

OPERATING AND MANAGEMENT AGREEMENT

BETWEEN

PRH BEACHWALK BEACHCLUB, LLC,

PRH-2600 HALLANDALE BEACH, LLC

AND

CITY OF HALLANDALE BEACH, FLORIDA

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
Recitals	1
Agreement	1
1. Exhibits.....	1
2. Defined Terms	2
3. Operation and Management of Property	2
4. Grant of Access Rights.....	2
5. Term of Agreement	2
6. Timetable for Development of Improvements	2
6.1 Preparation of Plans.....	2
6.2 Submission of Plans.....	2
6.3 Review of Development Plans by City Manager & DRC	3
6.4 Commission Approval of Development Plans	3
6.5 FDEP Application.....	3
6.6 Other Governmental Approvals.....	3
6.7 Submission of Construction Plans.....	3
6.8 Compliance with Governmental Requirements.....	3
6.9 Completion of Improvements.....	4
6.10 Operator Expenses.....	4
6.11 City's Joinder in Applications	4
7. Improvements to be Constructed.....	4
7.1 Restaurant and Concession Building.....	4
7.2 Dune Restoration	4
7.3 Landscape Buffer.....	5
7.4 Entry Plaza.....	5
7.5 Sand Volleyball Court	5
7.6 Lifeguard Towers	5
8. Public Property	5
8.1 No Charges for Certain Uses.....	5
8.2 Public Access During Construction.....	5
8.3 Additional Restrooms During Construction.....	5
9. Demolition of Existing Improvements	5

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
9.1 Timing of Demolition.....	5
9.2 Demolition Costs.....	6
9.3 Compliance with Governmental Requirements.....	6
9.4 Scheduling of Demolition.....	6
9.5 Removal and Disposal of Debris.....	6
10. Construction Improvements.....	6
10.1 Construction Quality.....	6
10.2 Operator’s Obligations During Construction.....	6
10.3 Operator to Provide Progress Reports.....	7
10.4 City’s Representative.....	7
10.5 Payment and Performance Bond.....	8
11. Ownership of Improvements.....	8
12. Operator’s Duty to Keep Property Free of Liens.....	8
12.1 Notice of Liens.....	8
12.2 Contesting Liens.....	8
13. Operator’s Obligation to Paint Exterior of North Beach City Center and Fire Station.....	8
13.1 City to Designate Colors and Materials.....	8
13.2 Permits.....	8
13.3 Timing of Painting.....	9
13.4 Painting Costs.....	9
14. Changes to the Improvements.....	9
14.1 Temporary Closing of Improvements.....	9
15. Hallandale Beach Resident Hiring Program.....	9
15.1 Number of Resident Jobs.....	9
15.2 Anticipated Jobs.....	9
15.3 Training Program.....	9
15.4 Quarterly Reports.....	10
15.5 Successor Programs.....	10
16. Use of Local Construction Businesses.....	10
16.1 Subcontractor and Supplier Reporting Requirement.....	10

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
16.2 Form of Report	10
16.3 Timing of Reports.....	11
16.4 Outreach Fairs.....	11
16.5 City's Right to Cost Recovery.....	11
17. Parking	11
17.1 Beach Club Parking	11
17.2 Operator to Manage Parking.....	11
17.3 Resident Parking Pass Spaces.....	11
17.4 Operator Parking Spaces	12
17.5 Valet Parking	12
17.6 Parking for City Events	12
17.7 Employee Parking.....	12
17.8 Bicycle Parking.....	12
18. Restaurant Operation	12
18.1 Full Service Restaurant.....	12
18.2 Commencement of Restaurant Operations	12
18.3 Operating Hours	12
18.4 Alcoholic Beverages.....	13
18.5 Capacity	13
19. Restrooms/Changing Rooms	13
20. Beachfront Rental Facility.....	13
20.1 Design of Facility	13
20.2 Beach Rental Equipment	13
20.3 Rental Operation.....	13
20.4 Other Rental Items.....	13
20.5 Items for Sale.....	13
21. Sand Volleyball Courts.....	13
21.1 Design of Volleyball Court.....	13
21.2 Management of Volleyball Court.....	14
21.3 No Volleyball Court Charge.....	14
22. Landscape Buffer.....	14
23. Dune Restoration	14

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
24. Maintenance Operation and Security of Property	14
24.1 Maintenance Costs.....	14
24.2 Maintenance Standards.....	14
24.3 Maintenance of Beach	14
24.4 Maintenance of Beach Access.....	15
24.5 Maintenance Before and After Severe Weather	15
24.6 Security of Improvements	15
25. Year-round Continuous Operation	15
25.1 Restaurant Operation	15
25.2 Beachfront Rental Facility Operation.....	15
26. Use of Property	16
26.1 Permitted Uses	16
26.2 Special Events.....	16
26.3 Signage	16
26.4 Advertising	16
26.5 Use of City Seal or Park Name.....	16
26.6 No Sales of Articles	16
26.7 Compliance with Governmental Requirements.....	16
26.8 No Nuisance; No Waste; Control of Noise	16
26.9 No Hazardous Materials	17
26.10 No Fumes.....	17
26.11 No Obstructions.....	17
26.12 Doors and Locks.....	17
26.13 Animals.....	17
26.14 Protection of Sea Turtles	17
26.15 Rules and Regulations	17
27. Utilities	17
28. Taxes and Assessments	17
29. Operating Fee	18
29.1 Scaled Operating Fee.....	18
29.2 Monthly Payments.....	18
29.3 Gross Revenue	18
29.4 Annual Payments	18
29.5 Operator's Records and Gross Revenue Reporting Requirement	18
29.6 Taxes on Operating Fee.....	19

