent prohibited by applicable law, unless the time period is shorter under applicable law, and except in connection with paragraph 16 above, Appraiser and Client agree that any legal action or lawsuit by one party against the other party or its affiliates, officers, directors, employees, contractors, agents, or other representatives, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, relating to (a) this Agreement or the Appraisal Report, (b) any services or appraisals under this Agreement or (c) any acts or conduct relating to such services or appraisals in connection with this Agreement, shall be filed within three (3) years from the date of delivery to Client of the Appraisal Report to which the claims or causes of action in the legal action or lawsuit relate. The time period stated in this section shall not be extended by any incapacity of a party or any delay in the discovery or accrual of the underlying claims, causes of action or damages.

VALUATION & ADVISORY SERVICES

CITY OF MIAMI BEACH  
Assessment Agreement  
Page 4 of 8  
December 2, 2020

AGREED AND ACCEPTED

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

FOR CITY OF MIAMI BEACH ("CLIENT"):

*Adrian Morales*  
City Attorney  
*ff* 12-8-20  
Date

DocuSigned by:  
*Morales, Jimmy*  
Signature

12/10/2020 | 4:37 PM EST  
Date

Jimmy Morales  
Name

City Manager  
Title

305.673.7631  
Phone Number

adrianmorales@miamibeachfl.gov  
E-Mail Address

**ADDITIONAL OPTIONAL SERVICES**

Assessment & Consulting Services: CBRE's Assessment & Consulting Services group has the capability of providing a wide array of solution-oriented due diligence services in the form of property condition and environmental site assessment reports and other necessary due diligence services (seismic risk analysis, zoning compliance services, construction risk management, annual inspections, etc.). CBRE provides our clients the full complement of due diligence services with over 260 employees in the U.S. that are local subject matter experts.

Initial below if you desire CBRE to contact you to discuss a proposal for any part or the full complement of consulting services, or you may reach out to us at [WhitePlainsProposals@cbre.com](mailto:WhitePlainsProposals@cbre.com). We will route your request to the appropriate manager. For more information, please visit [www.cbre.com/assessment](http://www.cbre.com/assessment).

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VALUATION & ADVISORY SERVICES

# Proposal and Contract for Services

## SPECIFIC PROPERTY DATA REQUEST

In order to complete this assignment under the terms outlined, CBRE, Inc., Valuation & Advisory Services, will require the following specific information for the property:

1. PLEASE NOTIFY US IMMEDIATELY IF ANY OTHER CBRE SERVICE LINE (INCLUDING CAPSTONE) IS INVOLVED IN THE BROKERAGE, FINANCING, INVESTMENT OR MANAGEMENT OF THIS ASSET.
2. Current title report or title holder name
3. Legal description
4. Survey and/or plat map
5. Site plan for the existing development
6. Building plans and specifications, including square footage for all buildings and suites
7. Current county property tax assessment or tax bill
8. Details on any sale, contract, or listing of the property within the past three years
9. Engineering studies, soil tests or environmental assessments
10. Ground lease, if applicable
11. Details regarding the development costs, including land cost, if developed within the past three years
12. Three-year and YTD property income and expenses
13. Current year property income and expense budget
14. Detailed occupancy report for the past three years and current YTD
15. Expense reimbursement schedule on a tenant-by-tenant basis
16. Historical sales volumes for all tenants subject to percentage rent
17. Complete copies or abstracts of all lease agreements and a current rent roll
18. Details regarding any pending changes to the rent roll or pertinent information regarding the current/future status of the tenants
19. Details regarding the lease rates/terms and marketing activity for any vacant suites
20. Details regarding any tenant improvement allowances and free rent provided for all leases pending or signed over the prior 12 months
21. Details regarding capital expenditures made within the last 12 months, or scheduled for the next 12 months
22. Any previous market/demand studies or appraisals
23. Name and telephone number of property contact for physical inspection and additional information needed during the appraisal process
24. Any other information that might be helpful in valuing this property

If any of the requested data and information is not available, CBRE, Inc., reserves the right to extend the delivery date by the amount of time it takes to receive the requested information or make other arrangements. Please have the requested information delivered to the following:

Stuart J. Lieberman, MAI  
Vice President  
stuart.lieberman@cbre.com  
CBRE, Inc.  
Valuation & Advisory Services  
777 Brickell Avenue, Suite 1100  
Miami, FL 33131

[www.cbre.us/valuation](http://www.cbre.us/valuation)

**CBRE**

# QUALIFICATIONS

Addendum C

# Stuart J. Lieberman, MAI

Vice President, Florida-Caribbean Region

# CBRE

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## Experience

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Stuart J. Lieberman, MAI is a Vice president with over 30 years of real estate appraisal and consulting experience. Mr. Lieberman is in the Valuation & Advisory Services Group's Miami office in the South Florida/Caribbean Region.

Since 1987, Mr. Lieberman has provided real estate valuation and consulting services to the financial lending community, institutional clients, government agencies, corporate entities, legal & accounting professionals, developers and private individuals. Mr. Lieberman has experience providing market studies, feasibility studies, highest & best use analysis, market rent studies, expert testimony & litigation support and portfolio analysis.

Mr. Lieberman's experience encompasses a wide variety of property types including single & multi-family residential, senior housing, mobile home parks, high density urban & ocean front developments, open space & public parks, automobile dealerships, service stations & convenience stores, funeral homes, medical office & surgical centers, mixed-use office, financial institutions & branch banks, retail shopping centers & regional malls, parking garages, restaurants & night clubs, movie theatres, health & fitness clubs, marinas & shipping terminals, FBOs (fixed base operations), industrial flex warehouses, bulk distribution, truck terminals, refrigeration warehouses, R&D, business parks, self-storage facilities; and, special purpose properties, including bowling alleys, broadcasting facilities, car wash, historical properties, public & private schools, day care facilities, houses of worship & religious facilities, tourist attractions, sport arenas and entertainment venues & theatres.

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## Professional Affiliations / Accreditations

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- Appraisal Institute – Designated Member No. 12003
- Certified General Real Estate Appraiser, State of Florida License RZ 1074
- Licensed Real Estate Broker – Associate, State of Florida License BK 0477878

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## Education

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- University of South Florida, Tampa, FL, BA, Political Science – 1985
- Appraisal Institute, American Institute of Real Estate Appraisers, Society of Real Estate Appraisers and Florida Real Estate Commission core courses, electives and seminars.



T +13053816472  
M +13053816462  
Stuart.lieberman@cbre.com

777 Brickell Avenue  
Suite 1100  
Miami, FL 33131

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## Clients Represented

- BankUnited
- Ocean Bank
- Centennial Bank
- C-III Asset Management
- City of Miami
- Miami-Dade County, Internal Services Dept.



Ron DeSantis, Governor

Halsey Beshears, Secretary



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**FLORIDA REAL ESTATE APPRAISAL BD**

THE CERTIFIED GENERAL APPRAISER FIBRIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES



**LICENSE NUMBER: RZ1074**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at [MyFloridaLicense.com](http://MyFloridaLicense.com)



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Tel: 1 305 381 6480  
 james.agner@cbre.com  
 www.cbre.com James Agner

777 Brickell Ave., Suite 1100  
 Miami, FL 33131

## Clients Represented

- LNR Partners
- Wells Fargo
- Truist
- PNC Bank
- Amerant Bank
- Popular Bank
- 5/3 Bank
- First Horizon Bank
- Santander Bank
- Regions Bank
- TD Bank
- Bank United
- US Century
- CitiBank
- Deutsche Bank
- Ocean Bank
- Centennial Bank
- Bank OZK
- First Bank Florida

## Experience

James Agner is the Senior Managing Director of the Valuation & Advisory Services for the Florida-Caribbean Southeast Region. Located in the CBRE Miami office since 1995, Mr. Agner has over thirty years of real estate appraisal and consulting experience throughout the State of Florida, with primary experience in South Florida and in the Caribbean. Mr. Agner is a designated member of the Appraisal Institute (MAI) and General Review Specialist (AI-GRS), member of the Society of Golf Appraisers (SGA), and Royal Institution of Chartered Surveyors (MRICS) and is licensed as a Certified General Real Estate Appraiser in the State of Florida. He also has provided expert witness testimony in the Circuit Courts – State of Florida and United States Bankruptcy Courts.

As Senior Managing Director, Mr. Agner leads a valuation and advisory staff in Miami and Palm Beach Counties that provides exceptional quality appraisal work and client service in South Florida, Treasure Coast and the Florida Keys. He also coordinates all activities for Florida and in the Caribbean, including overseeing new business development, client relations and appraisal quality control production. Mr. Agner is also the National Director of the Golf Valuation Group for CBRE.

## Professional Affiliations / Accreditations

- Appraisal Institute – Designated Member (MAI), Certificate No. 7791
- Appraisal Institute – General Review Specialist (AI-GRS), Certificate No. 69150
- Society of Golf Appraisers (SGA), Certificate No. 25
- Royal Institution of Chartered Surveyors – Member (MRICS), Certificate No. 7505662
- Certified General Real Estate Appraiser, State of Florida, #RZ382
- Licensed Real Estate Broker, State of Florida, BK402088

## Education

- Florida State University, Tallahassee, FL
  - Bachelors of Science in Business Administration, Marketing - 1981



Ron DeSantis, Governor

Halsey Beshears, Secretary



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**FLORIDA REAL ESTATE APPRAISAL BD**

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES



**LICENSE NUMBER: RZ982**

**EXPIRATION DATE: NOVEMBER 30, 2022**

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# ATTACHMENT

# D



**CUSHMAN &  
WAKEFIELD**

**APPRAISAL OF REAL PROPERTY**

**Smith & Wollensky  
1 Washington Avenue  
Miami Beach, Miami-Dade County, FL 33139**

**IN A MARKET RENT STUDY**

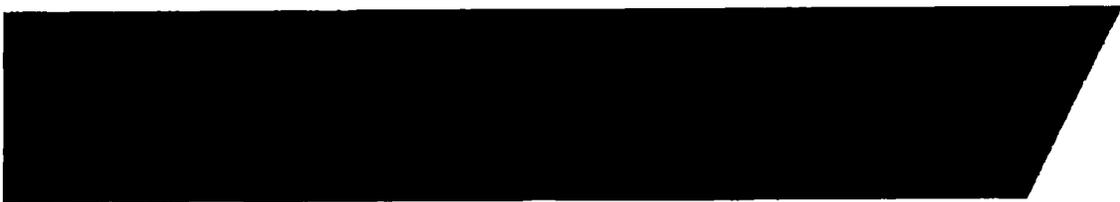
**As of December 14, 2020**

**Prepared For:**

**City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139**

**Prepared By:**

**Cushman & Wakefield Regional, Inc.  
Valuation & Advisory  
225 NE Mizner Blvd., Suite 300  
Boca Raton, FL 33432  
Cushman & Wakefield File ID: 20-48007-900477-001**





**Smith & Wollensky**  
**1 Washington Avenue**  
**Miami Beach, Miami-Dade County, FL 33139**



225 NE Mizner Blvd., Suite 300  
Boca Raton, FL 33432  
Tel +1 (954) 771-0800  
cushmanwakefield.com

December 23, 2020

Mr. Jimmy L. Morales  
**City of Miami Beach**  
1700 Convention Center Drive  
Miami Beach, FL 33139

Re: **Restricted Market Rent Study Report**

**Smith & Wollensky**  
Miami Beach, Miami-Dade County, FL 33139

Cushman & Wakefield File ID: 20-48007-900477-001

Dear Mr. Morales:

In fulfillment of our agreement as outlined in the Letter of Engagement, we are pleased to transmit our Restricted Market Study Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP). In accordance with USPAP, the use of this report is restricted to the client only.

The report presents limited discussions of the data, reasoning, and analyses used in the appraisal process to develop the appraiser's opinion of rental rate. It may not be understood without additional information in the appraiser's work file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated in the following pages.

