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AMENDMENT #1

**AMENDMENT TO OPERATING AND MANAGEMENT
AGREEMENT BETWEEN CITY OF HALLANDALE BEACH,
PRH BEACHWALK BEACHCLUB, LLC AND
PRH-2600 HALLANDALE BEACH, LLC**

This Amendment to Operating and Management Agreement (the "Agreement") is made and entered into by and between the CITY OF HALLANDALE BEACH, hereinafter referred to as "City," PRH BEACHWALK BEACHCLUB, LLC, hereinafter referred to as "Operator," and PRH-2600 HALLANDALE BEACH, LLC, hereinafter referred to as "Developer."

WHEREAS, on December 6, 2012, the City entered into the Agreement for the operation, management and maintenance of City property located at 111 Surf Road, Property ID # 514226-01-0170, known as North Beach Park and the Restaurant; and

WHEREAS, on May 15, 2015, the City Commission adopted Resolution 2015-39 granting SBERG Management, LLC ("SBE") as operator of the restaurant at the City's North Beach Park; and

WHEREAS, the Restaurant and beach club facility opened to the public on August 17, 2015;

WHEREAS, pursuant to Section 35.4. of the Agreement, any subcontract for the operation of the restaurant will be treated as an assignment of the Agreement and must comply with the requirements applicable to the assignment provision of the Agreement; and

WHEREAS, pursuant to Section 34.3., "Procedure for Assignments Requiring City's Consent," on January 6, 2017, City staff received a written application from the Operator requesting approval of a new restaurant operator; and

WHEREAS, having engaged in a highly competitive process, the Operator proposes to replace the current restaurant operator SBE with Beach-Chu Hallandale LLC, an affiliate of Azumi Limited ("Azumi"); and

WHEREAS, the Operator is requesting City Commission approval of Beach-Chu Hallandale LLC, an affiliate of Azumi Ltd, as the operator of the restaurant at the North City Beach Park Building.

NOW THEREFORE, in consideration of the mutual promises of the parties contained herein the parties agree as follows:

1. The Agreement is hereby amended to incorporate the following:

- A. Effective March 1st, 2017 Beach-Chu Hallandale LLC is hereby approved to replace SBE as the restaurant operator of the City's North Beach Park Restaurant pursuant to Section 35.4 the Agreement between the City and Operator. Operator and Developer understand that the approval of Beach-

51 Chu Hallandale LLC as the restaurant operator is not considered approval for
52 any Changes to the Improvements, including but not limited to the
53 Restaurant, Restrooms/Changing Rooms, Beachfront Rental Facility,
54 Lifeguard Office, Landscape Buffer and Sand Volleyball Court. Any changes
55 to the Improvements must comply with the requirements of the Agreement,
56 including but not limited to those set forth in Section 14 hereof.

57
58 B. Section 5, Term, of the Agreement is amended to read as follows:

59
60 *This Agreement commenced on December 6, 2012 (the "Effective Date"),*
61 *and will have a term of 30 years following the Fee Commencement Date, as*
62 *hereinafter defined (the "Term").*

63
64 C. Section 8.1. No Charges for Certain Use, of the Agreement is amended to
65 read as follows:

66
67 *Operator will not be permitted to impose any charges for use by the public of*
68 *the Restrooms/Changing Rooms, Sand Volleyball Courts, or the sandy beach*
69 *in general. Operator may impose and will set charges for use of any other*
70 *facilities and uses provided upon the Property. Operator will provide a*
71 *discount to City residents on any such charges imposed by Operator.*
72 *Operator has agreed to provide a 20% discount for Hallandale Beach*
73 *residents on all services at the facility with the exception of food and*
74 *beverage. Residents will receive a 10% discount for food and beverage*
75 *items. The menu will display information that communicates these discounts*
76 *to patrons.*

77
78 D. Section 17, Parking, of the Agreement, subsections 17.2 and 17.3 are
79 amended to read as follows:

80 *17.2 The parties acknowledge and agree that the Parking Spaces will be*
81 *used only for visitors to the Restaurant and the beach. The Parking Spaces*
82 *may not be used for the parking of cars of Beachwalk condominium residents*
83 *or visitors unless they are visiting the Restaurant or the beach.*

84 *17.3 Public Parking Spaces. 40 of the 80 Parking Spaces will be designated*
85 *for use by the Public (the "Public Parking Spaces") from dawn until 7:00 pm*
86 *(the "Public Parking Hours"). During the Public Parking Hours, the City will set*
87 *the rates and collect the revenue with respect to the Public Parking Spaces.*
88 *Between 7:00 pm and dawn (the "Operator Parking Hours"), the Public*
89 *Parking Spaces will be used only for visitors to the Restaurant and the beach.*
90 *During the Operator Parking Hours, the City will set the rates and collect the*
91 *revenue with respect to the Public Parking Spaces.*

92
93 E. Section 18, Restaurant Operation, subsection 18.3. Operating Hours, of the
94 Agreement is amended to read as follows:

95
96 *The Restaurant minimum operating periods are as follows:*

Days of operation: The Restaurant will be open 7 days a week, except when the Restaurant is closed for refurbishment, as permitted by this Agreement. Initially, the restaurant will be open 7 days for dinner and 4-5 days for Lunch. Lunch may be increased to 7 days, subject to demand.