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
30. City Option to Buy Out Operator	19
30.1 Notice to Operator	19
30.2 Valuation	19
30.3 Alternative Proposals.....	19
31. Other Payments Due Under this Agreement	20
32. Long Term Building Maintenance	20
32.1 Periodic Inspections.....	20
32.2 Inspection Report.....	20
32.3 Inspection Standard	20
32.4 Repairs and Reserve Account.....	20
32.5 Establishment of Capital Account	21
32.6 Use of Capital Account Funds.....	21
33. Return of Property Upon Termination.....	21
34. Assignment of the Agreement	21
34.1 No Assignment Prior to Completion	21
34.2 Assignment After Completion.....	22
34.2.1 Restaurant Experience	22
34.2.2 Financial Resources	22
34.2.3 Character and Reputation	22
34.2.4 No Violations.....	22
34.2.5 No Convictions or Indictments.....	22
34.2.6 No Scrutinized Companies	22
34.3 Procedure for Assignments Requiring City's Consent.....	22
34.4 Assignment Conditions.....	23
34.4.1 Entire Agreement	23
34.4.2 Proposed Documentation to City	23
34.4.3 Assumption of Obligations by Assignee.....	23
34.4.4 Effectuation of Assignments.....	23
34.5 Pledge of Collateral Assignment of Agreement.....	23
35. Subcontracts.....	23
35.1 Written Notice of Subcontracts	23
35.2 Subcontractor Requirements.....	23
35.3 City Issues with Subcontractors	23
35.4 Subcontract for Restaurant Operation	24
35.5 Use of Local Business as Subcontractors	24

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
36. Indemnification by Operator	24
36.1 Indemnification Includes Losses from Construction.....	24
36.2 Indemnification from General Contractor	24
36.3 Operator Liability Not Limited By Insurance	24
36.4 City's Tort Liability.....	24
37. Insurance	25
37.1 General Insurance Provisions	25
37.2 Evidence of Insurance	25
37.3 Cancellations and Renewals	25
37.4 Required Coverages.....	25
37.4.1 Commercial General Liability Insurance	25
37.4.2 All Risk Property Insurance.....	26
37.4.3 Business Interruption Insurance.....	26
37.4.4 Worker's Compensation and Employer's Liability	26
37.4.5 Business Automobile Liability Insurance	26
37.4.6 Liquor Liability Policy.....	27
37.5 Coverage Required During Construction	27
37.5.1 Builders Risk Insurance	27
37.5.2 Professional Liability Insurance.....	27
37.6 Premiums and Renewals.....	27
37.7 Adequacy of Insurance Coverage.....	27
37.8 Appraisal.....	27
37.9 City May Procure Insurance if Operator Fails To Do So	28
38. Loss or Damage to Improvements.....	28
38.1 Proof of Loss	28
38.2 Payment of Insurance Proceeds.....	28
38.3 Disposition of Insurance for Reconstruction	29
38.4 Covenant for Commencement and Completion of Reconstruction.....	29
38.5 Inadequacy of Insurance Proceeds	29
38.6 Extension of Term After Casualty.....	29
38.7 Payment of Minimum Operating Fee After Casualty.....	29
39. Condemnation.....	30
39.1 Complete Condemnation	30
39.2 Partial Condemnation	31
39.3 Restoration After Condemnation.....	31

OPERATING AND MANAGEMENT AGREEMENT
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
39.4 Temporary Taking	32
39.5 Determination	32
39.6 Payment of Fees and Costs	32
40. Operator Events of Default	32
40.1 Failure to Pay	32
40.2 Failure to Perform	32
40.3 Voluntary Bankruptcy	32
40.4 Involuntary Bankruptcy	32
40.5 Assignment of Agreement	33
40.6 Dissolution	33
41. City Events of Default	33
41.1 Failure to Perform	33
42. Remedies for Events of Default	33
42.1 Termination by City	33
42.2 Termination by Operator	33
42.3 Remedies Cumulative and Concurrent	33
42.4 Waiver, Delay or Omission	34
42.5 Proofs of Claim	34
43. Force Majeure	34
44. Notices	34
45. Miscellaneous Provisions	35
45.1 Amendment	35
45.2 Attorneys' Fees	35
45.3 Construction of Agreement	35
45.4 Counterparts	36
45.5 Entire Agreement	36
45.6 Governing Law; Venue; Waiver of Jury Trial	36
45.7 No Personal Liability of City	36
45.8 No Third Party Rights	36
45.9 Section and Paragraph Headings	36
45.10 Severability	36
45.11 Signatories' Authority	36
45.12 Successors and Assigns	37

OPERATING AND MANAGEMENT AGREEMENT

This Operating and Management Agreement ("Agreement") is made and entered into on December 6, 2012 between **PRH BEACHWALK BEACHCLUB, LLC**, a Florida limited liability company ("Operator"), **PRH-2600 HALLANDALE BEACH, LLC**, a Florida limited liability company ("Developer") and the **CITY OF HALLANDALE BEACH**, a Florida municipal corporation ("City").

Recitals

City is the owner of 1.3 acres of beachfront property known as North Beach Park, an existing recreational facility located in the City of Hallandale Beach, Florida, and more particularly described in **Exhibit A** ("Property").

On July 30, 2012, City entered into a Development Agreement ("Development Agreement") with Developer for the development of a mixed-use residential project on real property owned by Developer.

In the Development Agreement, the Developer agreed to construct certain improvements ("Improvements") on the City's Property adjacent to the City's beachfront in accordance with the City's Park Master Plan, including a restaurant/food and beverage concession, public restroom facilities with changing rooms, a facility for beach chair and umbrella rentals, and other amenities, and to be responsible for all costs of the construction of the Improvements, including but not limited to all costs for design, permitting, engineering and construction.

The Improvements will enhance and improve the City's recreational facilities.

In the Development Agreement, the Developer further agreed to complete the updating and enhancement of the public beach pedestrian accessways for the Property.

The Development Agreement contemplated that the Developer and the City would enter into an Operating and Management Agreement for the construction and operation of the Improvements on the Property.

Operator is an entity which is owned by the same parent entity that owns Developer.

Developer has assigned to Operator Developer's rights and obligations pertaining to the North Beach Park Improvements and the North Beach Park Operations and Management Agreement described in the Development Agreement.