The subject property was not inspected by the appraiser per agreement with the client.

|                |   |
|----------------|---|
| Client:        | Mr. Jimmy L. Morales<br><b>City of Miami Beach</b><br>1700 Convention Center Drive<br>Miami Beach, FL 33139   |
| Intended User: | In compliance with USPAP, the Client is the only Intended User.   |
| Intended Use:  | This Restricted Market Study Report was prepared for the exclusive use of the Client to determine market rent. Use of this report by others is not intended by the appraiser. |

|                                    |   |
|------------------------------------|---|
| Identification of the Real Estate: | <p>Smith &amp; Wollensky<br/>         1 Washington Avenue<br/>         Miami Beach, FL 33139</p>  |
| Current Use:                       | <p>The subject property consists of a 20,851 square foot (per Public Records) two-story restaurant space that is leased to Smith &amp; Wollensky that is located at the southern end of South Beach at the end of Washington Avenue, overlooking Government Cut in Miami Beach, FL. The restaurant space was completed in 1987. The property is currently occupied and leased by Smith &amp; Wollensky. The lease commenced on November 7, 1985, with an initial 20 year term and two 10 year renewal options, of which the subject is within the second renewal option, which ends on November 6, 2025. The current terms of the lease are based on a percentage rent base on gross sales based on the following:</p> <p>2.5% to \$2,500,000 in gross sales<br/>         3.0% to \$2,500,000 to \$3,000,000 in gross sales<br/>         3.5% over \$3,000,000 in gross sales</p> <p>It should be noted that current or historical percentage rent payments were not provided in for our analysis. Per the lease, the restaurant is to have a minimum of 200 seats. Additionally, the lessor agrees to make available 137 parking spaces at an annual fee of \$84,600, of which a portion can be credited against the percentage rent payment.</p> <p>During the second renewal term, the lessee shall pay a bonus rent of \$65,000 per annum.</p> <p>The lessee subsequently entered into a concession agreement with the City of Miami Beach on October 1, 2009 and ending on November 6, 2025 to utilized 581 square feet of the South Pointe Park public baywalk for seating for a food and beverage operation. The concession fee is currently \$120,000 and increases to \$140,000 in October 1, 2024. The total number of seats on this concession area is 36 seats. The total gross sales for restaurant as of fiscal year 2019 were \$18,376,451, which we have considered in our analysis.</p> <p>Based on our analysis herein, the current rental rate terms are atypical in that they represent predominately percentage rate payments, whereas most restaurant leases are based on a fixed rental rate amount and a percentage rent over a natural breakpoint.</p> |
| Type of Value:                     | Market Rent (defined later in this report)  |
| Real Property Interest Valued:     | Fee Simple  |
| Current Ownership:                 | CITY OF MIAMI BEACH   |

|                            |   |
|----------------------------|---|
| Sales History:             | Based on our review of Public Records and information the subject property has not transferred over the past three years. |
| Current Disposition        | To the best of our knowledge, the property is not under contract of sale nor is it being marketed for sale.               |
| Date of Inspection:        | December 14, 2020   |
| Effective Date of Value:   | December 14, 2020   |
| Date of Report:            | December 23, 2020   |
| Extraordinary Assumptions: | This market rent study does not employ any extraordinary assumptions.   |
| Hypothetical Conditions:   | This market rent study does not employ any hypothetical conditions.   |
| Opinion of Market Rent:    | \$50.00 per square foot, triple net ( <i>Market Rent As-Is on December 14, 2020</i> )                                     |
| Exposure Time:             | 9 to 12 months  |

## Market Study Definition

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. A market study may also include analyses of construction and absorption trends (Dictionary of Real Estate Appraisal, 4th Edition, page 176).

## Scope of Work

Scope of work is the type and extent of research and analyses involved in an assignment. To determine the appropriate scope of work for the assignment, we considered the intended use of the market study, the needs of the user, the relevant characteristics of the subject property, and other pertinent factors. We prepared this independent and impartial appraisal of the property in conformance with the requirements of USPAP. The report includes only the appraiser's conclusion and cannot be properly understood without reference to the appraiser's file, which is maintained within our work file. The level of detail and depth of the analysis is considered to be commensurate with the complexity of the property type and market conditions.

As part of this market study, a number of independent investigations and analyses were required. The agreed upon Scope of Work included the following:

- Michael C. McNamara, MAI, MRICS inspected the property and its environs.
- Collected primary and secondary data related to the subject.
- Investigated the general trends in the regional economy and local area.
- Investigated and analyzed rental data in the subject's market.
- Used generally accepted market-derived methods and procedures appropriate to the assignment.
- Set forth all assumptions and limiting conditions that affect the analysis, opinion and conclusions, as stated in the report.

- Provided a signed certification in accordance with Standards Rule 2-3 of USPAP.
- Sufficient data, due diligence, and analysis are combined in this valuation to produce a reliable market rent conclusion that serves the needs of the client.

This report is intended to comply with the reporting requirements outlined under USPAP for a Restricted Appraisal Report. The report was also prepared to comply with the requirements of the Code of Professional Ethics of the Appraisal Institute and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Title XI Regulations.

Cushman & Wakefield Regional, Inc. has an internal Quality Control Oversight Program. This Program mandates a "second read" of all appraisals. Assignments prepared and signed solely by designated members (MAIs) are read by another MAI who is not participating in the assignment. Assignments prepared, in whole or in part, by non-designated appraisers require MAI participation, Quality Control Oversight, and signature.

For this assignment, Quality Control Oversight was provided by Michael C. McNamara, MAI, MRICS. In addition to a qualitative assessment of the Appraisal Report, Michael C. McNamara, MAI, MRICS is a signatory to the Appraisal Report and concurs in the value estimate(s) set forth herein.

## Report Option Description

USPAP identifies two written report options: Appraisal Report and Restricted Appraisal Report. This document is prepared as a Restricted Appraisal Report in accordance with USPAP guidelines. The terms "describe," "summarize," and "state" connote different levels of detail, with "describe" as the most comprehensive approach and "state" as the least detailed. As such, the following provides specific descriptions about the level of detail and explanation included within the report:

- States the real estate and/or personal property that is the subject of the appraisal, including physical, economic, and other characteristics that are relevant
- States the type and definition of value and its source
- States the Scope of Work used to develop the appraisal
- States the information analyzed, the appraisal methods used, and the reasoning supporting the analyses and opinions; explains the exclusion of any valuation approaches
- States the use of the property as of the valuation date
- States the rationale for the Highest and Best Use opinion (if included)

## Assumptions and Limiting Conditions

"Report" means the appraisal or consulting report and conclusions stated therein, to which these Assumptions and Limiting Conditions are annexed.

"Property" means the subject of the Report.

"Cushman & Wakefield" means Cushman & Wakefield, Inc. or its subsidiary that issued the Report.

"Appraiser(s)" means the employee(s) of Cushman & Wakefield who prepared and signed the Report.

The Report has been made subject to the following assumptions and limiting conditions:

- No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters that are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser. Title to the Property is assumed to be good and marketable and the Property is assumed to be free and clear of all liens unless otherwise stated. No survey of the Property was undertaken.
- The information contained in the Report or upon which the Report is based has been gathered from sources the Appraiser assumes to be reliable and accurate. The owner of the Property may have provided some of such information. Neither the Appraiser nor Cushman & Wakefield shall be responsible for the accuracy or completeness of such information, including the correctness of estimates, opinions, dimensions, sketches, exhibits and factual matters. Any authorized user of the Report is obligated to bring to the attention of Cushman & Wakefield any inaccuracies or errors that it believes are contained in the Report.
- The opinions are only as of the date stated in the Report. Changes since that date in external and market factors or in the Property itself can significantly affect the conclusions in the Report.
- The Report is to be used in whole and not in part. No part of the Report shall be used in conjunction with any other analyses. Publication of the Report or any portion thereof without the prior written consent of Cushman & Wakefield is prohibited. Reference to the Appraisal Institute or to the MAI designation is prohibited. Except as may be otherwise stated in the letter of engagement, the Report may not be used by any person(s) other than the party(ies) to whom it is addressed or for purposes other than that for which it was prepared. No part of the Report shall be conveyed to the public through advertising, or used in any sales, promotion, offering or SEC material without Cushman & Wakefield's prior written consent. Any authorized user(s) of this Report who provides a copy to, or permits reliance thereon by, any person or entity not authorized by Cushman & Wakefield in writing to use or rely thereon, hereby agrees to indemnify and hold Cushman & Wakefield, its affiliates and their respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys' fees, incurred in investigating and defending any claim arising from or in any way connected to the use of, or reliance upon, the Report by any such unauthorized person(s) or entity(ies).
- Except as may be otherwise stated in the letter of engagement, the Appraiser shall not be required to give testimony in any court or administrative proceeding relating to the Property or the Appraisal.
- The Report assumes (a) responsible ownership and competent management of the Property; (b) there are no hidden or unapparent conditions of the Property, subsoil or structures that render the Property more or less valuable (no responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them); (c) full compliance with all applicable federal, state and local zoning and environmental regulations and laws, unless noncompliance is stated, defined and considered in the Report; and (d) all required licenses, certificates of occupancy and other governmental consents have been or can be obtained and renewed for any use on which the value opinion contained in the Report is based.
- The physical condition of the improvements considered by the Report is based on visual inspection by the Appraiser or other person identified in the Report. Cushman & Wakefield assumes no responsibility for the soundness of structural components or for the condition of mechanical equipment, plumbing or electrical components.
- The forecasted potential gross income referred to in the Report may be based on lease summaries provided by the owner or third parties. The Report assumes no responsibility for the authenticity or completeness of lease information provided by others. Cushman & Wakefield recommends that legal advice be obtained regarding the interpretation of lease provisions and the contractual rights of parties.

- The forecasts of income and expenses are not predictions of the future. Rather, they are the Appraiser's best opinions of current market thinking on future income and expenses. The Appraiser and Cushman & Wakefield make no warranty or representation that these forecasts will materialize. The real estate market is constantly fluctuating and changing. It is not the Appraiser's task to predict or in any way warrant the conditions of a future real estate market; the Appraiser can only reflect what the investment community, as of the date of the Report, envisages for the future in terms of rental rates, expenses, and supply and demand.
- Unless otherwise stated in the Report, the existence of potentially hazardous or toxic materials that may have been used in the construction or maintenance of the improvements or may be located at or about the Property was not considered in arriving at the opinion of value. These materials (such as formaldehyde foam insulation, asbestos insulation and other potentially hazardous materials) may adversely affect the value of the Property. The Appraisers are not qualified to detect such substances. Cushman & Wakefield recommends that an environmental expert be employed to determine the impact of these matters on the opinion of value.
- Unless otherwise stated in the Report, compliance with the requirements of the Americans with Disabilities Act of 1990 (ADA) has not been considered in arriving at the opinion of value. Failure to comply with the requirements of the ADA may adversely affect the value of the Property. Cushman & Wakefield recommends that an expert in this field be employed to determine the compliance of the Property with the requirements of the ADA and the impact of these matters on the opinion of value.
- If the Report is submitted to a lender or investor with the prior approval of Cushman & Wakefield, such party should consider this Report as only one factor, together with its independent investment considerations and underwriting criteria, in its overall investment decision. Such lender or investor is specifically cautioned to understand all Extraordinary Assumptions and Hypothetical Conditions and the Assumptions and Limiting Conditions incorporated in this Report.
- In the event of a claim against Cushman & Wakefield or its affiliates or their respective officers or employees or the Appraisers in connection with or in any way relating to this Report or this engagement, the maximum damages recoverable shall be the amount of the monies actually collected by Cushman & Wakefield or its affiliates for this Report and under no circumstances shall any claim for consequential damages be made.
- If the Report is referred to or included in any offering material or prospectus, the Report shall be deemed referred to or included for informational purposes only and Cushman & Wakefield, its employees and the Appraiser have no liability to such recipients. Cushman & Wakefield disclaims any and all liability to any party other than the party that retained Cushman & Wakefield to prepare the Report.
- Any estimate of insurable replacement cost/insurable value, if included within the agreed upon scope of work and presented within this report, is based upon figures derived from a national cost estimating service and is developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage for replacing any structure. This analysis should not be relied upon to determine insurance coverage. Furthermore, we make no warranties regarding the accuracy of this estimate.
- Any estimate of actual cash value, if included within the agreed upon scope of work and presented within this Report, is based upon an agreed upon procedure with the client as identified by the client within their definition. C&W makes no warranties regarding the accuracy or relevance of this estimate.
- Unless otherwise noted, we were not given a soil report to review. However, we assume that the soil's load-bearing capacity is sufficient to support existing and/or proposed structure(s). We did not observe any evidence to the contrary during our physical inspection of the property. Drainage appears to be adequate.
- Unless otherwise noted, we were not given a title report to review. We do not know of any easements, encroachments, or restrictions that would adversely affect the site's use. However, we recommend a title search to determine whether any adverse conditions exist.
- Unless otherwise noted, we were not given a wetlands survey to review. If subsequent engineering data reveal the presence of regulated wetlands, it could materially affect property value. We recommend a wetlands survey by a professional engineer with expertise in this field.
- Unless otherwise noted, we observed no evidence of toxic or hazardous substances during our inspection of the site. However, we are not trained to perform technical environmental inspections and recommend the hiring of a professional engineer with expertise in this field.

- Unless otherwise noted, we did not inspect the roof nor did we make a detailed inspection of the mechanical systems. The appraisers are not qualified to render an opinion regarding the adequacy or condition of these components. The client is urged to retain an expert in this field if detailed information is needed.
- By use of this Report each party that uses this Report agrees to be bound by all of the Assumptions and Limiting Conditions, Hypothetical Conditions and Extraordinary Assumptions stated herein.

