



Hallandale Beach
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400 South Federal Hwy
Hallandale Beach, FL 33009

City of Hallandale Beach City Commission Agenda Cover Memo

Meeting Date:	March 1, 2017		Item Type: <small>(Enter X in box)</small>	Resolution X	Ordinance	Other
Fiscal Impact: <small>(Enter X in box)</small>	Yes	No	Ordinance Reading: <small>(Enter X in box)</small>	1st Reading		2nd Reading
	X		Public Hearing: <small>(Enter X in box)</small>	Yes	No	Yes
Funding Source:	Operating and Management Agreement for North Beach		Advertising Requirement: <small>(Enter X in box)</small>	Yes		No
						X
Account Balance:	N/A		Quasi-Judicial: <small>(Enter X in box)</small>	Yes		No
						X
Project Number :	N/A		RFP/RFQ/Bid Number:	N/A		
Contract/P.O. Required: <small>(Enter X in box)</small>	Yes	No	Strategic Plan Priority Area: <small>(Enter X in box)</small>			
	X					
Sponsor Name:	Roger Carlton, City Manager		Department: Procurement	Andrea Lues, Procurement Director		

Short Title:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, APPROVING AMENDMENT #1 TO THE AGREEMENT BETWEEN THE CITY OF HALLANDALE BEACH AND PRH BEACHWALK BEACHCLUB, LLC. PRH-2600 HALLANDALE BEACH, LLC., AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE THE AMENDMENT AND APPROVING BEACH-CHU HALLANDALE LLC, AN AFFILIATE OF AZUMI LTD, AS THE SUBCONTRACTOR FOR THE OPERATION OF THE CITY'S NORTH BEACH PARK RESTAURANT PURSUANT TO THE OPERATING AND MANAGEMENT AGREEMENT BETWEEN THE CITY AND PRH BEACHWALK BEACHCLUB, LLC. PRH-2600 HALLANDALE BEACH, LLC. ; AND PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary:

Background:

In 2012, the City of Hallandale Beach approved a development agreement, via Resolution # 2012-28 (Exhibit #1), with PRH-2600 Hallandale Beach LLC (the “Developer”), an affiliate of the Related Group (“Related”). Related is one of Florida's leading developers of sophisticated metropolitan living projects including: City Place West Palm Beach, Merrick Park Coral Gables, Las Olas Beach Club Fort Lauderdale, Ocean 1 & 2 Sunny Isles Beach, etc. Related has successfully developed and managed condominiums and hotels, which include world class restaurants within many of their locations.

The development agreement entered into by the City on July 30, 2012 was to develop multiple sites surrounding the water tower on the beach. In conjunction with the developer agreement, the City and PRH Beachwalk Beachclub, LLC (the “Operator”) entered into an Operating and Management Agreement for a restaurant and public facilities at North Beach. In addition, the Developer entered into a lease agreement for the North Beach City Center.

In 2015, as the build out of the restaurant neared completion, the Operator presented SBERG Management LLC (“SBE”) to the City Commission to be the restaurant sub-operator. On May 20, 2015, the City Commission approved the assignment of Restaurant Operator to SBE via Resolution #2015-39 (Exhibit #2). SBE opened Hyde Beach Kitchen and Cocktails (“HBKC”) in August of 2015. The Operator has determined that the HBKC concept has not proven to be the ideal fit for the location and customer base, which has negatively impacted its financial performance. Accordingly, the Operator proposes to replace SBE with a new restaurant sub-operator, Beach-Chu Hallandale LLC, an affiliate of Azumi Limited (“Azumi”). The City Attorney’s Office has reviewed the existing agreement and has concluded that the City cannot be held liable for the Operator’s termination of their sub-operator. The existing agreement includes an indemnification from the Operator, and if the sub-operator were to sue the City the Operator contractually would have to defend the City in such action.