City and Operator are entering into this Agreement to provide for the construction, operation and management by Operator of the contemplated Improvements and facilities on the Property, in satisfaction of the requirements of the Development Agreement set forth in these Recitals.

Agreement

In consideration of the mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the parties agree as follows:

1. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated into the Agreement:

- 1.1. **Exhibit A** – Legal Description of the Property
 - 1.2. **Exhibit B** – Preliminary Site Plan for the Property (“Preliminary Site Plan”)
 - 1.3. **Exhibit C** – Preliminary conceptual renderings of the Improvements (“Preliminary Renderings”)
 - 1.4. **Exhibit D** – Form of Construction Utilization Report required by Section 16.
 - 1.5. **Exhibit E** – Valet Parking Code of Conduct
 - 1.6. **Exhibit F** – Agreement between Beach One Resort, LLLP and the City dated June 13, 2012. (“Beach Access Agreement”)
 - 1.7. **Exhibit G** - Form of Local Business Utilization Report required by Section 35.
2. **Defined Terms.** Terms which are defined in this Agreement are listed in an Appendix indicating the Section number where the term is defined.
 3. **Operation and Management of Property.** City and Operator agree that Operator, together with its permitted assigns, contractors and subconcessionaires, will be the sole and exclusive party to develop, manage, operate, maintain and repair the Property during the term of the Agreement. Operator hereby accepts all of the rights, obligations and duties of Operator set forth in this Agreement, and all of the rights, obligations and duties of Developer pertaining to the Property set forth in the Development Agreement.
 4. **Grant of Access Rights.** City grants to the Operator all reasonable and necessary rights of access to, over and across the Property, adjacent public rights of way, and other City-owned property adjacent to the Property to enable Operator to perform the duties contemplated by this Agreement.
 5. **Term of Agreement.** This Agreement will commence upon the date it is signed by City and Operator (“Effective Date”), and will have a term of 30 years (the “Term”).
 6. **Timetable for Development of Improvements.**
 - 6.1. **Preparation of Plans.** Within 30 days after the Effective Date, Operator, working with City staff, will commence preparation of plans for the development of the Property by Operator (the “Development Plans”) more particularly described below.
 - 6.2. **Submission of Plans.** Within 90 days after the Effective Date, Operator will submit 15 complete sets of the Development Plans to the City Manager or her designee (“City Manager”) and to the City’s Development Review Committee (“DRC”) for their review and approval. The Development Plans must be consistent with the Preliminary Site Plan and the Preliminary Renderings attached as Exhibits B and C to this Agreement. Although not subject to review as a major development pursuant to Section 32-782 of the City Code, the Development Plans must include the level of detail and site data required as if filing for major development review under the City Code. The Development Plans must include the following:
 - 6.2.1. Site plan;

- 6.2.2. Elevation plan;
- 6.2.3. Detailed renderings of the Improvements to be constructed (“Renderings”); and
- 6.2.4. Detailed landscaping plans showing individual species of plants and trees.
- 6.3. **Review of Development Plans by City Manager and DRC.** The City Manager will review the Development Plans and meet with Operator to discuss any changes requested by the City Manager and the DRC. The City Manager and Operator will use best efforts to finalize the Development Plans as quickly as possible. The City Manager and DRC must complete their review of the Development Plans within 75 days after submission.
- 6.4. **Commission Approval of Development Plans.** Following approval of the Development Plans by the City Manager and the DRC, the Development Plans will be placed on an agenda for presentation to and approval by the City Commission at a public meeting.
- 6.5. **FDEP Application.** Within 90 days after approval of the Development Plans by the City Commission, Operator must submit to the Florida Department of Environmental Protection (“FDEP”) all applications required for the construction of the Improvements.
- 6.6. **Other Governmental Approvals.** Within 90 days after FDEP issues the permits required for the Improvements, and the permits are final and not subject to appeal, Operator must submit to the applicable Governmental Authorities any remaining applications for the construction of the Improvements, including, without limitation, application to the City for a building permit. For purposes of this Agreement, a “Governmental Authority” is any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 6.7. **Submission of Construction Plans.** Operator’s application to the City for a building permit must include a complete set of plans (“Construction Plans”) for the construction of the Improvements on the Property. The Construction Plans must be consistent with the approved Development Plans and must comply with the requirements of the City Code and the Florida Building Code.
- 6.8. **Compliance with Governmental Requirements.** The Development Plans, the Construction Plans, and the Improvements to be constructed must comply with all Governmental Requirements, including but not limited to City’s Green Building Program, which will require a green building certification for the Improvements from a recognized environmental rating agency accepted by the city’s Development Services Department. For purposes of this Agreement, a “Governmental Requirement” is any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.

- 6.9. **Completion of Improvements.** Operator must complete the construction of the Improvements in accordance with the Development Plans and the Construction Plans (collectively, the "Plans") as evidenced by issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, within 18 months after the last to occur of the following (subject to extension as contemplated by this Agreement):
- 6.9.1. Operator receives all necessary permits and approvals for the construction of the Improvements from all Governmental Authorities with jurisdiction of the Property; or
 - 6.9.2. City delivers the Property to Operator clear of any tenants or other obstructions.
- 6.10. **Operator Expenses.** Operator will be responsible for payment of all costs of preparing the Plans, as well as all application and permit fees, and all costs of construction of the Improvements.
- 6.11. **City's Joinder in Applications.** City, as the owner of the Property, agrees to join in, consent to, and execute any applications or other documents for which City's consent is required in connection with the proposed development of the Property. City will execute any applications or other document within 10 days after receipt unless City determines that the application or document is not correct, in which case it will return the application or document to Operator for correction. Upon resubmittal of any previously rejected application or document, City will have 10 days to execute.
7. **Improvements to be Constructed.** Operator will be responsible for the construction or installation of the following Improvements on the Property in accordance with the Plans.
- 7.1. **Restaurant and Concession Building.** A building ("Building") to contain:
 - 7.1.1. A full-service restaurant ("Restaurant") with two stories, containing approximately 4,000 square feet, with approximately 3,000 square feet of additional patio space to be used as an adjacent outdoor eating area. The Restaurant will include all of the furniture, fixtures and equipment required to operate a full-service restaurant, and restrooms for Restaurant patrons.
 - 7.1.2. Public restroom facilities for beachgoers with a minimum of three male stalls and a male changing room and a minimum of three female stalls and a female changing room ("Restrooms/Changing Rooms");
 - 7.1.3. A beachfront stand or facility for the rental of beach chairs and umbrellas to the public ("Beachfront Rental Facility");
 - 7.1.4. An office for the lifeguards and for storage of lifeguard equipment ("Lifeguard Office") containing at least 210 square feet.
 - 7.2. **Dune Restoration.** The restoration of the sand dunes on the Property, subject to and in accordance with the permits for such work issued by FDEP or any other Governmental Authority ("Dune Restoration").