Hours of operation:

1st Floor Beach Bar: 10am – 6pm

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

Dinner Service 5:30pm – 11:00 pm

The Restaurant may be closed on certain holidays, if requested by Operator and approved by the City Manager. Any changes to the operating hours must comply with section 25.1.

- F. Section 20, Beachfront Rental Facility, subsection 20.2, Beach Rental Equipment, of the Agreement is amended to read as follows:

Beach Rental Equipment. The Beachfront Rental Facility will house a beach chair and umbrella rental operation with sufficient inventory to provide beach chairs and umbrellas for patrons within an area of the beach designated on the Preliminary Site Plan.

- G. Section 28. Taxes and Assessments, of the Agreement is amended to read as follows:

During the Term, Operator will be responsible for any and all taxes or assessments levied against the Property and Improvements by any Governmental Authority other than the City. Operator shall pay all taxes and assessments prior to delinquency. Operator will have the right to contest any taxes and assessments, at Operator's expense. The City agrees to cooperate with Operator in any contest of taxes or assessments, but Operator will be responsible for any costs incurred by City in such contest. If Operator pays any tax or assessment, a portion of which is received by the City, the City agrees to remit back to Operator the City's allocated share of the tax or assessment.

- H. Section 29 Operating Fee, subsection 29.1, Scaled Operating Fee of the Agreement is amended to read as follows:

Operator agrees to pay City the monthly Minimum Operating Fee, as described below. Operator shall also pay City a Percentage Fee calculated upon the Gross Revenue from the operation of the Property, to the extent the Percentage Fee set forth below is higher than the sum of the minimum Monthly Operating Fees paid in any year, according to the following schedule:

29.1.1. Commencing with the month during which the Improvements are opened to the public, which the parties acknowledge was August 17, 2015,

hereinafter referred to as the "Fee Commencement Date," and continuing through July 2020, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$5,000.00 per month or (b) 2.5% of Gross Revenue per year.

29.1.2. Commencing in August 2020 and continuing through July 2025, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$7,000.00 per month or (b) 3.0% of Gross Revenue per year.

29.1.3. Commencing in August 2025 and continuing through July 2030, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$9,000.00 per month or (b) 3.5% of Gross Revenue per year.

29.1.4. Commencing in August 2030 and continuing through July 2035, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$11,000.00 per month or (b) 4.0% of Gross Revenue per year.

29.1.5. Commencing in August 2035 and continuing through July 2040, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$13,000.00 per month or (b) 4.5% of Gross Revenue per year.

29.1.6. Commencing in August 2040 and continuing through July 2045, Operator shall pay the City the greater of (a) a Minimum Operating Fee of \$15,000.00 per month or (b) 5.0% of Gross Revenue per year.

- I. Section 29, Operating Fee, subsection 29.3 Gross Revenue, of the Agreement is amended to read as follows:

For purposes of calculating the Percentage Fee due under this Agreement, Gross Revenue will include all revenue generated by the use and operation of the Property, including but not limited to, all revenue generated by the Restaurant, Beachfront Rental Facility, the Parking Spaces, and any events which may be held at the Property. Gross Revenue will not include (a) refunds to customers, (b) any promotional, employee or other discounts actually granted and (c) the amount of sales taxes imposed upon sales to customers and collected by Operator or any Sub Operator or subcontractor for remittance to the State of Florida, Division of Revenue.

- J. Section 29, Operating Fee, subsection 29.5 Operator's Records and Gross Revenue Reporting Requirement, of the Agreement is amended to read as follows:

Operator must provide the City with a monthly statement of gross revenue, which shall be provided to the City thirty (30) days following the end of the month covered by the statement. The monthly statement must be accompanied by a certificate executed by an officer of Operator in the form attached as Exhibit 29.5. The statements of gross revenue and certificates may be transmitted to the City electronically.

Operator's annual Gross Revenue reports will be subject to a yearly audit as determined by the City by a certified public accountant selected by City. The

City will provide the complete draft and final audit reports to Operator for review upon City's receipt. Operator will have 30 days after receipt to review and propose corrections to the draft audit report. If the final audit report shows that Percentage Fee payments to the City during the audit period fell short of the Percentage Fee payments required by this Agreement by an amount exceeding 10% of the required Percentage Fee payments, then the following shall occur:

29.5.1. Operator shall promptly pay the amount of the shortfall due City;

29.5.2. Operator must reimburse City for the cost of the audit;

29.5.3. For the next five-year period, Operator's Minimum Operating Fee will increase by \$2500 per month, and the maximum Percentage Fee will increase by an additional 0.5%; and

- K. Section 29, Operating Fee, is amended to add the following new section, Section 29.7 Sales Revenue Reporting Requirement, to the Agreement to read as follows:

If the monthly statements submitted pursuant to Section 29.5, above, indicate that total Gross Revenues for any calendar quarter did not equal or exceed 103% of the total Gross Revenues for the same period in the prior year, referred to as the "Growth Target," then Operator shall within sixty (60) days submit an outline of its plan to achieve the Growth Target. The outline must include the following:

29.7.1. Summaries of revenues from each category of services

29.7.2. Plans for the improvement of revenues for the next quarter

- L. Section 30, City Option to Buy Out Operator, of the Agreement is hereby deleted in its entirety and replaced by the following:

Section 30. City Share of Assignment Proceeds. In the event that Operator transfers, sells or assigns this Agreement, City shall be entitled to receive and Operator shall pay to City the greater of \$300,000 or two percent (2%) of the gross proceeds received by Operator in connection with such transfer, assignment or sale of this Agreement.

- M. Section 31, Other Payments Due Under this Agreement, is hereby amended to add the following:

If the City, prior to the date that is two (2) years following the Effective Date of this Amendment #1, completes the repainting and beautification of the Hallandale Beach Bridge, PRH agrees to and will reimburse the City for the actual costs paid to third parties of such repainting and beautification, not to exceed \$200,000. The amount to be reimbursed to the City will be paid within sixty (60) days of receipt of the City's paid invoice to the City's contractor for the Bridge repainting and beautification.

- N. Section 32, Long Term Building Maintenance, subsection 32.1, Periodic

Inspection, of the Agreement is amended to read as follows:

Every five (5) years, beginning after the Fee Commencement Date, the City may select and procure an engineer to perform an engineering and maintenance inspection of the Property ("Periodic Inspection"). The engineer will evaluate the condition of the Building, including the structural system (roof, structural walls, windows, and exterior doors), plumbing system, HV AC, and other mechanical systems ("Building Systems"), as well as the condition of the Restaurant and all walkways, patio areas, and all other portions of the Property and Improvements to be maintained by Operator ("Operator Areas"). Representatives of the Operator and the City will be notified of the Periodic Inspection and allowed to attend the inspection.

2. The provisions of the Agreement being modified and any attachments thereto in conflict with this Amendment #1 shall be and are hereby amended to conform with this Amendment # 1, effective as of the date of the last execution of this Amendment #1 by both parties.
3. All provisions of the Agreement not in conflict with this Amendment #1 remain in full force and effect, and are to be performed at the level specified in the Agreement.
4. This Amendment #1 shall be effective upon the date it is executed by the City ("Effective Date").

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE DULY EXECUTED THIS DOCUMENT AS THE DATES SET OUT BELOW.

(Signatures appear on the following page.)

276
277

WITNESSES:

[Signature]
Holly Allen

WITNESSES:

[Signature]
Holly Allen

278

ATTEST:

M. Butwell
3-10-17, City Clerk

Approved as to Legal Form

[Signature]
Jennifer Merino, City Attorney

279
280

OPERATOR:

PRH Beachwalk Beachclub, LLC, a Florida limited liability company

By: [Signature]
Print name: Matthew Allen
Title: Vice President
Date: March 7, 2017

DEVELOPER:

PRH-2600 Hallandale Beach, LLC, a Florida limited liability company

By: [Signature]
Print name: Matthew Allen
Title: Vice President
Date: March 7, 2017

CITY OF HALLANDALE BEACH, FLORIDA

By: [Signature]
Roger Carlton, City Manager

281 EXHIBIT 29.5

282 to

283
284 AMENDMENT TO OPERATING AND MANAGEMENT AGREEMENT BETWEEN CITY
285 OF
286 HALLANDALE BEACH, PRH BEACHWALK BEACHCLUB, LLC AND
287 PRH-2600 HALLANDALE BEACH, LLC
288

289
290 GROSS REVENUE CERTIFICATE
291

292
293
294 Reference is hereby made to that certain Operating and Management Agreement (as
295 amended, supplemented, renewed, extended, replaced, or restated from time to time in
296 effect, the "Agreement"), dated as of December 6, 2012, by and between the CITY OF
297 HALLANDALE BEACH ("City"), PRH BEACHWALK BEACHCLUB, LLC ("Operator"),
298 and PRH-2600 HALLANDALE BEACH, LLC ("Developer").
299

300 Further, specific reference is made to sections 29.3 and 29.5 of the Agreement and
301 Operator's obligations thereunder. Terms defined in the Agreement and not otherwise
302 defined herein shall have the meanings contained in the Agreement.
303

304 Attached is the Operator's Statement of Gross Revenue ("Statement") for the calendar
305 month ended _____, 20__.
306

307 The Statement presents fairly in all material respects, to the extent of the actual
308 knowledge of the Operator, the Gross Revenue at and for the period presented, and
309 was prepared as required by the Agreement.
310

311 IN WITNESS WHEREOF, the undersigned has executed this Gross Revenue
312 Certificate as of the ____ day of _____, 20__.
313
314
315

316 OPERATOR:

317
318 PRH Beachwalk Beachclub, LLC, a
319 Florida limited liability company
320

321
322 By: _____
323 Print name: _____
324 Title: _____
325 Date: _____