## Certification

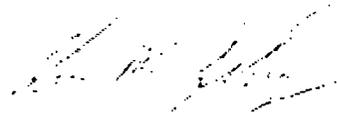
We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- Michael C. McNamara, MAI, MRICS did make a personal inspection of the property that is the subject of this report. Adrian M. Sanchez, MAI did not make a personal inspection of the property that is the subject of this report.
- We have not performed prior services (an appraisal or market study) involving the subject property within the three-year period immediately preceding the acceptance of the assignment.
- No one provided significant real property appraisal assistance to the persons signing this report.
- As of the date of this report, Michael C. McNamara, MAI, MRICS and Adrian M. Sanchez, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.
- Our analyses, opinions, or conclusions were developed and this report has been prepared in conformity with the requirements of the State of Florida for State-certified appraisers.
- The use of this report is subject to the requirements of the State of Florida relating to review by the Real Estate Appraisal Subcommittee of the Florida Real Estate Commission.




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# Addenda Contents

- Addendum A: Valuation Addendum
- Addendum B: Qualification of the Appraisers

## Addendum A: Valuation Addendum

## Valuation Addendum

### Market Participant Discussions Regarding Underwriting of Retail Space in South Beach

We have relied upon discussions with market participants in determining how the market is currently underwriting assets in South Beach. Additionally, we have included retail broker discussions with regard to current demand on South Beach.

- Based on conversations Greg Masin of Cushman & Wakefield of Florida's retail brokerage group, who is active on Lincoln Road Mall demand for retail space has decreased over the past several years on Lincoln Road. He indicated that leases have recently been signed between \$200.00 to \$250.00 per square foot over the past year on Lincoln Road. He indicated that typically little tenant improvement allowances are given out to tenants on this street unless it is first generation space. Retail spaces off of Lincoln Road Mall command less in rent than those fronting Lincoln Road and he indicated that demand for these side street leases have increased over the past several years, but not as much as Lincoln Road fronting space. He indicated that tenants signing leases along Lincoln Road factor in the branding and marketing that are associated with Lincoln Road frontage and less on the real estate metrics involved in whether the lease makes sense from a real estate standpoint. Note that since Covid-19 began he has not witnessed any changes in rental rates on Lincoln Road and/or on South Beach in general. He noted that there has been a lot of activity marketwide for well located retail spaces, as retailers are positing themselves to "lock in" a good location or space under current market conditions, which some retailers view as temporary. These are mostly food and beverage outlets. He also noted that current negotiations have given way to the thought of percentage rent in the near term with a fixed rental rate amount in the future; however, these are not concrete and no deals have been done on these terms to date.
- We also spoke with Frank Begrowicz, a retail broker with Cushman & Wakefield of Florida, who is also active on Lincoln Road. He noted that an average retailer on the road will have sales roughly around \$1,200 per square foot and based on those sales they can afford to pay in the mid to low-\$200 per square foot range in rents. He noted that rents have stabilized and even declined over the past year after increasing significantly over the past several years and that rents peaked several years ago. Regarding large spaces in comparison to smaller spaces on Lincoln Road, he indicated that there does not appear to be a significant difference in relation to rental rates. Although, he noted that there have been few deals at this price point and for this large of a space. He also indicated that several landlords in the area have attempted to convert hard corners into one single space and sign a national credit tenant to take the entire space and pay Lincoln Road fronting retail rents and few of these deals have occurred. The tenants that are fronting Lincoln Road and that are actively seeking spaces to lease on this street are national (or global) credit tenants, whereby the side streets will most likely be filled with non-credit tenants like restaurateurs.
- With regard to side street space, or space located off of Lincoln Road (i.e. the subject side ground floor space) he noted that little to no side street deals have occurred over the past year and most of the tenants that used to be on Lincoln Road that were not national/global brands have left the market and have moved to the mainland. In terms of side street rental rates he noted that short terms leases were being signed between \$45.00 to \$80.00 per square foot, with some up to \$100.00 per square foot on a triple net basis. He noted that if a space is delivered as a vanilla shell that is considered more desirable for prospective tenants in the market due to the associated downtime costs and for space that is not (which is a majority of the vacant space in the market). He also noted that market rent for the smaller ground floor retail spaces along Collins Avenue (south of Lincoln Road) were being underwritten and would lease in the low \$100 per

square foot range prior to the Covid-19 pandemic. The area south of Lincoln Road along Collins Avenue is pedestrian nature with a large number of people visiting the local area (pre-Covid-19).

- The expenses at various retail buildings (particularly those that have recently sold) have become an issue for some tenants that are currently looking for space in the market, with reassessments of properties and the subsequent increases in real estate taxes being the largest issue in terms of expenses increases in the area. He noted that buildings that have not traded recently will have an advantage to those that have based on a lower per square foot expense amount.
- Regarding landlord allowances for retail space in South Beach, Mr. Begrowicz noted that few spaces are given tenant improvement allowances and most landlords prefer to offer a small amount of free rent of one or two months (if any).
- Additionally, he noted that few landlords in the market are currently offering tenant improvement allowances for vacant spaces, rather they are offering several months of free rent in lieu of tenant improvement allowance. He also noted that the market has slowed over the past year in terms of rental rate growth based on the decline in demand from Latin America.

**We began our search for recent large restaurant leases in Miami Beach and none were encountered. Most larger restaurant spaces are either part of hotels and not leased or represent owner/user spaces. Therefore, we have considered recent retail leases in South Beach, which are located on the following chart.**

**RETAIL LEASE COMPARABLES - MIAMI BEACH**

| PROPERTY INFORMATION |  |                       |               | LEASE INFORMATION |             |                    |               |               | COMMENTS   |
|----------------------|--|-----------------------|---------------|-------------------|-------------|--------------------|---------------|---------------|--|
| NO.                  | Property Name<br>Address, City, State        | TENANT<br>NAME        | LEASE<br>DATE | LEASE<br>SIZE     | TERM (yrs.) | INITIAL<br>RENT/SF | RENT<br>STEPS | LEASE<br>TYPE |  |
| 1                    | Meridian Avenue & 17th Street<br>Miami Beach | Confidential -<br>LOI | 6/20          | 4,400             | 10.0        | \$70.00            | 3.0%          | <u>Net</u>    | This is a second generation space retail space and a signed letter of intent with a restaurant operator. The landlord was to provide \$90.00 psf in tenant improvement allowance to reconfigure the space. |
| 2                    | Alton Road & 17th Street<br>Miami Beach      | Confidential          | 1/20          | 1,600             | 4.0         | \$95.00            | 3.0%          | <u>Net</u>    | This is a first generation space retail space.   |
| 3                    | Alton Road & 17th Street<br>Miami Beach      | Confidential          | 12/19         | 3,600             | 10.0        | \$135.00           | 3.0%          | <u>Net</u>    | This is a first generation space retail.   |
| 4                    | West Avenue Retail<br>Miami Beach,           | Confidential          | 8/18          | 5,000             | 5.0         | \$60.00            | 3.0%          | <u>Net</u>    | This space was leased to a restaurant tenant and is a second generation space.   |
| 5                    | 3400 Collins Avenue<br>Miami Beach           | Confidential          | 7/18          | 1,448             | 10.0        | \$80.00            | 3.0%          | <u>Net</u>    | This space is located north of Lincoln Road and has direct frontage on Collins Avenue. It was leased to a retail tenant.   |
| 6                    | 2000 Collins Avenue<br>Miami Beach           | Confidential          | 12/17         | 5,675             | 10.0        | \$81.80            | 3.0%          | <u>Net</u>    | This space is located north of Lincoln Road and has direct frontage on Collins Avenue. It was leased to a retail tenant.   |
| STATISTICS           |  |                       |               |                   |             |                    |               |               |  |
|                      | Low  |                       | 12/17         | 1,448             | Neg.        | \$60.00            |               |               |  |
|                      | High   |                       | 6/20          | 5,675             | Neg         | \$135.00           |               |               |  |
|                      | Average                                      |                       | 3/19          | 3,621             | Neg         | \$86.97            |               |               |  |

Compiled by Cushman & Wakefield Regional, Inc.

The South Beach lease comparables range from \$60.00 to \$135.00 per square foot on a triple net basis, with an average of \$86.97 per square foot.

**As noted previously, as there were no available recent large restaurant leases in Miami Beach, we have expanded our search to include recent large restaurant lease comparables in prime retail locations throughout Miami-Dade County. The following chart reflects the most recent large lease comparables in the market.**

**MIAMI-DADE LARGE RESTAURANT LEASE COMPARABLES**

| PROPERTY INFORMATION |  |            |                | LEASE INFORMATION |            |            |             |                 |            |            |                        |                   |                        |             |       | COMMENTS   |
|----------------------|--|------------|----------------|-------------------|------------|------------|-------------|-----------------|------------|------------|------------------------|-------------------|------------------------|-------------|-------|--|
| NO.                  | Property Name<br>Address, City, State                              | YEAR BUILT | YEAR RENOVATED | TENANT NAME       | LEASE DATE | SIZE (NRA) | TERM (yrs.) | INITIAL RENT/SF | RENT STEPS | LEASE TYPE | PERCENTAGE RENT CLAUSE | % RENT BREAKPOINT | % Rent over Breakpoint | MONTHS FREE | TU\$/ |  |
| 1                    | Coral Gables - Restaurant<br>Coral, FL                             | 2002       | N/A            | Confidential      | 2/20       | 9,914      | 5           | \$36.60         | Flat       | <u>Net</u> | <u>N/A</u>             | 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<br>Miami, FL                              | 1972       | 2018           | Confidential      | 9/19       | 4,480      | 10          | \$56.00         | 2.5%       | <u>Net</u> | <u>Yes</u>             | 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<br>Miami,                                 | 2019       | N/A            | Confidential      | 6/19       | 5,500      | 10          | \$65.00         | 3.0%       | <u>Net</u> | <u>N/A</u>             | 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<br>Miami,                                  | 1951       | 2017           | Confidential      | 1/19       | 10,000     | 5           | \$75.00         | 3.0%       | <u>Net</u> | <u>N/A</u>             | 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<br>Ground Floor Retail Space<br>Miami,             | 2011       | N/A            | Confidential      | 3/19       | 5,179      | 15          | \$75.00         | 2.5%       | <u>Net</u> | <u>N/A</u>             | 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<br>9610 Old Cutler Road<br>Miami, | 1997       | 2019           | Red Fish Grill    | 10/18      | 8,400      | 10          | \$88.57         | Flat       | <u>Net</u> | <u>N/A</u>             | 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. |
| <b>STATISTICS</b>    |  |            |                |                   |            |            |             |                 |            |            |                        |                   |                        |             |       |  |
| 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 south beach lease comparables range from \$36.60 to \$88.57 per square foot on a triple net basis, with an average of \$66.03 per square foot.

### Market Rent Conclusion

We have relied upon discussions with market participants, recent leases, as well as considering current market conditions in determining a market rent for the subject space. We have considered that the subject space is larger than all of the other lease comparables and we have considered the superior location of the subject in Miami Beach overlooking Government Cut. It should be noted that there are few direct waterfront dining options in Miami-Dade County and we have considered this in our projections, despite the near term market conditions, we believe that a potential restaurant operator would consider this in their lease negotiations.

The client has requested that we estimate a market percentage rate for the subject space in addition to the base rental rate. We have considered that it is typical in the market for restaurant leases to be signed with percentage rent clauses in addition to a base rental rate, over a natural breakpoint with percentage rent ranging from 5.00 to 6.00 percent of gross sales above this natural breakpoint.