- 7.3. **Landscape Buffer.** The installation of landscaping (“Landscape Buffer”) on the Property.
 - 7.4. **Entry Plaza.** A small entry plaza (“Entry Plaza”) to provide a drop-off location for beachgoers.
 - 7.5. **Sand Volleyball Court.** Up to two sand volleyball courts (“Sand Volleyball Courts”) to be constructed as shown in the Site Plan.
 - 7.6. **Lifeguard Towers.** Two lifeguard towers (“Lifeguard Towers”) designed to be consistent in appearance with the Building, to be constructed in a location to be designated by City. After completion of the Lifeguard Towers, Operator will remove the existing Lifeguard Towers upon request by City.
8. **Public Property.** Operator acknowledges that the Property is a public park, and expressly agrees that the Property, and all Improvements to be constructed upon or operated upon the Property, will be open to and accessible by all members of the public at all times during operating hours. No portions of the Property will be designated for exclusive use by any third parties.
- 8.1. **No Charges for Certain Uses.** Operator will not be permitted to impose any charges for use by the public of the Restrooms/Changing Rooms, Sand Volleyball Courts, or the sandy beach in general. Operator may impose and will set charges for use of any other facilities and uses provided upon the Property. Operator will provide a discount to City residents on any such charges imposed by Operator.
 - 8.2. **Public Access During Construction.** Operator acknowledges that the public will use the public beach adjacent to the Property during the construction of the Improvements. Operator agrees to maintain the construction site in a safe manner, with appropriate fencing and signage to keep the public out of the construction area.
 - 8.3. **Additional Restrooms During Construction.** City and Developer have previously entered into a Lease Agreement dated October 10, 2012 for the lease to Developer of the North Beach City Center building (the “North Beach Facility”). The Lease requires the Developer to provide public restrooms on the ground floor of the North Beach Facility or to provide temporary flushable restrooms in an alternate location for users of the public beach during the Lease term. Operator, Developer and City agree that the restrooms to be provided by Developer under the Lease will also serve as the restrooms to be used by the public until construction of the Improvements has been completed.
9. **Demolition of Existing Improvements.** If demolition of the facilities currently existing on the Property (the “Existing Improvements”) is not completed prior to the Effective Date, pursuant to the Right of Entry Agreement, Demolition and Indemnification Agreement between the City and Developer, dated October 9, 2012. Operator will be responsible for the demolition of the Existing Improvements.
- 9.1. **Timing of Demolition.** Operator will commence the demolition of the Existing Improvements after City’s approval of the Plans for the Improvements, and issuance of all permits required for the demolition of the Existing Improvements.

- 9.2. **Demolition Costs.** Operator will be responsible for all costs of demolishing the Existing Improvements.
 - 9.3. **Compliance with Governmental Requirements.** Operator will comply with all Governmental Requirements applicable to demolition of the Existing Improvements.
 - 9.4. **Scheduling of Demolition.** Operator must notify City in advance of the demolition, and will cooperate with City in the scheduling of the demolition.
 - 9.5. **Removal and Disposal of Debris.** Operator will be responsible for the prompt removal and proper disposal of all debris from the Property after the demolition.
10. **Construction of Improvements.**
- 10.1. **Construction Quality.** Operator agrees to perform all work ("Work") required to complete the construction of the Improvements on the Property in accordance with the Plans, in a good and workmanlike manner.
 - 10.2. **Operator's Obligations During Construction.** During the construction of the Improvements, Operator must do all of the following or cause its contractors to do so:
 - 10.2.1. Perform and complete the Work;
 - 10.2.2. Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;
 - 10.2.3. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety, efficiency and adequacy of the construction equipment and construction methods used, and be responsible for any damage which may result from any failure of the construction equipment or any failure in the method of construction;
 - 10.2.4. Provide all architectural and engineering services, scaffolding, hoists, temporary structures, light, heat, power, toilets (for use by workers and not for use by the public), temporary utility connections, equipment, tools and materials and whatever else may be required for the proper performance of the Work;
 - 10.2.5. Order and have delivered all materials required for the Work and be responsible for all materials so delivered to remain in good condition;
 - 10.2.6. Maintain the Property in a clean and orderly condition at all times commensurate with a well-maintained construction site, and remove all paper, cartons and other debris from the Property site on a daily basis;
 - 10.2.7. Fence the construction site so that the public cannot obtain access to it;
 - 10.2.8. Protect all Work prior to its completion and acceptance;
 - 10.2.9. Preserve all properties adjacent to or leading to the Property, and restore and repair any such properties damaged as a result of the construction of