Current Situation

New Operator:

The Operator recommends, and is proposing to replace the current restaurant sub-operator with Beach-Chu Hallandale LLC, an affiliate of Azumi Limited (“Azumi”), the company behind the highly successful Zuma and ROKA restaurants (See Exhibit #3 – Application Letter). Azumi is

an award winning global restaurateur with 16 locations worldwide, which offer a sophisticated twist on the traditional Japanese style of informal eating. Zuma Miami, which opened its doors in 2010 to critical acclaim, was its first outpost in the USA and consistently ranks among the top restaurants in South Florida in both cuisine and customer service. Zuma Miami currently generates over \$20 Million in yearly revenue. The new restaurant, to be named Bi-Chu Beach, is inspired by Azumi's ROKA concept and brings a similar restaurant dining style and vitality to the beachside setting of Hallandale Beach. (See Exhibit #4 – Azumi Presentation)

Operator and Developer understand that the approval of Azumi as the restaurant sub-operator is not considered approval for any Changes to the Improvements, including but not limited to the Restaurant, Restrooms/Changing Rooms, Beachfront Rental Facility, Lifeguard Office, Landscape Buffer and Sand Volleyball Court.

Value Proposition:

The City currently receives an operating fee of \$5,000 monthly, or 2.5% of yearly gross revenue, whichever is greater. In 2016, the first full year of operations for SBE, the agreement generated a revenue of \$161,178. This means that SBE's yearly gross revenue was approximately \$6.45 million.

The Operator conservatively projects that the new restaurant, Bi-Chu Beach, will achieve gross sales of at least \$10 Million within the first 2-3 years of operation. This equals an estimated \$250,000 in yearly revenue for the City. For no additional investment, the City can expect, based on these projections, an increase of yearly revenue of approximately \$89,000 by approving the new restaurant sub-operator.

Amendment #1 to the Agreement:

In addition to the change in the sub-operator, City staff and the Operator believe that this is the opportune time to make certain amendments to the agreement.

The following are the items that are included in Amendment #1 (Exhibit #5):

1. **Term.** The term under the existing agreement commenced on the effective date, December 6, 2012. The term is being adjusted to commence on the Fee Commencement Date of August 17, 2015, which is when the facility first opened. By matching the term to the opening date, the City will receive three (3) additional years in operating fees. The Developer and Operator have fulfilled all their required contributions in the Development Agreement, Operating and Management Agreement,

and Lease Agreement to the City of approximately \$1.4 Million. The Developer and Operator have also invested approximately \$16 Million (hard and soft costs) in the development of the restaurant building and related facilities and amenities, which will revert back to the City at the end of the 30 year term. Please see page 2, line 59-63, of Amendment #1, Exhibit 5.

2. **Resident Discount.** The current agreement does not clearly define the resident discount and the method by which the discount would be administered. The discount is clearly defined in the proposed amendment. All Hallandale Beach residents will receive a 10% discount off food and beverage purchases. Availability of the discount will be noted on all menus. Residents will simply present their local ID to use of the resident discount. Residents shall also receive 20% off all other services, such as beach chair and umbrella rentals and spa services. Please see page 2, line 65-77, of Amendment #1, Exhibit 5.
3. **Parking.** The existing language in the agreement is being amended to clarify that the Operator manages the parking spaces only after 7pm. Please see page 2, line 78-92, of Amendment #1, Exhibit 5.
4. **Operating Hours.** The existing language in the agreement is being amended to change the operating hours to respond to market demand. Bi-Chu Beach will be open 7 days a week. Initially, the restaurant will be open 7 days for dinner and 4-5 days for lunch. Lunch will be ramped up to 7 days, provided business levels are there.

First Floor Beach Bar: 10am – 6pm (as is currently)

Restaurant 2nd Floor: Lunch Service 12:00pm – 2:30pm
Dinner Service 5:30pm – 11:00 pm

Please see page 2-3, line 94-112, of Amendment #1, Exhibit 5.

5. **Chairs and Umbrellas.** The existing language in the agreement is being amended to allow the Operator to provide patrons with chairs and umbrellas within the designated area (as defined in the existing agreement), rather than 120 chairs and umbrellas. This will enable the Operator to better service local residents and guests alike, as well as increase revenue to the City. This amendment is necessary as there are times where the 120 approved chairs/umbrellas are insufficient to meet demand. Please see page 3, line 114-120, of Amendment #1, Exhibit 5.
6. **Taxes and Assessments.** The existing language in the agreement states that the Operator is only responsible for taxes and assessments levied against the Improvements, which is the building only. The language is being amended to state the Operator is responsible for all taxes levied against the improvement and the property. This change will ensure the City is not accountable to pay any property taxes. Please see page 3, line 122-134, of Amendment #1, Exhibit 5.