We have considered all of these variables in determining a market rent for the subject.

| <b>MARKET RENT SYNOPSIS</b>       |                        |
|-----------------------------------|------------------------|
| <b>TENANT CATEGORY</b>            | <b>Restaurant Rent</b> |
| Market Rent                       | \$50.00                |
| Lease Term (Years)                | 20                     |
| Lease Type (Reimbursements)       | Net                    |
| Contract Rent Increase Projection | 3.00%                  |
| <u>Tenant Improvements</u>        |                        |
| New Leases                        | \$50.00                |
| Renewal Leases                    | \$10.00                |
| First Generation                  | \$100.00               |
| <u>Free Rent</u>                  |                        |
| New Leases                        | 3 months               |
| Renewal Leases                    | none                   |
| <u>Leasing Commissions</u>        |                        |
| New Leases                        | 5.00%                  |
| Renewal Leases                    | 2.50%                  |
| <u>Percentage Rent</u>            |                        |
| % Rent                            | 5.00%                  |
| Breakpoint                        | Natural Breakpoint     |

*Compiled by Cushman & Wakefield Regional, Inc.*

**We have also considered that there are few leases being signed under market conditions and those that are currently being negotiated are considering percentage rent over the next year and converting to a fix rental rate once the Covid-19 pandemic ends.**

### Market Expense Comparables

We have relied on expense comparables of properties located in Miami Beach in determining market expenses for the subject. The following chart illustrates these expenses.

| SUBJECT PROPERTY         |               | COMPARABLES REVENUE AND EXPENSE ANALYSIS |             |               |               |               |  |
|--------------------------|---------------|--|-------------|---------------|---------------|---------------|--|
| Property City            | Miami Beach   | Miami Beach                              | Miami Beach | Miami Beach   | Miami Beach   | Miami Beach   |  |
| Year Built               | 1987          | 2000's                                   | 2010's      | 1960's        | 1940's        | 1920's        |  |
| Property Type            | Subject Space | Retail                                   | Retail      | Office/Retail | Office/Retail | Office/Retail |  |
| Rentable Square Feet     | 20,851        | 49,768                                   | 36,957      | 20,688        | 53,835        | 20,177        |  |
| Year of Record           |               | 2017                                     | 2017        | 2018          | 2019          | 2019          |  |
| Actual/Budget/Annualized |               | Actual                                   | Actual      | Actual        | Actual        | Actual        |  |

|  | PSF     | PSF     | % EGI   | PSF     | PSF     | PSF     |
|--|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>REVENUE</b>                             |         |         |         |         |         |         |         |         |         |         |         |         |         |         |
| <b>EFFECTIVE GROSS REVENUE</b>             | N/A     | \$75.80 | 100.00% | \$48.56 | 100.00% | \$26.06 | 100.00% | \$65.80 | 100.00% | \$95.70 | 100.00% | \$26.06 | \$95.70 | \$62.38 |
| <b>OPERATING EXPENSES</b>                  |         |         |         |         |         |         |         |         |         |         |         |         |         |         |
| Insurance                                  | \$4.00  | \$4.13  | 5.45%   | \$1.59  | 3.27%   | \$1.13  | 4.34%   | \$2.34  | 3.56%   | \$3.48  | 3.64%   | \$1.13  | \$4.13  | \$2.53  |
| Repairs & Maintenance                      | \$5.00  | \$6.92  | 9.13%   | \$2.28  | 4.70%   | \$6.85  | 26.29%  | \$4.35  | 6.61%   | \$4.05  | 4.23%   | \$2.28  | \$6.92  | \$4.89  |
| Management Fees                            | \$2.60  | \$2.02  | 2.66%   | \$2.08  | 4.28%   | \$0.81  | 3.11%   | \$0.00  | 0.00%   | \$2.55  | 2.66%   | \$0.00  | \$2.55  | \$1.49  |
| Other Expenses / Non-Reimbursables         | \$0.20  | \$0.00  | 0.00%   | \$0.37  | 0.76%   | \$0.88  | 3.38%   | \$0.45  | 0.68%   | \$0.00  | 0.00%   | \$0.00  | \$0.88  | \$0.34  |
| <b>Total Operating Expenses</b>            | \$11.80 | \$13.07 | 17.24%  | \$6.32  | 13.01%  | \$9.67  | 37.11%  | \$7.14  | 10.85%  | \$10.08 | 10.53%  | \$6.32  | \$13.07 | \$9.26  |
| Real Estate Taxes (None as City owns Land) | \$0.00  | \$11.13 | 14.68%  | \$3.70  | 7.62%   | \$5.27  | 20.22%  | \$7.72  | 11.73%  | \$15.59 | 16.29%  | \$3.70  | \$15.59 | \$8.68  |
| <b>TOTAL EXPENSES</b>                      | \$11.80 | \$24.20 | 31.93%  | \$10.02 | 20.63%  | \$14.94 | 57.33%  | \$14.86 | 22.58%  | \$25.67 | 26.82%  | \$10.02 | \$25.67 | \$17.94 |
| <b>NET OPERATING INCOME</b>                | N/A     | \$61.60 |         | \$38.54 |         | \$11.12 |         | \$50.94 |         | \$70.03 |         | \$11.12 | \$70.03 | \$44.45 |

## Addendum B: Qualification of the Appraisers



**Michael C. McNamara, MAI, MRICS Executive Director**

Valuation & Advisory  
Practice Group Leader | Multifamily  
Cushman & Wakefield Regional, Inc.

### **Professional Expertise**

Michael C. McNamara, MAI, MRICS, is an Executive Director and Multifamily Practice Group Co-Leader within the Valuation & Advisory group of Cushman & Wakefield Regional, Inc. in Ft. Lauderdale, Florida. Mr. McNamara joined Cushman & Wakefield in August 1998 as a Senior Appraiser. In November of 2002, Mr. McNamara was named Director, was promoted to Senior Director in June 2005 and was further promoted to Executive Director in January 2010. Prior to joining Cushman & Wakefield, Mr. McNamara was employed by Landauer Real Estate Counselors as a Director within their Valuation and Technical Services group from May 1995 through July 1998. He was an Appraiser with American Realty Consultants from January 1993 to May of 1995 and an Appraiser for Consolidated Appraisal Services from March 1992 through December 1992. From October 1989 through March 1992 he was an appraiser with Pederson & Trask.

Since joining Cushman & Wakefield Regional, Inc., Mr. McNamara has performed appraisal, feasibility and consulting assignments involving multifamily complexes, condominiums, vacant land, office buildings, shopping centers, industrial, self storage and investment properties throughout 12 states and 11 different islands in the Caribbean. The majority of appraisal experience has been concentrated in Florida and has been primarily for institutional investors, lending institutions, attorneys and private investors.

### **Memberships, Licenses, Professional Affiliations and Education**

- Designated Member, Appraisal Institute (MAI #11052). As of the current date, Michael McNamara, MAI has completed the requirements of the continuing education program of the Appraisal Institute.
- Member, Royal Institution of Chartered Surveyors (MRICS #1285269)
- Florida Licensed Real Estate Salesman (SL #553108)
- Certified General Real Estate Appraiser in the following states:
  - Florida – RZ2105
- Bachelor of Arts, Rutgers University, Economics

### **Other Accomplishments and Awards**

- Recipient, Valuation & Advisory Excellence in Quality Service Award for the Florida region, 1999 and 2006.
- Recognized, Top Valuation Service Professional in South Florida, 1999, 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2010 and 2013.

- Recognized, Top Valuation Service Professional in the State of Florida, 2003, 2004 and 2005.
- Recognized, one of the top ten producers in South Florida, 2012

#### **Testimony in Courts of Law and Quasi-Judicial Hearings**

- United States Bankruptcy Court – Southern District – Fort Lauderdale, Florida
- United States Bankruptcy Court – Eastern District – Alexandria, Virginia
- Circuit Court of the 20th Judicial Circuit in Collier County, Naples, Florida
- Circuit Court of the 15th Judicial Circuit in Palm Beach County, West Palm Beach, Florida
- Circuit Court of the 19th Judicial Court, St. Lucie County, St. Lucie, Florida
- Tax appeal hearings in Broward, Martin, and Miami-Dade Counties

#### **Publications**

- Market Watch, Fort Lauderdale, Florida "Self Storage in the Sunshine State", Mini-Storage Messenger (May 2009)
- Market Watch, Orlando, Florida "Self Storage in the City Beautiful", Mini-Storage Messenger (May 2010)
- Market Watch, Tampa, Florida "A Ray of Hope", Mini-Storage Messenger (May 2011)
- Market Watch Sidebar, Florida Self Storage, "A Review of the Numbers" Mini-Storage Messenger (April 2012)
- Market Watch, Jacksonville, Florida "Where Florida Begins", Mini-Storage Messenger (November 2012)



Ron DeSantis, Governor

Halsey Beshears, Secretary



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**FLORIDA REAL ESTATE APPRAISAL BD**

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 493, FLORIDA STATUTES



LICENSE NUMBER: 122105

EXPIRATION DATE: NOVEMBER 30, 2022

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**Adrian M. Sanchez, MAI Senior Director**

Valuation & Advisory  
Cushman & Wakefield Regional, Inc.

### **Professional Expertise**

Adrian M. Sanchez, MAI is a Senior Director of Cushman & Wakefield Regional, Inc. (Cushman & Wakefield) working within Valuation & Advisory. Mr. Sanchez joined Cushman & Wakefield in March 2003 as a Research Specialist within the Research Services Group. In June of 2003, Mr. Sanchez joined the Valuation & Advisory group as a Staff Appraiser. Mr. Sanchez has received the Excellence in Quality Service Award for the Valuation & Advisory group for the Florida region in 2006.

Since joining Cushman & Wakefield Regional, Inc., Mr. Sanchez has performed appraisal, feasibility and consulting assignments involving residential complexes, condominiums, vacant land, office buildings, shopping centers, industrial and investment properties throughout the State of Florida and the Caribbean. The majority of appraisal experience has been concentrated in Florida and has been primarily for institutional investors, lending institutions, attorneys and private investors.

### **Memberships, Licenses, Professional Affiliations and Education**

- Designated Member, Appraisal Institute. As of the current date, Adrian M. Sanchez, MAI has completed the requirements of the continuing education program of the Appraisal Institute.
- Certified General Real Estate Appraiser in the following states:
  - Florida – RZ 3239
- Bachelor of Arts, University of Miami

### **Appraisal Education**

- AB-1 – Real Estate Appraisal Principles
- AB-2 – Mastering Real Estate Appraisal
- 310 – Basic Income Capitalization
- 510 – Advanced Income Capitalization
- 520 – Highest & Best Use & Market Analysis
- 530 – Advanced Sales Comparison and Cost Approach
- 540 – Report Writing & Valuation Analysis
- 550 – Advanced Applications

FLORIDA

 Ron DeSantis, Governor

Halsey Beshears, Secretary 

**STATE OF FLORIDA**  
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**FLORIDA REAL ESTATE APPRAISAL BD**  
THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES



**LICENSE NUMBER: R23239**  
**EXPIRATION DATE: NOVEMBER 30, 2022**  
Always verify licenses online at [MyFloridaLicense.com](http://MyFloridaLicense.com)



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**Blake Koletic**

Valuation & Advisory  
Cushman & Wakefield Regional, Inc.

### **Professional Expertise**

Blake Koletic is an Appraiser of Cushman & Wakefield Regional, Inc. working within the Valuation & Advisory group in Miami, Florida. Mr. Koletic joined Cushman & Wakefield in August of 2018 as a State-Registered Trainee Appraiser.

Currently, Mr. Koletic is involved in the research and development of appraisal assignments of multi-family buildings, self-storage facilities, office buildings, retail buildings and commercial land parcels throughout the State of Florida.

### **Memberships, Licenses, Professional Affiliations and Education**

- State-registered Trainee Appraiser (RI24585)
- State of Florida Real Estate Sales Associate (SL3413465)
- Practicing Affiliate, Appraisal Institute
- Bachelors of Science, Florida State University

### **Appraisal Education**

- Basic Appraisal Principals & Procedures
- General Income Approach I & II
- Florida Appraisal Laws & Rules
- Comprehensive National USPAP

STATE

Ron DeSantis, Governor Halsey Beshears, Secretary



**STATE OF FLORIDA**  
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**FLORIDA REAL ESTATE APPRAISAL BD**  
THE REGISTERED TRAINEE APPRAISER HEREIN HAS REGISTERED UNDER THE  
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

  
**KOLET BRYANT THOMAS**  
GRAND SEAL OF THE STATE OF FLORIDA  
1845

**LICENSE NUMBER: N24585**  
**EXPIRATION DATE: NOVEMBER 30, 2022**  
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# ATTACHMENT

# E



# SMITH & WOLLENSKY MIAMI BEACH

## SCHEME BOARD

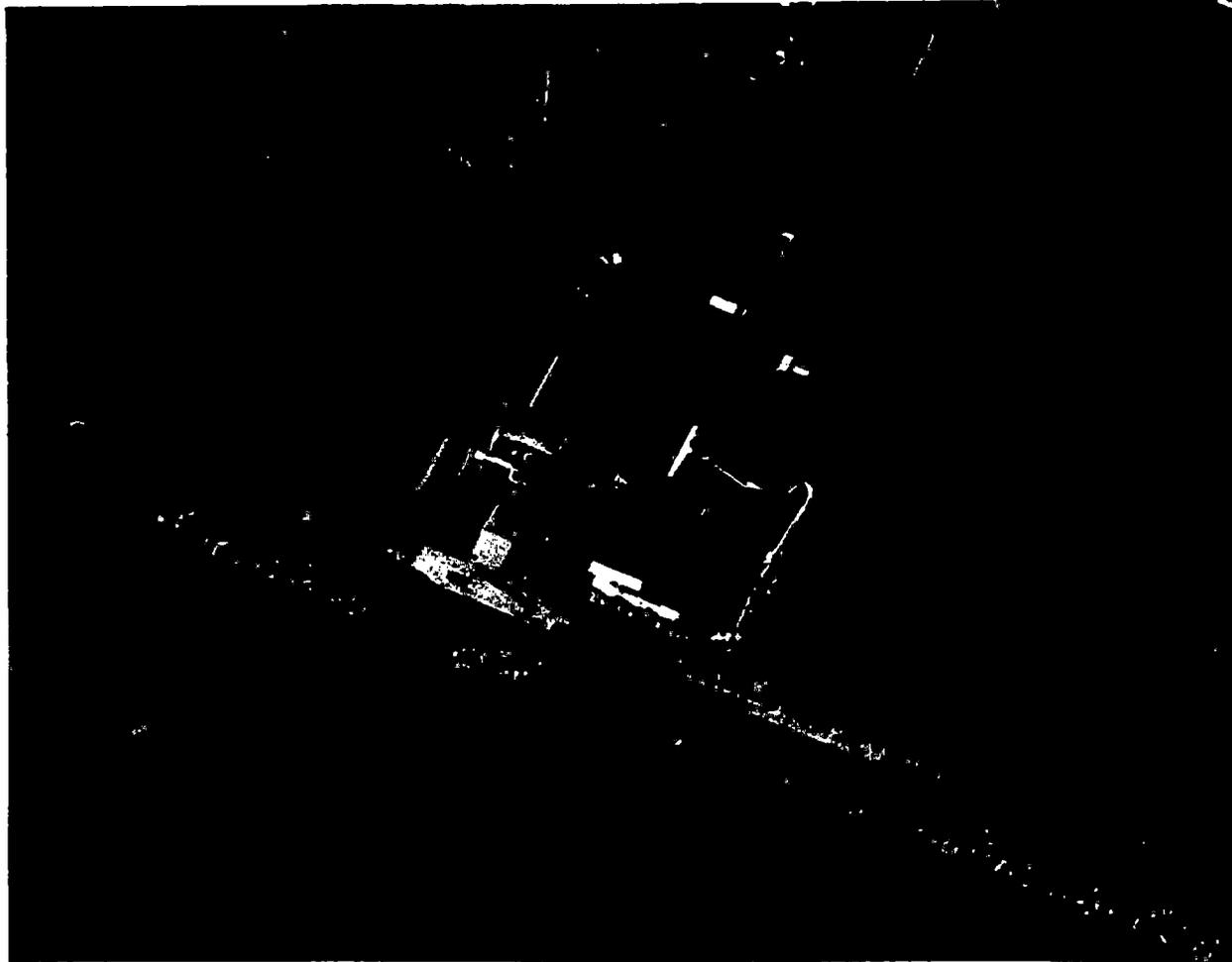
Please note that the following presentation is preliminary in nature and subject to revision.