- the Improvements, whether such properties are publicly or privately owned;
- 10.2.10. Implement and maintain in place at all times a comprehensive hurricane and flood plan for the Property and the Work, and provide a copy of same to the City;
 - 10.2.11. Upon completion, deliver to the City an as-built survey and as-built plans and specifications for the Improvements;
 - 10.2.12. Upon completion of the Improvements, deliver to the City a copy of the final Certificate of Occupancy;
 - 10.2.13. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work in accordance with the schedule agreed to by the parties;
 - 10.2.14. Take commercially reasonable precautions to protect property adjacent to the Property, or property which is in the vicinity of or is in anyway affected by the Work, and be entirely responsible and liable for all damage or injury as a result of Operator's operations to all adjacent public and private property; and
 - 10.2.15. At all times enforce discipline and good order among its employees and the general contractor at the Property.
- 10.3. **Operator to Provide Progress Reports.** Operator must keep the City apprised of Operator's progress regarding the Work. Operator will provide to the City Manager copies of monthly construction progress reports generated by Operator's contractor or consultant.
 - 10.4. **City's Representative.** The City Manager may designate one or more employees or agents to be the City's representative for the construction of the Improvements. The City's representative may, during normal business hours, visit, inspect or appraise the Improvements, and any materials, contracts, records, plans, specifications and shop drawings relating to the Improvements, whether kept at Operator's offices or at the construction site or elsewhere. City agrees that City will be solely responsible for the safety and conduct of the City's representative if the representative elects to enter an active construction area to perform an inspection. City's representative may also review the books, records, accounts and other financial and accounting records of Operator wherever kept, and make copies of such records as often as may be requested. Operator agrees to advise City's representative of meetings among Operator, Operator's representatives, contractors, subcontractors, or any subset of this group, and City's representative will be entitled to attend such meetings. Operator agrees to cooperate with the City to enable City's representative to conduct site visits, inspections and appraisals. Operator shall make available to City's representative upon request daily log sheets covering the period since the immediately proceeding inspection showing the date, weather, subcontractors on the job, number of workers, and status of construction.

- 10.5. **Payment and Performance Bond.** Operator must comply or cause its contractor to comply with the applicable provisions of Section 255.05 of the Florida Statutes in connection with the construction of the Improvements.
11. **Ownership of Improvements.** Operator acknowledges that it is constructing the Improvements for the benefit of the City, and that City will be the owner of the Improvements at all times during the Term of this Agreement. Upon completion of the Improvements, Operator will execute and deliver to the City a bill of sale conveying to City all of Operator's right, title and interest in the Improvements, free and clear of liens and encumbrances.
12. **Operator's Duty to Keep Property Free of Liens.** Operator agrees to keep the Property free of any and all liens arising out of the construction of the Improvements.
- 12.1. **Notice of Liens.** If City becomes aware of any lien filed against the Property, City will provide Operator with written notice of the lien. Operator must either satisfy the lien or transfer it to bond in accordance with Section 713.24 of the Florida Statutes within ten days after Operator's receipt of notice of the lien. If Operator becomes aware of any lien filed against the Property, Operator will provide written notice of the lien to the City, and must satisfy the lien or transfer it to bond within ten days after Operator receives knowledge of the lien.
- 12.2. **Contesting Liens.** If Operator desires to contest any lien, Operator must notify the City of its intention to do so within 30 days after the Operator receives notice of the lien.
- 12.2.1. The lien will not constitute an Operator Event of Default under this Agreement if Operator timely transfers the lien to bond as described above. If the lien is determined to be valid, Operator must satisfy and discharge the lien within 30 days after its validity is determined.
- 12.2.2. In the event Operator contests any lien, Operator shall protect and indemnify the City against all loss, expense and damage resulting from the lien contest, in accordance with the indemnification provisions of this Agreement.
13. **Operator's Obligation to Paint Exterior of North Beach City Center and Fire Station.** Operator agrees that it will paint the exteriors of the North Beach Facility and the City fire station ("Fire Station"), both of which are located at 2801 East Hallandale Beach Boulevard, Hallandale, Florida 33009.
- 13.1. **City to Designate Colors and Materials.** Upon request by Operator, City will notify Operator of the paint colors, brands, and types of primer, paint, and any other products City requires to be used to prepare and paint the North Beach Facility and the Fire Station; the number of coats of paint to be applied to each structure; and any other requirements of City.
- 13.2. **Permits.** If any permits or other governmental approvals are required for the painting of the North Beach Facility and Fire Station, Operator will be responsible for obtaining the permits or approvals. City, as the owner of the North Beach Facility and Fire Station, agrees to join in, consent to, and execute any

applications or other documents for which City's consent is required in connection with the painting of these facilities.

- 13.3. **Timing of Painting.** Operator agrees to complete the painting of the North Beach Facility and the Fire Station prior to issuance of the certificate of occupancy for the Building. Operator will perform the painting and any related work in a good and workmanlike manner, in accordance with all Governmental Requirements.
- 13.4. **Painting Costs.** Operator will include the cost of the painting of the North Beach Facility and Fire Station as part of the cost of constructing the Improvements.
14. **Changes to the Improvements.** After the Improvements have been completed, Operator will not make any further alterations or additions ("Changes") to the Improvements without the City's prior written consent. Any permitted Changes will be made in a good and workmanlike manner, in accordance with approved plans, if required, and in accordance with all Governmental Requirements.
 - 14.1. **Temporary Closing of Improvements.** If Operator desires to make Changes to the Improvements during the Term that will necessitate the periodic or temporary closing of the Restaurant, Beachfront Rental Facility, or the Restrooms/Changing Rooms, Operator must first obtain written approval from the City for the Changes and for the scheduling of the construction of the Changes, which approval will not be unreasonably withheld or delayed. If the Restrooms/Changing Rooms have to be closed for any period of time to make the approved Changes, Operator must provide trailer restrooms or other temporary facilities for use by the public until the permanent facilities are reopened.
15. **Hallandale Beach Resident Hiring Program.** Prior to the issuance of the first building permit for the Improvements, Operator, in cooperation with the City's NEED program administered by the City Human Services Director, will formulate and implement a "Hallandale Beach Resident Hiring Program" (the "Hiring Program") for the construction and the operation of the Improvements.
 - 15.1. **Number of Resident Jobs.** The goal of the Hiring Program will be the hiring of residents of Hallandale Beach for a minimum of 10 percent of the full-time-equivalent initial employees hired by Operator for construction and permanent jobs at the Property. Operator acknowledges that its obligation to create a Hiring Program for the Property is only a proportionate part of Developer's larger obligations set forth in the Development Agreement between the City and Developer dated July 30, 2012.
 - 15.2. **Anticipated Jobs.** Operator will provide the City's NEED Director with a list of the types of jobs anticipated and the necessary qualifications sufficiently in advance of any hiring, so that NEED can identify those residents meeting the identified qualifications or can work with potential candidates to obtain the necessary training to be eligible for such jobs.
 - 15.3. **Training Program.** Operator will identify the number of qualified residents needed to provide a sufficient pool of qualified candidates. If NEED is unable to identify a sufficient pool of qualified resident candidates to meet the goal of 10 percent hiring of Hallandale Beach residents, Operator will work with NEED to

formulate and implement a training program so that this goal is achievable. Operator agrees to fund the \$1,000 training expense for each position remaining to be filled to meet the goal of hiring City residents to fill 10 percent of Operator's full time equivalent positions at the Property. Operator agrees to hire suitable candidates once they are trained.