- 7. Operating Fee and City's Option to Buy Out.** The Amendment removes the City's option to buy out the Operator in the 15th year of the agreement. In exchange for the removal of the Buy-Out Option, the Operator has agreed to continue to increase the operating fee. In the current agreement, the operating fee remains flat in years 12-30 of the term at \$9,000 a month or 3.5% of yearly gross revenue, whichever is greater. With approval of Amendment #1, the operating fee will continue to grow every five (5) years. In years 25-30 of the term, the operating fee will equal the greater of \$15,000 a month or 5% of gross revenue. At the projected \$10 million yearly gross revenue, the City will receive \$500,000 in revenue annually. Please see pages 3-4, line 136-171, of Amendment #1, Exhibit 5.

The following language is also being added to the Gross Revenue subsection of the Operating Fee, *"including but not limited to"*, ensuring all sources of revenue are accounted for. Please see pages 4, line 173-184, of Amendment #1, Exhibit 5.

Buy Out Option:

The Operator has also agreed to provide the City with a share of any sale, assignment, or transfer of this agreement throughout the term of the agreement. The City shall receive the greater of \$300,000 or 2% of the gross proceeds from the sale, assignment or transfer of the agreement. Please see page 5, line 228-235, of Amendment #1, Exhibit 5. In essence, by eliminating the Buy Out Option (which would require the City to expend a large sum of money), the City will get a significant payment if the agreement is sold.

- 8. Gross Revenue Reporting Requirement.** The Operator must supply to the City monthly revenue/sale reports. The Operator will submit revenue/sales reports to staff in electronic form within 30 days following the end of the month. The report shall include gross sales for all categories of revenue related to the agreement. The report shall be signed by a senior corporate representative of the firm. Revenues will be subject to a yearly audit, at the City's choice. Please see page 4-5, line 186-213, of Amendment #1, Exhibit 5.
- 9. Sales Revenue Reporting Requirement.** If the Operator does not reach their growth target of greater than or equal to 103% of the gross revenue, compared to the previous year's quarter, the Operator must submit its plan to improve gross revenue. This will assist staff to identify problems as they begin to occur, rather than after the business downturn has already happened. See page 5, line 215-227, of Amendment #1, Exhibit 5.

10. Bridge Painting Reimbursement. The Operator has agreed to reimburse the City up to \$200,000 for out-of-pocket costs for the repainting and beautification of the Hallandale Beach Blvd. Bridge if completed within two years from the date this amendment is executed by the City. The amount to be reimbursed to the City will be reimbursed within sixty (60) days of receipt of the City's paid invoice to the City's contractor for the bridge repainting and beautification. If the City does not complete the repainting by mid-March 2019, the payment will no longer be required. See page 5, line 237-246, of Amendment #1, Exhibit 5.

11. Periodic Inspections. The existing language in the agreement is being amended to adjust the Periodic Inspection to begin every five (5) years from the Fee Commencement Date (completion of construction) rather than when the agreement was originally executed. See page 6, line 248-260, of Amendment #1, Exhibit 5.

Application Review:

Pursuant to Section 35.4. of the Operating and Management Agreement, "Subcontract for Restaurant Operations", (Exhibit #6, page 24), any subcontract for the operation of the restaurant must comply with the requirements applicable to assignment of the agreement. Pursuant to Section 34.2, the following information shall be provided in writing to the City for presentation to the Commission for their review and approval of the restaurant sub-operator:

- 34.2.1. Restaurant Experience.
- 34.2.2. Financial Resources.
- 34.2.3. Character and Reputation.
- 34.2.4. No Violations.
- 34.2.5. No Convictions or Indictments.
- 34.2.6. No Scrutinized Companies.