**MILLIMETRE  
DESIGN**

# Layout Plan



## Property Aerial





Bar stools



Bar counter



Furniture



Furniture

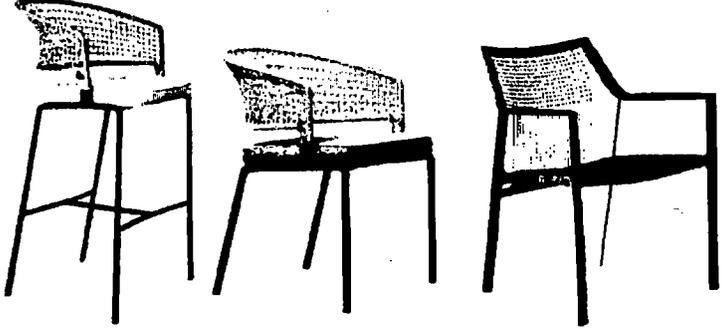


Decorative

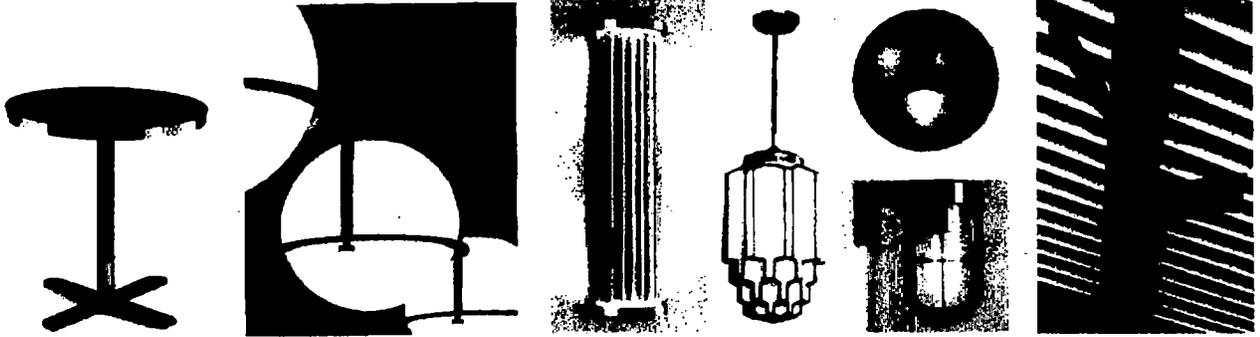


Decorative

FURNITURE



FEATURELIGHTING



MATERIALS/TEXTURES

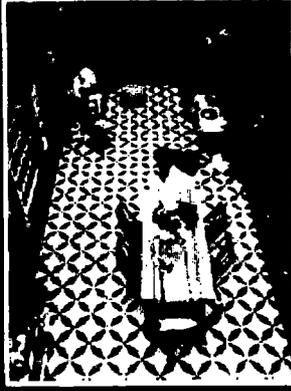




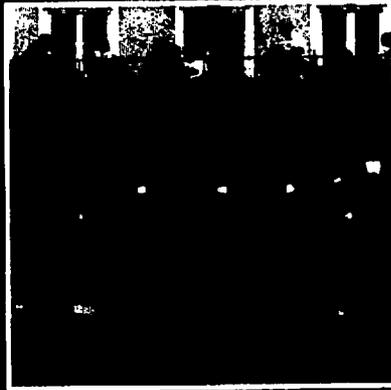
Screen 1



Staircase



Floor



Dark wall & floor

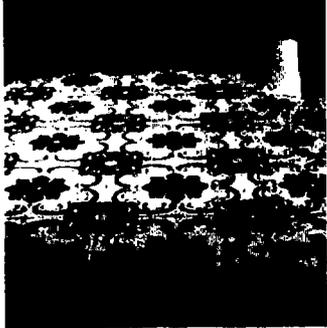


Dark interior



Bar counter

FLOORING



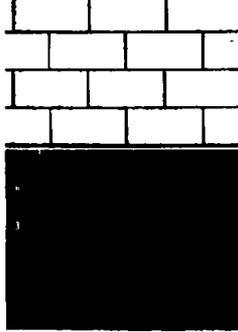
CANOPY



JOINERY & METAL DETAILS



MATERIALS/TEXTURES

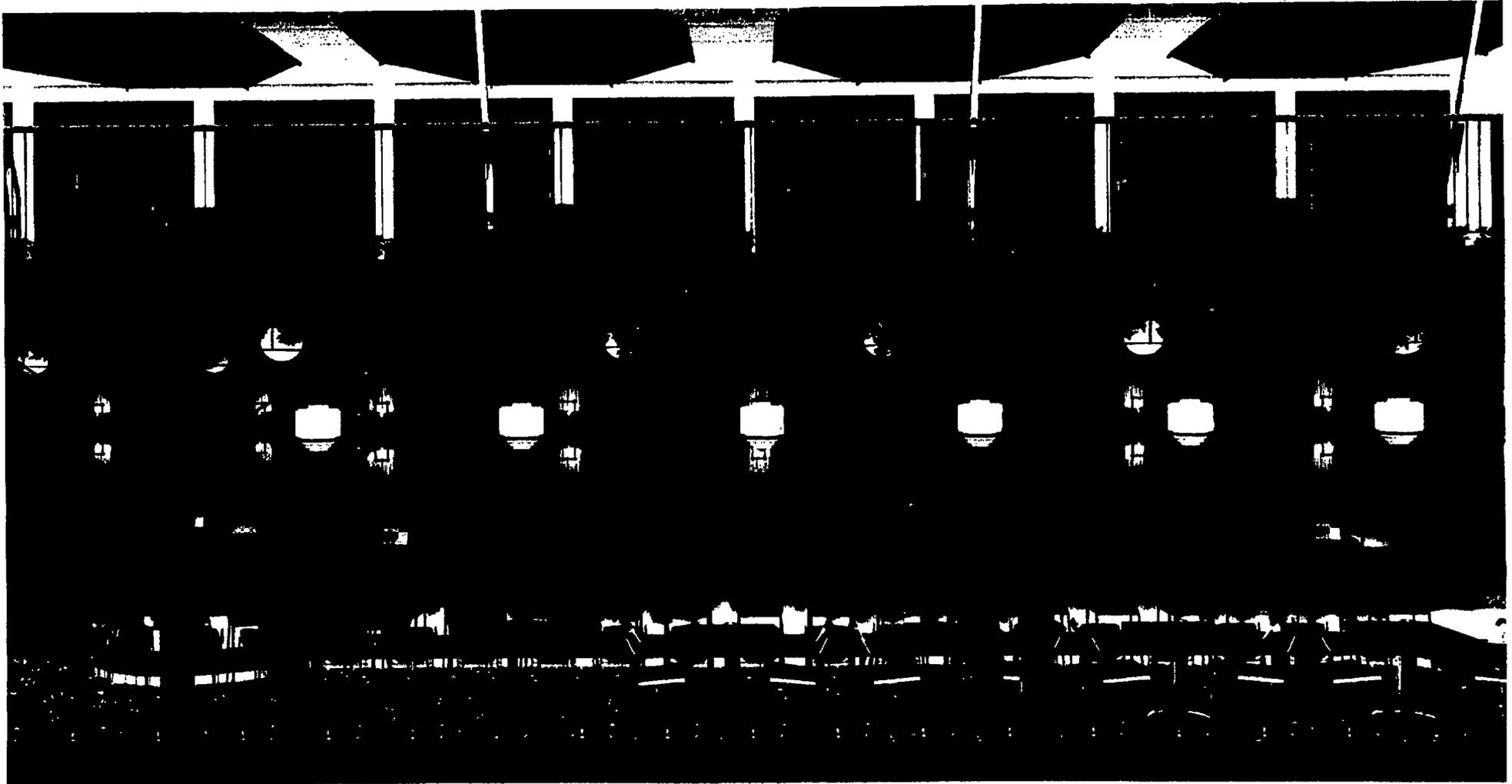




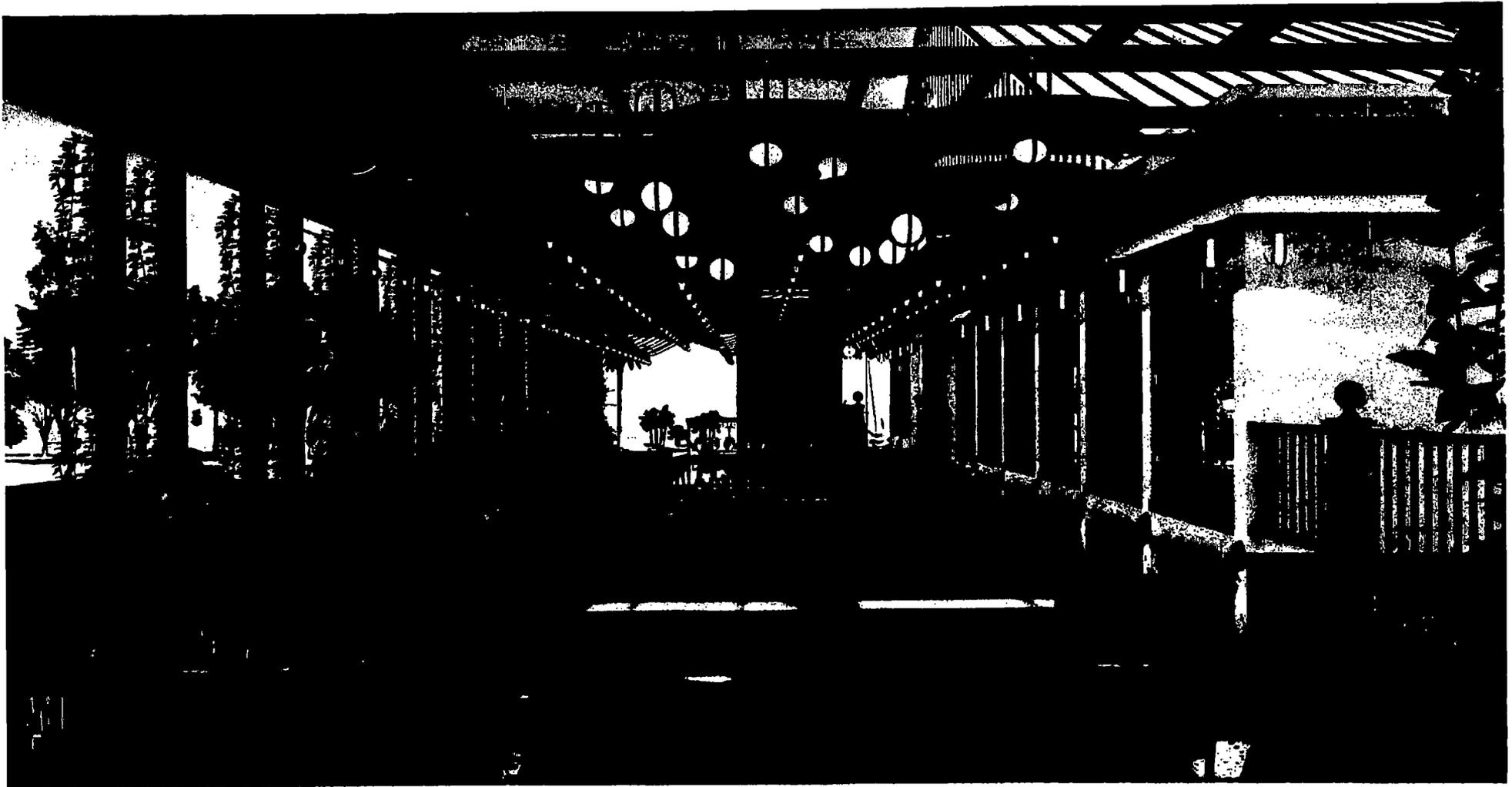
Southern Facade



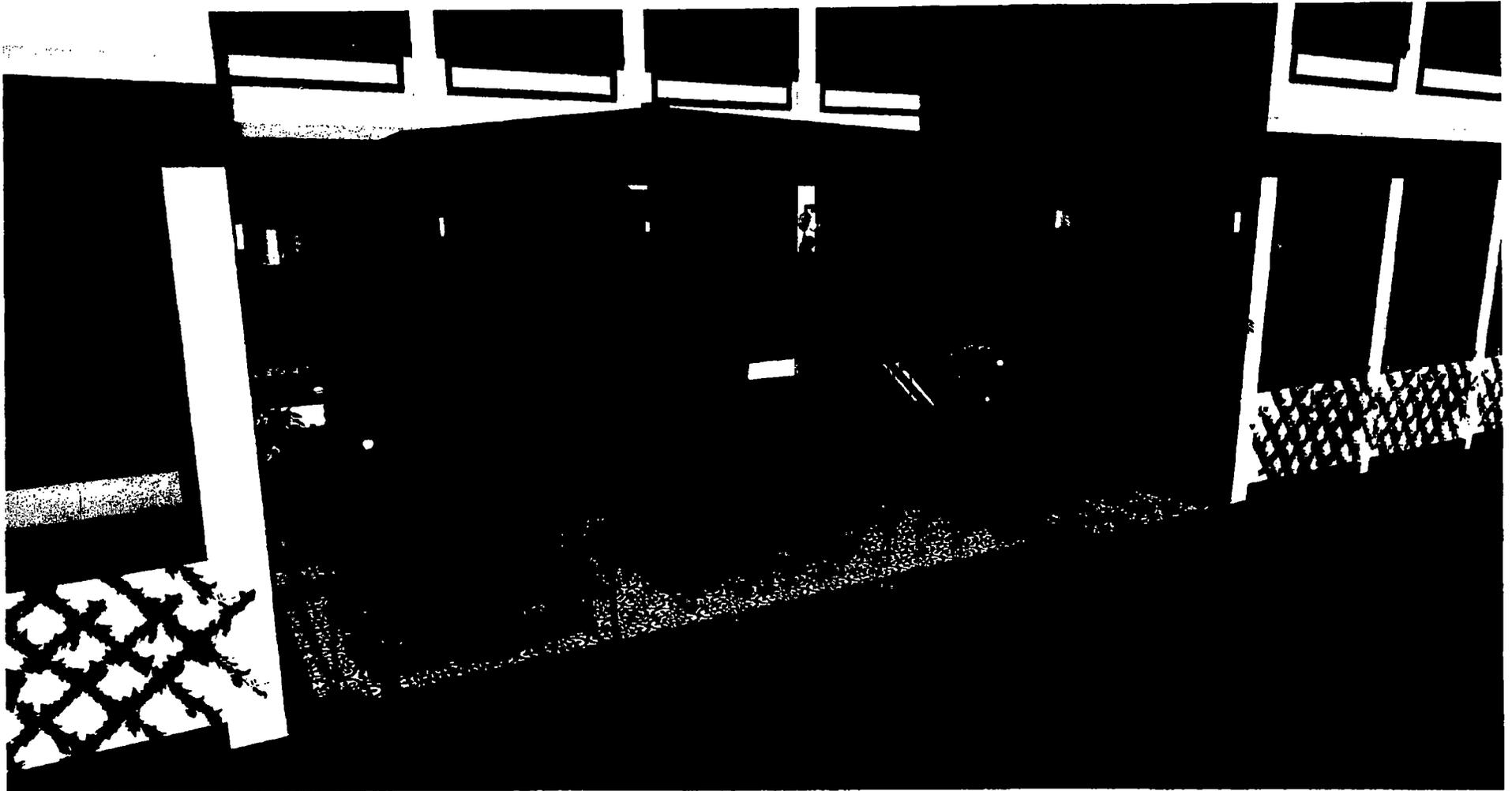
Southern Facade



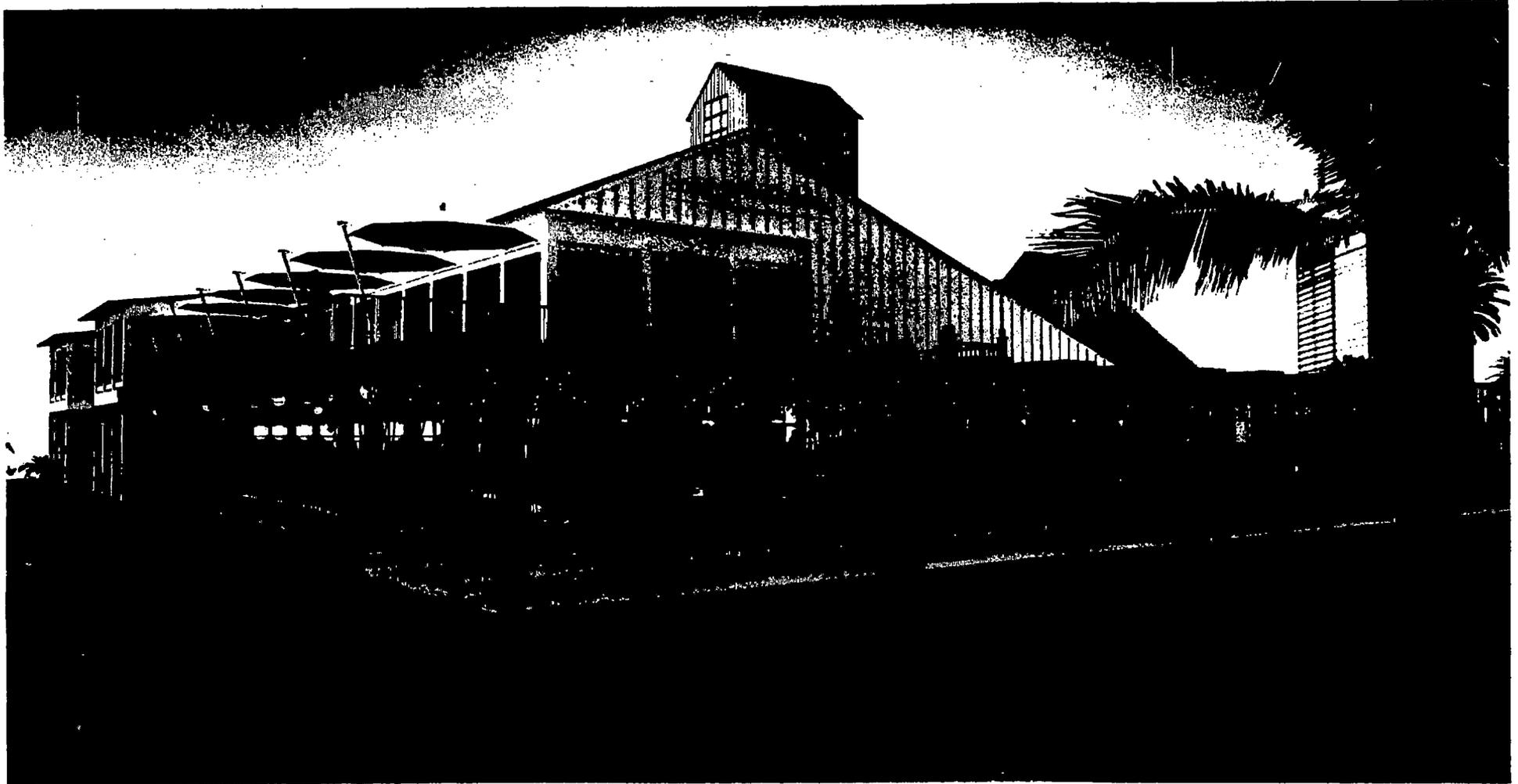