15.4. **Quarterly Reports.** Operator will report on a quarterly basis to the City through NEED the following information: (a) the number of initial employees hired for construction or permanent jobs; (b) whether the resident hires continue to be employed; and (c) how many of the employees are City residents. The first reporting quarter will begin after issuance of the first building permit for the Improvements. Reporting will continue throughout the Term of this Agreement.

15.5. **Successor Programs.** Operator agrees to coordinate with any successor program to the City's NEED program, and with any additional programs that may be designated by the City for hiring and contracting during the Term, as long as Operator's coordination with a successor or additional program does not materially increase the duties and obligations imposed upon Operator under the NEED program.

16. **Use of Local Construction Businesses.** In order to promote job growth in the City, during the construction of the Improvements, Operator will use best efforts to contract for construction materials and services with companies that are owned by City residents or located within the City, where such companies are otherwise qualified and competitive. This provision is not intended to require Operator to hire a local company that is not qualified, or that charges a price that is materially higher than a non-local provider of the same goods or services

16.1. **Subcontractor and Supplier Reporting Requirement.** During the construction process, Operator will prepare a report ("Construction Utilization Report") setting forth:

16.1.1. A list of all contracts for construction labor and materials entered into by Operator;

16.1.2. The trade or trades involved in each contract;

16.1.3. The dollar value of each contract;

16.1.4. Whether the subcontractor or supplier is located in the City; and

16.1.5. If a subcontractor or supplier is replaced during the construction process, how were they replaced.

16.2. **Form of Report.** Operator will use the form of Construction Utilization Report attached as **Exhibit D** for the reporting requirements of this section. Operator may rely on the information reported by its subcontractors and suppliers in preparing the Construction Utilization Report. Operator will make the contracts underlying the Construction Utilization Report available to the City Manager or her designee upon request. The Construction Utilization Reports will not be subject to audit.

- 16.3. **Timing of Reports.** Operator must submit the Construction Utilization Report to City at the commencement of construction; 60 days after the commencement of construction; thereafter only when there are changes; and a final Construction Utilization Report upon completion of construction.
- 16.4. **Outreach Fairs.** In order to facilitate the hiring of local subcontractors and suppliers, Operator agrees to hold two outreach fairs ("Outreach Fairs") prior to the commencement of construction. Operator will invite local contractors and suppliers to attend the Outreach Fairs to learn about the project, Operator's bidding requirements, and about ways to improve their chances for success in the bidding process. Operator will publicize the Outreach Fairs by local print and online media and by direct contact with local businesses, including local businesses included on a list to be provided by City. At the Outreach Fairs, Operator will collect the necessary contact information from the attendees, all of whom must receive written notice when Operator's bid solicitation process begins.
- 16.5. **City's Right to Cost Recovery.** If Operator fails to submit the required Construction Utilization Reports to the City, or submits incomplete Construction Utilization Reports, Operator will be required to reimburse City for its costs in preparing or completing the reports. If City reasonably believes that Operator has failed to comply with the Outreach Fair requirements or notify Outreach Fair attendees prior to the commencement of the bid solicitation process, and City wishes to investigate and verify Operator's compliance with these requirement, Operator will be required to reimburse City for its costs in performing the investigation.

17. **Parking.**

- 17.1. **Beach Club Parking.** The parties acknowledge that City has the right to use 80 public parking spaces ("Parking Spaces") located in the Beach Club Condominium, 1800 South Ocean Drive, Hallandale, Florida.
- 17.2. **Operator to Manage Parking.** Throughout the Term, Operator will manage the Parking Spaces and will provide for use of the Parking Spaces by City residents and non-residents according to this Agreement. The Parking Spaces will be used only for visitors to the Restaurant and the beach. The Parking Spaces may not be used for the parking of cars of Beachwalk condominium residents or visitors unless they are visiting the Restaurant or the beach.
- 17.3. **Resident Parking Pass Spaces.** 40 of the 80 Parking Spaces will be designated for use by City residents who hold beach parking passes (the "Pass Parking Spaces"). The parking passes authorize parking from dawn until sunset. The City will set the rates for the beach parking passes, and will collect all revenues from the sale of resident beach parking passes. After sunset, the Pass Parking Spaces will be used only for visitors to the Restaurant and the beach. The Operator will set the rates for parking in the Pass Parking Spaces after sunset.