Consultant Review:

The Procurement Department engaged Paul Lambert of Lambert Advisory to review the application (See Exhibit #7) for the new restaurant sub-operator for an amount not to exceed \$3,000, including being present at the Commission meeting to answer any questions. Lambert Advisory is a real estate and economic advisory firm. Mr. Lambert has reviewed the application for the following sections of the criteria: Restaurant Experience, Financial Resources, and Character Reputation. At this time, the City has been invoiced \$1,000 for the review of documentation. See summary of review by Lambert Advisory below (See Exhibit 8 for complete review).

34.2.1. Restaurant Experience: Azumi Limited has equal or better experience in the State of Florida (and worldwide) when compared to PRH Beachwalk Beachclub LLC. Azumi owns and operates one of the strongest performing restaurants in the Miami market (Zuma). This strong performance has continued and even strengthened over the past several years despite the fact that Zuma has been in operation for more than six years in a market which is fickle as it relates to restaurants.

34.2.2. Financial Resources: Based upon Lambert Advisory's review of the statements, on an earnings before interest, tax, depreciation and amortization (EBIDTA) basis, Azumi Limited has significant positive cash flow for all three years of operations submitted. Based upon the information provided and reviewed, the sub-operator is of sufficient operating depth and financial capacity to deliver and support operations of the North Beach Restaurant as they have proposed.

34.2.3. Character and Reputation: Azumi has submitted three letters which are consistent with the requirements of the Operating Agreement and speak positively to the character and reputation of Azumi and/or its Zuma restaurant.

City Attorney Review:

The City Attorney's Office has conducted a review for the remaining criteria: No Violations, No Convictions or Indictments, and No Scrutinized Companies. The following is an overview of the findings of the application review for the Restaurant Operator. (See Exhibit 9 for complete review.)

34.2.4. No Violations: It would appear that there are no outstanding material violations of a Government Requirement against it or against any property owned or managed by the proposed assignee in the State of Florida. City Attorney's Office conducted an additional Miami Dade County code enforcement search, which did not reveal any violations subsequent to Zuma's submittal.

34.2.5. No Convictions or Indictments: City Attorney's Office confirmed with the Alcoholic Beverage and Tobacco Division of the Florida Department of Business and Professional Regulation and verified that a criminal background check was completed.

34.2.6. No Scrutinized Companies: Pursuant to State Board of Administration of the State of Florida, Zuma Japanese Restaurant Miami, LLC is not listed as a scrutinized company as defined in Section 215.473 of the Florida Statutes.

Additional Information:

North Beach City Center: The City entered into a lease agreement with PRH-2600 Hallandale Beach LLC (Developer) via Ordinance #2012-29 on October 10, 2012 (Exhibit 10). The Center is located at 2801 E. Hallandale Beach Blvd., adjacent to the City's water tower. Currently, the Center is being used as a sales center for the Hyde Resort and Hyde Beach House. The term of the lease expired on October 10, 2016. The tenant has continued to remit payment on a month to month basis. The tenant wishes to extend the lease until October 2017. Staff will bring back to Commission an ordinance for the lease extension on the April 5, 2017 Commission meeting. Furthermore, staff will ensure that the proposed rent during this extension period is adequate.

Fire Station #60 Repairs: As a result of the construction of the Hyde Resort, there were a number of damages that occurred to the Fire Station and equipment. See an assessment of the damages below:

Station 60 Comprehensive Repair Estimate	
Station Exterior Painting/Railings/Glass/etc.	\$ 19,539.00
Air Conditioner Replacement - 12 Units	\$ 102,383.00
E60	\$ 67,347.00
R60	\$ 37,130.00
Window Refurbishment/Replacement	\$ 40,000.00
Awning	\$ 2,000.00
Walkway Lights	\$ 3,000.00
Vinyl Fence Around Generator	\$ 2,000.00
Total	\$ 273,399.00

The developer of Hyde Resort, an affiliate of Related, has acknowledged the damages without dispute and has committed to completing or paying the City for all repairs within 120 days.

Fire Station #60 Fuel Line Repair: During the construction of the sidewalk, the contractor for the Hyde Resort, JMA, damaged the fuel line to the emergency generator at the fire station. JMA is actively resolving the issue and coordinating the repair scope with a specialized fuel line subcontractor. The belly tank of the generator will be filled by February 24, 2017 and the belly tank will be re-filled as needed until such time that repair is completed. The complete fuel line repair to the main storage tank will be completed by March 10, 2017.