Eastern Terrace Facing South – New Seating



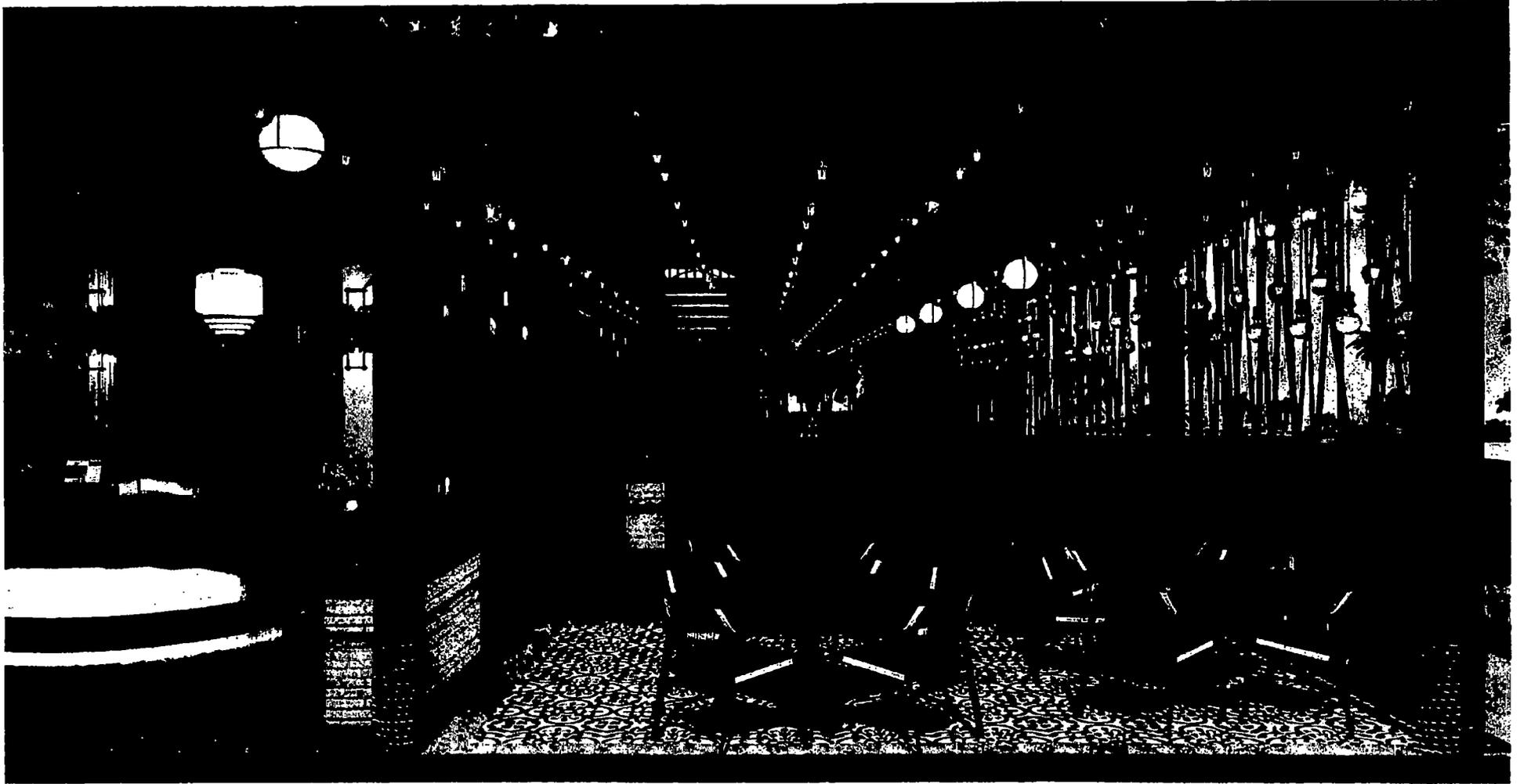
Patio Dining Southern Facade



Eastern Terrace



Eastern Terrace Facing North – New Seating



Service Area - Existing Conditions





Service Area - Proposed Visual





Service Area- Proposed Visual



# ATTACHMENT

# F

# SMITH & WOLLENSKY

AMERICA'S STEAKHOUSE

## MIAMI BEACH PRELIMINARY RENOVATION ESTIMATE

| <b>Category</b>           | <b>Estimate</b>     |
|---------------------------|---------------------|
| 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          |
| <b>TOTAL</b>              | <b>\$ 3,305,970</b> |

Estimates are preliminary and subject to adjustment.

Work estimated to be done over the first 5 years after lease extension approval and sequenced to minimize guest disruption.

\* See next slide for breakdown.