- 17.3.1. City residents with parking passes who park after sunset or who park during the day but remain parked after sunset will be required to pay the Operator's parking rates for the period of time after sunset.
 - 17.4. **Operator Parking Spaces.** The remaining 40 Parking Spaces will be managed by the Operator (the "Operator Parking Spaces") and used only for parking by visitors to the Restaurant and the beach. The Operator will set the rates for the Operator Parking Spaces, and will collect all revenues from such parking.
 - 17.5. **Valet Parking.** Operator will provide valet parking for all visitors to the Property who wish to valet park. Operator will collect all valet parking revenues. Operator agrees to comply with the Valet Code of Conduct attached as Exhibit E.
 - 17.6. **Parking for City Events.** Operator will make 40 of the Parking Spaces available for use by the City anytime that the North Beach Facility is used for a City Event (including a private rental by the City). The sponsor or host of the City Event will have the option, but not the obligation, to obtain valet service from the Operator. The City will provide the Operator with at least 30 days advance written notice of City Events, and the City and Operator will develop a parking plan for each City Event.
 - 17.7. **Employee Parking.** Operator will arrange for all of its employees to park off the Property.
 - 17.8. **Bicycle Parking.** Operator will incorporate into the Plans installation of free bicycle racks for visitors to the Property in a location to be agreed upon by City and Operator.
18. **Restaurant Operation.**
 - 18.1. **Full Service Restaurant.** The Restaurant to be constructed and operated by Operator will be a full-service restaurant, providing table service and serving breakfast, lunch, dinner, and alcoholic beverages. The Restaurant shall not be a nationally branded fast food restaurant but may contain a take-out window or other ancillary component where a fast food menu is offered.
 - 18.2. **Commencement of Restaurant Operations.** The Restaurant must be fully operational and open for business within 18 months after the last to occur of the following (subject to extension as contemplated by this Agreement):
 - 18.2.1. Operator receives all necessary permits and approvals for the construction of the Improvements from all Governmental Authorities with jurisdiction of the Property; or
 - 18.2.2. City delivers the Property to Operator clear of any tenants or other obstructions.
 - 18.3. **Operating Hours.** The Restaurant's kitchen operating hours will be from 7:00 a.m. to 10:00 p.m., seven days per week, except when operating hours are modified or the restaurant is closed for refurbishment, as permitted by this Agreement. The Restaurant kitchen must be operating during these hours. The Restaurant may be closed on certain holidays, if requested by Operator and

approved by the City Manager.

- 18.4. **Alcoholic Beverages.** Operator is responsible for obtaining all required licenses for the sale of alcohol in the Restaurant, and will adhere to all Governmental Requirements applicable to the sale of alcohol. The parties understand that Operator seeks to provide alcohol and food service to the sandy beach area covered by its chair rental concession. The City's Code of Ordinances regulates this activity. The parties understand that the City intends to undertake a review of its regulations to examine how they may affect the Operator's proposed activities, and evaluate whether changes to the Code of Ordinances are desirable.
- 18.5. **Capacity.** The Restaurant will be designed to provide indoor seating for a minimum of 80 persons, and outdoor seating in the patio area for a minimum of 100 persons.
19. **Restrooms/Changing Rooms.** The public Restrooms/Changing Rooms which are included in the Building must remain open any time the public beach is open.
20. **Beachfront Rental Facility.**
 - 20.1. **Design of Facility.** Operator will design a Beachfront Rental Facility as shown in the Renderings attached as **Exhibit C**, to be located in the area shown on the Preliminary Site Plan attached as **Exhibit B**. The Beachfront Rental Facility will be included in the Plans for the Improvements.
 - 20.2. **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 up to 120 people within an area of the beach designated on the Preliminary Site Plan.
 - 20.3. **Rental Operation.** Operator or its authorized subconcessionaire will rent beach chairs and umbrellas to the public at prices comparable to what is charged at other beaches in Southeast Florida. Operator will follow the rules, regulations and warnings applicable to the City's beach. Operator will place chairs and umbrellas on the beach as they are rented, and will put them away in a secure storage area under the Building every evening and whenever a severe weather warning is in effect.
 - 20.4. **Other Rental Items.** Operator will be permitted to rent paddleboards, canoes, kayaks, snorkels, masks, fins, and other non-motorized equipment from the Beachfront Rental Facility with City's prior written consent.
 - 20.5. **Items for Sale.** Operator will be permitted to sell sunblock, goggles, towels, and other beach-related items from the Beachfront Rental Facility.
21. **Sand Volleyball Courts.**
 - 21.1. **Design of Volleyball Court.** Operator will design one or more Sand Volleyball Courts to be located in the area shown on the Preliminary Site Plan. The Sand Volleyball Court will be included in the Plans for the Project.

- 21.2. **Management of Volleyball Court.** Operator will be responsible for establishing a plan for the use of the Sand Volleyball Court by the public, and for managing and maintaining the Sand Volleyball Court.
- 21.3. **No Volleyball Court Charge.** Operator will not charge for the use of the Sand Volleyball Court.
22. **Landscape Buffer.** Operator will be responsible for designing a creative landscape plan for the Property in order to provide visitors and City residents with a unique and beautiful beach environment. The location of the Landscape Buffer is shown on the Preliminary Site Plan. Where possible, Operator will utilize native species that can survive beachfront conditions. Operator will be responsible for maintaining the Landscape Buffer throughout the Term.
23. **Dune Restoration.** Operator will, subject to the provisions of any applicable permit issued by Governmental Authority, grade the existing sand dunes on the Property and plant appropriate landscaping to stabilize and enhance the dunes.
24. **Maintenance, Operation and Security of Property.**
 - 24.1. **Maintenance Costs.** Operator will be responsible for the payment of all costs and expenses associated with the operation, maintenance, and security of the Property and all Improvements, including, without limitation, the Entry Plaza, Landscape Buffer, Sand Volleyball Court, Lifeguard Towers, and all driveways, walkways, and all landscaping located on the Property.
 - 24.2. **Maintenance Standards.** Operator will maintain all portions of the Property, including all of the Improvements, in good, clean, sanitary, fully operational condition.
 - 24.2.1. Operator expressly acknowledges and agrees that it is very important to the City and its residents that the Restrooms/Changing Room be serviced at least three times per day, or more frequently if necessary to keep them clean, sanitary, and fully operational. The Restrooms must be kept fully stocked with paper towels, toilet paper, and hand soap at all times.
 - 24.3. **Maintenance of Beach.**
 - 24.3.1. Operator will be responsible for maintaining all of the Property lying west of the Erosion Control Line established by the State of Florida, including the Landscape Buffer and the plants that are installed by Operator as part of the Dune Restoration. In addition, Operator will be responsible for all trash removal and similar light maintenance east of the Erosion Control Line.
 - 24.3.2. Operator is responsible for removing from the beach on a daily basis and storing all beach chairs, beach umbrellas, and other equipment that is rented or provided by the Beachfront Rental Facility
 - 24.3.3. Following the initial Dune Restoration, Operator will not be responsible for any replenishment, removal, grading or dredging of sand or similar heavy earthwork.