Conclusion:

Quality:

Based on the City's dedication to enhancing the quality of life in the community, the approval of Amendment #1 of the Operating and Management Agreement provides the City with both clarifications and financial improvements which will assist the City in properly managing and monitoring the Operator and providing services to our city residents and visitors. The stellar customer service that Azumi is well known for and prides itself on will provide an unmatched dining and recreational opportunity for residents and visitors as well.

Fiscal Impact:

1. Approval of the new restaurant sub-operator will result in an increase of revenue of approximately \$89,000 per year, which could grow significantly if the sub-operator's track record elsewhere occurs in Hallandale Beach.
2. The City will receive three (3) additional years in operating fees.
3. Revenue will continue to grow every five (5) years by 0.5% of yearly gross revenue, with a maximum of 5% in years 25-30 of the term. At the projected \$10 Million yearly gross revenue, the City will receive \$500,000 annually in revenue by years 25-30. This volume could grow significantly based on the actual performance of the restaurant sub-operator.
4. The City shall receive the greater of \$300,000 or 2% of the sale, assignment or transfer of the agreement, if such a sale were to occur.
5. The City shall not be responsible for any taxes or assessments to the property.
6. Increase in chairs/umbrellas capacity will increase revenue.
7. The City will be reimbursed for up to \$200,000 if it repaints and beautifies the Hallandale Beach Boulevard Bridge within two years.

Vibrant Appeal:

The approval of Bi-Chu Beach/Zuma will bring in a world renowned restaurant group and operation to the City, further increasing the vibrant appeal of Hallandale Beach as a place to live and visit in South Florida.

Safety:

Bi-Chu Beach is committed to providing a safe and welcoming environment for all their guests and team. Food Safety and Responsible Alcohol Service are cornerstones to their ethos. All

managers are certified with State Food Safety Certification and TIPS (Training for Intervention Procedures) for alcohol service or local equivalent. All staff are formally trained in these areas based on their responsibilities. Bi-Chu Beach will work with a cooperative and proactive approach with all relevant local and state authorities such as Police, Fire, and Health to ensure responsible safety for all who use the facilities.

Why Action is Necessary:

Pursuant to Chapter 23, Section 23-5, Award of Contract, of the City of Hallandale Beach Code of Ordinances, the City Manager shall have the authority to recommend to the City Commission award of contracts.

Further, pursuant to Section 35.4. of the Operating and Management Agreement, "Subcontract for Restaurant Operation," any subcontract for the operation of the restaurant will be treated as an assignment of the Operating Agreement and must comply with the requirements applicable to the assignment provision of the agreement. Said Assignment shall be approved by the City Commission.

Pursuant to Section 34.3 of the Operating and Management Agreement, "Procedure for Assignments Requiring City's Consent," the replacement of the restaurant sub-contractor must be presented to the City Commission for review and approval within sixty (60) days after City receives the application. The sixty (60) days will have ran out before the March 15, 2017 City Commission meeting. The City may reject an assignee as long as it provides reasonable justification for why the proposed assignee is not acceptable to the City.

Proposed Action:

Staff is requesting City Commission approval of the attached Amendment #1 to the Operating and Management Agreement between the City, the Developer and Operator with all terms stipulated in Amendment #1.

Attachment(s):

Exhibit 1 – Developer Agreement and Resolution
Exhibit 2 – Resolution #2015-39
Exhibit 3 – Application Letter
Exhibit 4 – Azumi Presentation
Exhibit 5 – Amendment #1

Exhibit 6 – Operating and Management Agreement
Exhibit 7 – Application Package
Exhibit 8 – Lambert Advisory Memorandum
Exhibit 9 – City Attorney Review
Exhibit 10 – Lease Agreement and Ordinance
Exhibit 11 – Resolution
Exhibit 12 – Staff Presentation

A handwritten signature in blue ink, appearing to be 'TC' or similar initials, written in a cursive style.

Prepared by: Tom Camaj, Contracts Coordinator