# SMITH & WOLLENSKY

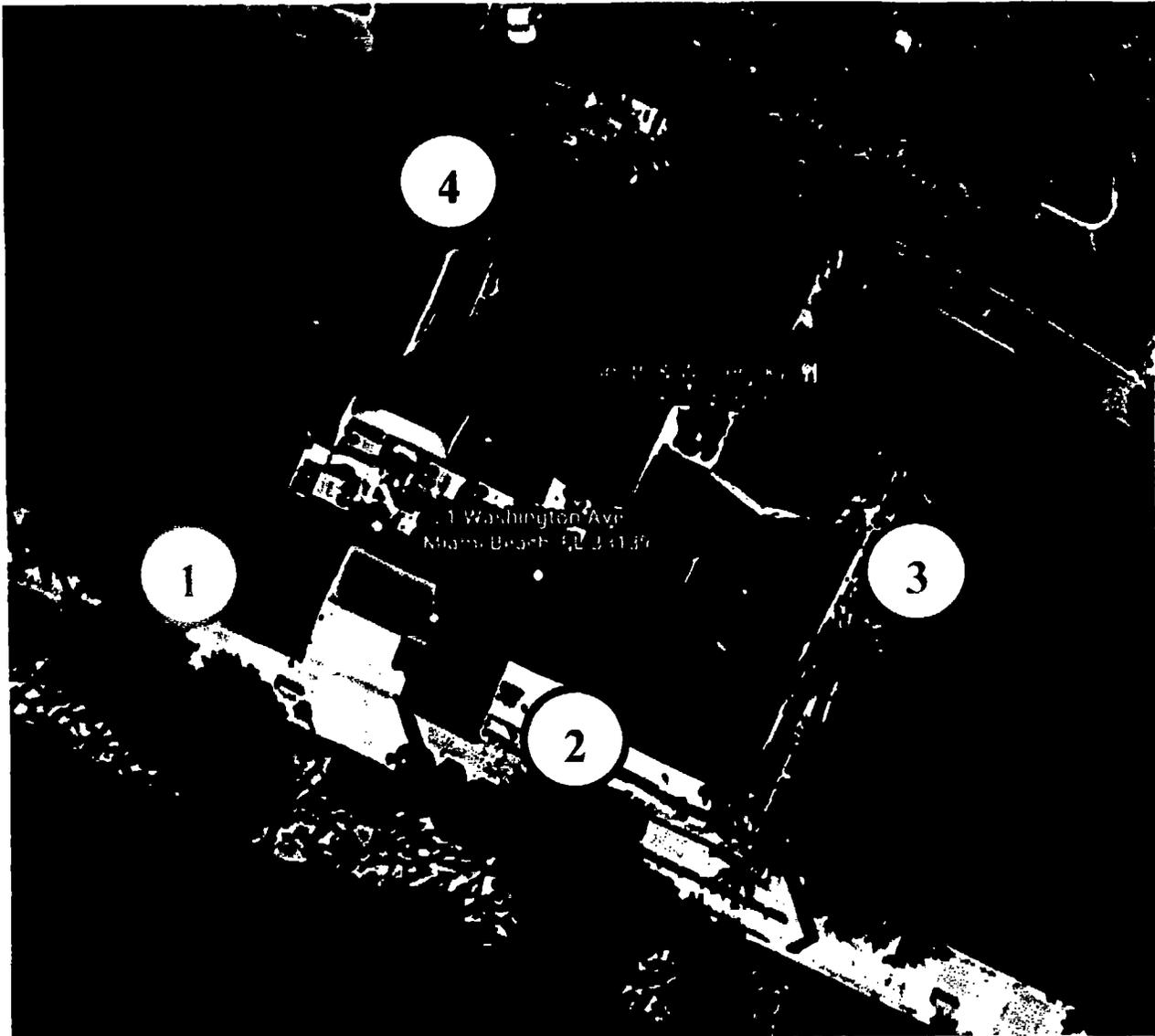
AMERICA'S STEAKHOUSE

## MIAMI BEACH PRELIMINARY HARD COST ESTIMATE

| <b>Category</b>    |           | <b>Estimate</b>  |
|--------------------|-----------|------------------|
| 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          |
| <b>TOTAL</b>       | <b>\$</b> | <b>1,884,000</b> |

Estimates are preliminary and subject to adjustment.

## Proposed Tenant's Work Location Map and Description



- 1 – Improvements to exterior southwest corner
- 2 – Improvements to southern façade patio dining area
- 3 – New seating area on eastern terrace, including the installation of pavers and other work
- 4 – Beautification and buffering of service area

### **Additional Proposed Tenant's Work Not Reflected on Location Map Above**

- Repair and/or replacement of various mechanical, electrical, and plumbing equipment;
- Technology upgrades;
- Repair and/or replacement of furniture, fixtures and equipment; and
- Work to roof.

# ATTACHMENT G

# MIAMI BEACH

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

PLANNING DEPARTMENT

## MEMORANDUM

TO: Alina T. Hudak, City Manager

FROM: Thomas R. Mooney, AICP  
Planning Director

DATE: June 23, 2021

SUBJECT: **Planning Analysis of Proposed Amended Lease Agreement – Smith & Wollensky – 1 Washington Avenue**

### **BACKGROUND**

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease.

The proposed amended lease agreement applies to the Smith & Wollensky Restaurant, located at 1 Washington Avenue, near the southern tip of the City. There has been a restaurant on the site since 1987. The building has been renovated in 1997 and 2017. Smith and Wollensky opened on the site in 1997. The proposal is to amend and 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, based on appraised fair market value; and negotiate other public benefits to the City.

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 Concession Amendment 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.

The following is an analysis based on the criteria delineated in the Code:

### **ANALYSIS**

1. **Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.**

**Consistent** – The site will continue to be used in the same fashion as it is today. The existing restaurant provides public access to the waterfront and activates the

waterfront. As such the proposed use is consistent with Comprehensive Plan Policy ROS 1.1.6:

**POLICY ROS 1.1.6**

*Pedestrian Access to Shoreline: Public pedestrian access to the waterfront and shoreline shall be required in compliance with applicable law incident to the development of properties for nonresidential uses unless waived at the time of plan review whether at any of the land use boards or staff approval.*

- 2. The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.**

**Consistent** – Since the proposal allows for the continuation of an existing use that has proven to be successful, no negative impacts are anticipated by the proposal. The area will continue to be used in the same manner as it is today. As a result, there will be no diminution of open space, increased traffic, or noise. Property values and the provisions for services will not change.

- 3. A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**

**Consistent** - This proposal expands the City's revenue base by increasing the revenue paid to the City for an existing restaurant use that still has time remaining on its current lease. The restaurant at this location served as a catalyst for the revitalization of the South of Fifth neighborhood and continues to serve as a great attraction for the area.

- 4. A determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**

**Consistent** - The surrounding neighborhood will not be negatively affected. The site will continue to operate in the same fashion as it does today. As a result, it will not lead to the blocking of views nor environmental intrusions.

- 5. The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**

**Consistent** – The site contains sufficient surface parking, and the proposed lease amendment and extension will not affect the parking or infrastructure needs of adjacent properties.

- 6. Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.**

**Not applicable** - The Planning Department has no other issues it deems appropriate to analyze for this proposal.

**CONCLUSION**

The proposed amended and extended lease agreement is consistent with the Goals, Objectives, and Policies based on the proposals for the property. The amendment will generate no negative impacts for the surrounding area. The property would continue to serve in the same fashion as it does today.

# ATTACHMENT

# H

1985 MAY 24 PM 4 24

BSR156769

OFF  
REC 12520PG 469

B-11  
7

CORRECTIVE QUITCLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Southeast Regional Director, National Park Service, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public Law 485, 91st Congress, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises for public park and public recreation area purposes by the City of Miami Beach, Florida (hereinafter designated "Grantee"), does hereby release and quitclaim to Grantee, and to its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter expressed and set forth, all Grantor's right, title and interest in and to the following described property, consisting of approximately 16.87 acres, located in Section 10, Township 54 South, Range 42 East, Dade County, Florida:

This deed was prepared in the Office of the Regional Solicitor, U.S. Department of the Interior, 75 Spring Street, S.W., Atlanta, Georgia 30303.

Bill

PARCEL ONE

For the Point of Beginning commence at a 10" square concrete monument located on the northerly boundary of the U. S. Corps of Engineers Reservation, being on a bearing of South 65° 13' East, and a distance of 16.62 feet from the westernmost corner of Lot 6, Block 4 of South Beach Park Subdivision as shown in Plat Book 6, Page 77, of the public records of Dade County, said monument designated "C" having coordinates of X-784,440.19, and Y-521,912.47. Said monument also lies approximately South 24° 27' 26" West, a distance of 592.30 feet South of, and North 65° 36' 16" East, a distance of 554.97 feet west of the northeast corner of the northwest 1/4 of Section 10, Township 54 South, Range 42 East. From said Point of Beginning, thence run along the northerly boundary of said land South 65° 36' 16" East, passing through a monument designated "A", at a distance of 713.87', a total distance of 1,476.52 feet, more or less, to its intersection with the erosion control line established for the Miami Beach renourishment project as shown on Dade County Plat File Number 24-5342-12, Sheet 1 of 14, dated 25 July 1977; run thence South 23° 41' 12" East, along said erosion control line and its extension, a distance of 630.14 feet, more or less, to the Mean High Water line of the northerly shoreline of the "Government Cut" for the Entrance Channel of Miami Harbor; run thence northwesterly along said Mean High Water line on an approximate bearing of North 65° 35' 19" West, a distance of 1,945.66 feet, more or less, to a point on the Mean High Water line which lies South 24° 25' 50" West, a distance of 50 feet, more or less, from U. S. Corps of Engineers monument "Wiggins"; thence run North 24° 25' 50" East, a distance of 50 feet, more or less, to monument "Wiggins"; thence continue North 24° 25' 50" East, 370.43 feet to monument "C", and the Point of Beginning.

The above-described tract or parcel of land contains 16.52 acres, more or less. The bearings and distances stated herein are based on the Mercator Grid System of the East Zone of Florida.

PARCEL TWO

For a Point of Reference commence at monument "C" as described in Parcel One above, run thence along the northeasterly line of the U. S. Corps of Engineers Reservation, North 65° 35' 12" West, a distance of 151.63 feet, more or less, to a steel pin set in concrete, designated monument "C"; thence run South 87° 36' 37" West a distance of 208.58 feet along the northwesterly boundary of the U. S. Corps of Engineers Reservation to monument "West", having coordinates of X-784,093.91 and Y-521,966.52, said point being the Point of Beginning of the tract being described herein.

From said Point of Beginning, run thence South  $57^{\circ}41'41''$  West, a distance of 226.20 feet to U. S. Corps of Engineers monument "Virgil", having coordinates of X-783,902.72 and Y-521,845.63; thence continue South  $57^{\circ}41'41''$  West a distance of 4.0 feet, more or less, to the face of an existing steel bulkhead and the approximate north shore of the Entrance Channel to Miami Harbor; thence run Northwesterly along the north shore of Miami Harbor on an approximate bearing of North  $32^{\circ}05'08''$  West, a distance of 132.34' more or less, to a point which lies South  $87^{\circ}38'37''$  West, a distance of 265.09 feet from monument "West"; thence run North  $87^{\circ}38'37''$  East along the northwesterly boundary of the U. S. Corps of Engineers Reservation passing thru a concrete monument designated "P" at a distance of 121 feet, more or less, for a total distance of 265.09 feet to monument "West", and the Point of Beginning.

The above-described tract or parcel of land contains 0.35 acre, more or less. The bearings and distances stated herein are based on the Mercator Grid Systems of the East Zone of Florida.

There are excepted from this conveyance and reserved to the Grantor, and its assigns, all oil, gas, and other minerals in, under and upon the lands herein conveyed, together with the rights to enter upon the land for the purpose of mining and removing the same.

This conveyance is made subject to any and all existing rights-of-way, easements and covenants and agreements affecting the above-described premises, whether or not the same now appear of record.

To Have and to Hold the hereinbefore described property, subject to the reservations, exceptions, restrictions, conditions and covenants herein expressed and set forth unto the Grantee, its successors and assigns, forever.

This is a corrective quitclaim deed for the purpose of amending Paragraph 9 of the Corrective Quitclaim Deed from Grantor to Grantee dated July 18, 1980, and of deleting Paragraphs 2, 5, and 6 of said deed, which are no longer applicable.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for further conveyance to the City of Miami Beach, Florida.

It is agreed and understood by and between the Grantor and Grantee, and the Grantee by its acceptance of this deed, does acknowledge its understanding of the agreement, and does covenant and agree for itself, and its successors and assigns, forever, as follows:

1. This property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application, submitted by the Grantee on December 6, 1978, which program and plan may be amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of

the other party, and such amendments shall be added to and become a part of the original application.

2. There is further reserved to the U. S. Army Corps of Engineers, in a 50' wide strip extending from the mean high water line landward along the North bank of the Miami Cut, with access thereto, a perpetual and assignable right and easement to construct, operate and maintain channel improvement works on, over and across the land described, for the purposes as authorized by the Act of Congress approved 13 June 1902, including the rights to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate, dredge, cut away, and remove any or all of said land; and for such other purposes as may be required in connection with said work of improvement.

3. There is reserved to the Grantor all those contractual rights and benefits accruing to the United States from that certain document entitled "Contract Between the United States of America and the City of Miami Beach for Recreational Development at the Existing North Jetty, Miami Harbor, Florida, Project" executed on behalf of the United States on 13 August 1976 and approved on behalf of the Secretary of the Army on 10 November 1976, as implemented by that certain lease from the Secretary of the Army to the City of Miami Beach, FL, numbered DACW17-1-77-2,

dated 17 May 1977, for a 50-year term commencing on 1 December 1976 and ending on 30 November 2026, covering 1.7 acres of Government-owned fee land and certain easement interests and improvements thereon. Such rights and benefits include, but are not limited to, the enforcement of all provisions of said contract relative to obligations assumed by the City of Miami Beach for operation, maintenance and replacement of the improvements constructed under said contract for the 50-year term of said lease.

4. This conveyance is made subject to continued use and occupancy by the U.S. Coast Guard of a suitable land area and building, comparable to that presently covered by Permit DACW17-4-68-2 (a copy of which is attached as Exhibit A), for so long as the Coast Guard shall need the use and occupancy of said land area and building for its radio D.F. calibration station.

5. The Grantee shall, within 6 months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.

6. 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. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

7. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

8. If at any time the United States of America shall determine that the premises herein conveyed, or any part thereof, are

needed for the national defense, all right, title and interest in and to said premises, or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

9. As part of the consideration for the Deed, the Grantee covenants and agrees for itself, its successors and assigns, that (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior in effect on the date of this Deed (43 C.F.R Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant, and (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those

imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior, of his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

10. The Grantee agrees to comply with the requirements of Public Law 90-480 (82 Stat. 718), the Architectural Barriers Act of 1968, as amended by Public Law 91-205 of 1970 (84 Stat. 49), to assure that development of facilities on conveyed surplus properties for public park and recreation purposes are accessible to the physically handicapped; and, further assure in accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394), that no otherwise qualified handicapped individual shall solely by reasons of his handicap be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

11. Grantee shall be on the lookout for archeological artifacts during its construction activities and shall take appropriate action should any artifacts be discovered.

12. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title and interest in and to said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Department of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 15<sup>th</sup> day of April, 1985.

UNITED STATES OF AMERICA  
acting by and through the  
Secretary of the Interior.

Through:

Robert M. Baker  
Southeast Regional Director  
National Park Service

By: W. James Brown

WITNESSES:

Gregg Shuffler  
Clay Williams

STATE OF Georgia )  
COUNTY OF Fullton ) ss

On this 15<sup>th</sup> day of April, 1985, before me, the subscriber, personally appeared W. James Brown, National Park Service, of the United States Department of the Interior, a governmental agency of the United States of America, and known to me to be the same person described in and who executed the foregoing instrument aforesaid, as the act and deed

of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

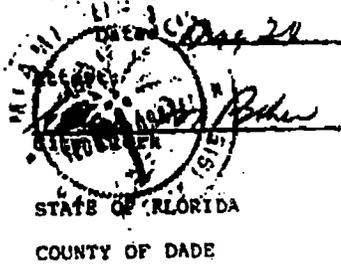
*William C. Parks*  
NOTARY PUBLIC



My commission expires:

Notary Public, George State of Large  
My Commission Expires Oct. 16, 1986

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements therein contained.



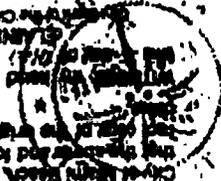
By: *[Signature]*  
Rob W. Parkins, City Manager

STATE OF FLORIDA )  
COUNTY OF DADE ) ss

On this 20<sup>th</sup> day of May, 1975, before me, the undersigned Officer, personally appeared Rob W. Parkins, to me known and known to me to be the same person whose name is subscribed to the foregoing acceptance, who being by me duly sworn, did depose and say that he is the City Manager of the City of

*M. Louis Burnett*  
5-9-85

By: \_\_\_\_\_ Deputy  
I, ELAINE M. BAKER, do hereby certify that the foregoing is a true and correct copy of the original thereof on file in this City of Miami Beach, Florida, and the seal of said City.



RICHARD P. BRIVKER  
Notary Public  
State of Florida  
My Commission Expires \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
Notary Public State of Florida  
Richard P. Brivker, Notary Public



NOTARY PUBLIC  
*Richard P. Brivker*

Miami Beach, Florida, that he is duly designated, empowered and authorized by a resolution of the City Commission of the City of Miami Beach, Florida, to execute the foregoing acceptance and sign his name thereto and that he signed his name thereto and acknowledges that he executed the foregoing instrument for and on behalf of the City of Miami Beach, Florida for the purposes and uses therein described.

# ATTACHMENT

## I

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: Support for Renewal of Smith & Wollensky Lease at South Pointe Park**

Dear Mayor and Commissioners:

On behalf of Continuum on South Beach Master Association, Inc., we strongly support the renewal of the lease by Smith & Wollensky of its restaurant space in South Pointe Park.

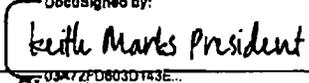
Smith & Wollensky has been a fixture of the South of 5<sup>th</sup> Neighborhood for over twenty-five (25) years. The character of this prestigious and well-known restaurant has been a great fit for our neighborhood and a wonderful amenity for the many residents of this area. We are strongly in favor of the renewal of Smith & Wollensky's lease.

We are NOT in favor of a new bidding process for this space in South Pointe Park. A new establishment could be completely out of character with our special, residential neighborhood.

We urge you to renew the lease with Smith & Wollensky. Thank you.

Very truly yours,

**Continuum on South Beach Master Association, Inc.**

By:   
Signature

Print Name: Keith Marks

Title: President

Date: October 12, 2020



Portofino/South Pointe Master Association

October 26, 2020

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: Support for Renewal of Smith & Wollensky Lease at South Pointe Park**

Dear Mayor and Commissioners:

Portofino/South Pointe Master Association, Inc., is among the closest residential property to Smith & Wollenskys restaurant in South Pointe Park. To the best of my knowledge, we've never received a complaint related to the operation of this nearby restaurant and have found it to be a terrific amenity for the enjoyment of our residents and neighbors.

Given their exemplary operating record and the overall high quality of the restaurant, we enthusiastically support the renewal of Smith & Wollensky's lease with the City of Miami Beach.

Respectfully,

  
alyson herman (Oct-26, 2020 13:02 EDT)

Alyson Herman, President  
Portofino/South Pointe Master Association, Inc.



Portofino Towers Condominium Association

October 26, 2020

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: Support for Renewal of Smith & Wollensky Lease at South Pointe Park**

Dear Mayor and Commissioners:

Portofino Towers is among the closest residential property to Smith & Wollenskys restaurant in South Pointe Park. To the best of my knowledge, we've never received a complaint related to the operation of this nearby restaurant and have found it to be a terrific amenity for the enjoyment of our residents and neighbors.

Given their exemplary operating record and the overall high quality of the restaurant, we enthusiastically support the renewal of Smith & Wollensky's lease with the City of Miami Beach.

Respectfully,

  
alyson herman (Oct 26, 2020 13:16 EDT)

Alyson Herman, President  
Portofino Towers Condominium Association, Inc.

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

April 28, 2021

**RE: Support for Renewal of Smith & Wollensky Lease at South Pointe Park**

Dear Mayor and Commissioners:

On behalf of South of Fifth Neighborhood Association, Inc., (SOFNA), we strongly support the renewal of the lease by Smith & Wollensky of its restaurant space in South Pointe Park.

Smith & Wollensky has been a fixture of the South of 5<sup>th</sup> Neighborhood for over twenty-five (25) years. The character of this prestigious and well-known restaurant has been a great fit for our neighborhood and a wonderful amenity for the many residents of this area. We are strongly in favor of the renewal of Smith & Wollensky's lease.

We are NOT in favor of a new bidding process for this space in South Pointe Park. A new establishment could be completely out of character with our special, residential neighborhood.

We support the renewal of the lease with Smith & Wollensky. Thank you.

Warm Regards,

South of Fifth Neighborhood Association Inc., Board of Directors

Alyson Herman, President  
David Podein, Vice President  
Keith Marks, Secretary  
Brian Harris, Treasurer  
Pamela Brumer, Commercial Director  
Clare McCord, Director



October 26, 2020

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: Renewal of Smith & Wollensky Lease at South Pointe Park**

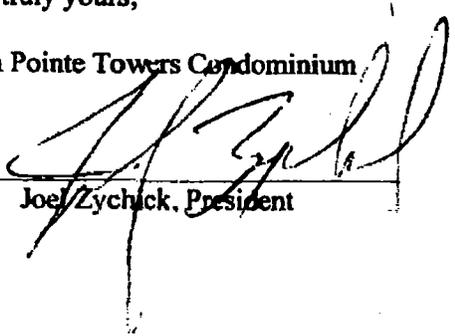
Dear Mayor and Commissioners:

South Pointe Tower Condominium ("SPT") is located directly North of Smith & Wollenskys restaurant in South Pointe Park. We strongly support the renewal of the lease by Smith & Wollensky of its restaurant space in South Pointe Park.

Smith & Wollensky has been a fixture of the South of 5<sup>th</sup> Neighborhood for over twenty-five (25) years and it has served the community and the residence of SPT and our neighbors without incident. This well-known restaurant has been an wonderful amenity for the many residents of this area. We are strongly in favor of the renewal of Smith & Wollensky's lease.

Very truly yours,

South Pointe Towers Condominium

By: 

Joel Zychick, President

Mayor and Commissioners  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: Support for Renewal of Smith & Wollensky Lease at South Pointe Park**

Dear Mayor and Commissioners:

On behalf of The Courts at South Beach, we strongly support the renewal of the lease by Smith & Wollensky of its restaurant space in South Pointe Park.

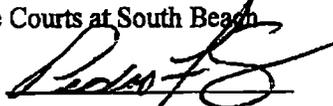
Smith & Wollensky has been a fixture of the South of 5<sup>th</sup> Neighborhood for over twenty-five (25) years. The character of this prestigious and well-known restaurant has been a great fit for our neighborhood and a wonderful amenity for the many residents of this area. We are strongly in favor of the renewal of Smith & Wollensky's lease.

We are NOT in favor of a new bidding process for this space in South Pointe Park. A new establishment could be completely out of character with our special, residential neighborhood.

We urge you to renew the lease with Smith & Wollensky. Thank you.

Very truly yours,

The Courts at South Beach

By: 

Print Name: Pedro Foley

Title: Property Manager

Date: 2-4-21



**MIAMI BEACH  
CHAMBER OF COMMERCE**

1920 Meridian Ave, Miami Beach, FL33139

A Resolution of the Miami Beach Chamber of Commerce in support of extending the ground lease for Smith & Wollensky, which expires in 2025 and in support of placing on the November ballot a resolution proposal in support of the lease extension.

Whereas since it opened its doors on Miami Beach in 1997, Smith & Wollensky has proven to be excellent community partners;

Whereas since it opened its doors on Miami Beach in 1997, Smith & Wollensky has gathered support from neighboring businesses and residents for its quality service and offerings;

Whereas in light of the pending expiration of the lease in 2025, Smith & Wollensky is seeking the renewal for the same term as the original lease, which is a 20 year term, plus two 10 year renewal options in order so it can proceed with a renovation project in excess of \$3,000,000;

Whereas two appraisals have been received and are being reviewed for purposes of arriving at the rent for the new term;

Whereas the new lease requires a city-wide referendum because it relates to waterfront land;

Whereas a competitive bid process can be waived by the Commission by a 5/7 vote upon a finding that the waiver is in the "public interest" which can be validated by the required city-wide referendum which will still allow the commission to engage in a bid process if the community does not support the lease extension;

Whereas the Miami Beach Chamber of Commerce has consistently support efforts over the years to improve Miami Beach through the development of meaningful and impactful projects for the City;

Whereas the Miami Beach Chamber of Commerce has consistently supported efforts by long-standing businesses to remain on the Beach;  
Whereas the Board has received a complete presentation of the proposed lease extension;  
Whereas after careful consideration of the community benefits that will be afforded by the lease extension;

Whereas in order to extend the lease, the extension will need to receive voter approval by way of a resolution(s) set forth on the November 2021 ballot; and  
Whereas the Chamber intends to support a positive outcome of ballot resolution regarding the extension to allow a strong business partner to remain on the Beach;

NOW THEREFORE, the Miami Beach Chamber of Commerce passes this Resolution in support of the extension of the lease for Smith & Wollensky; the placement of an appropriate resolution(s) on the November 2021 ballot to obtain approval of the extension terms by voter referendum and encourages the City of Miami Beach to facilitate the lease extension and placement of a ballot resolution by waiving the competitive bid process for the lease extension.

Jerry Libbin  
CEO & President  
Miami Beach Chamber of  
Commerce

Robin Jacobs  
Chair of Executive  
Board of Governors

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