- 24.4. **Maintenance of Beach Access.** Throughout the Term, Operator must preserve and maintain the 20-foot public beach access way described in the Beach Access Agreement attached as **Exhibit F**, and any alternative access to the sandy beach which may be provided by City under the Beach Access Agreement
- 24.5. **Maintenance Before And After Severe Weather.** If a severe weather event is predicted, such as a storm, hurricane, tornado, Operator will be responsible for securing all portions of the Property (including the portion of the beach lying west of the Erosion Control Line) prior to the anticipated weather event, and for cleaning up the Property after the weather event, including the removal of sand and other debris from the Restrooms/Changing Rooms and other Improvements.
- 24.6. **Security of Improvements.** Operator will be responsible for installing and maintaining appropriate security systems required to protect the Property.
- 24.6.1. In addition to any security systems which Operator may choose to install, Operator will be required to purchase, install (in Property locations designated by City) and maintain digital security cameras approved by the City and compatible with the City's existing security camera system.
- 24.6.2. Operator will include as part of the Design Plans the design of its own security systems as well as the locations for installation of the security cameras required by the City.

25. **Year-round Continuous Operation.**

- 25.1. **Restaurant Operation.** Operator agrees that the Restaurant will operate 365 days per year, except as follows: After the restaurant has commenced operations, if Operator observes that public demand and, therefore, gross revenue from Restaurant is very low during certain hours or certain days of the week, Operator may adjust the Restaurant operations in one or more of the following ways: (a) adjust the Restaurant hours by closing between meals, (b) reduce the number of meals served daily (i.e., eliminate breakfast, lunch or dinner), or (c) close the Restaurant for up to two weekdays per week ("Restaurant Operational Change"). Operator shall provide written notice to the City Manager of a proposed Restaurant Operational Change at least 14 calendar days prior to implementing the operational change. In addition, Operator may close the Restaurant if closing or evacuation of the Property is required because of dangerous weather conditions or in the case of a closing previously approved by City to allow Operator to make Changes to the Improvements. Operator's failure to operate the Restaurant as required by this Section for a period of 10 consecutive days without written consent of the City Manager will be an Event of Default under this agreement.
- 25.2. **Beachfront Rental Facility Operation.** Operator agrees that the Beachfront Rental Facility will operate 365 days per year, except that Operator may close the facility if closing or evacuation of the Property is required because of dangerous weather conditions or in the case of a closing previously approved by City to allow Operator to make Changes to the Improvements. Operator's failure to operate the Beachfront Rental Facility for a period of 10 consecutive days without

the prior written consent of the City will be an Event of Default under this Agreement

26. **Use of Property.**

- 26.1. **Permitted Uses.** Operator agrees to use the Property only for the uses expressly permitted by this Agreement ("Permitted Uses") and for no other use without the prior written consent of the City, which consent may be withheld by City in its sole discretion.
- 26.2. **Special Events.** Operator will have the right to hold special events at the Property subject to Operator's compliance with City's standard approval process for special events.
- 26.3. **Signage.** Operator will be permitted to install one sign at the base of the island along Ocean Drive, and one sign by the outdoor patio area of the Restaurant, at Operator's expense, subject to all applicable Governmental Requirements. Operator must submit the design of both signs to the City Manager for review and approval. Submission of the signs to the City Manager will be prior to and in addition to any submissions required for the permitting of the signs. Operator will be responsible for maintaining its signage in good condition and repair during the Term, for removal of its signs at the end of the Term, and for repair of any damage caused by removal of the signs, if necessary. City reserves the right to remove, at Operator's expense, any unapproved signage, without notice to Operator.
- 26.4. **Advertising.** Operator will not advertise the business of Operator conducted on the Property in any manner that is offensive, obscene, unlawful, misleading, libelous or fraudulent; that glamorizes or otherwise promotes violence or tobacco use or contains nudity; that is political in nature or contains political messages; or that is reasonably determined not to be in good taste. If City finds any of Operator's advertising to be objectionable, City and Operator will consult about the advertising to which City objects. If City continues to object following consultation with the Operator, Operator must remove the objectionable advertising.
- 26.5. **Use of City Seal or Park Name.** Operator will not use the name of the City, the name "North Beach Park," or the City seal, in any advertising or publications, including menus, without City's prior written approval.
- 26.6. **No Sales of Articles.** Operator will not, except with City's prior written approval, exhibit, sell or offer for sale on the Property any items other than items connected with the uses of the Property contemplated by this Agreement.
- 26.7. **Compliance with Governmental Requirements.** Operator will comply with all Governmental Requirements in the use and operation of the Property. Operator will not use or occupy the Property in any manner that would interfere with the use of the Property as a public facility.
- 26.8. **No Nuisance; No Waste; Control of Noise.** Operator will not commit or permit any waste, odor, noise, nuisance, or any activity which violates any Governmental Requirement or which disturbs the quiet enjoyment of visitors to the Property.

Operator will be responsible for monitoring and controlling the level of noise coming from the Restaurant, so that it does not disturb visitors to the beach or owners of adjacent properties.

- 26.9. **No Hazardous Materials.** Operator will not permit flammable materials such as gasoline, kerosene, naphtha, benzene, explosives or other articles, goods or merchandise of an intrinsically hazardous or dangerous nature to be brought onto the Property, unless such materials are customarily used or required in connection with the Permitted Uses.
- 26.10. **No Fumes.** Operator will not permit any odors, acids, vapors or other gases or materials to be discharged from any of the Improvements except for such smoke or fumes as may customarily result from operation of the Restaurant.
- 26.11. **No Obstructions.** Operator will use reasonable efforts not to obstruct any sidewalk, passageway, entrance, exit, stairway, lobby, corridor, hall, or other area on the Property.
- 26.12. **Doors and Locks.** Operator will install locks on the doors of the Building, and will provide the City with at least two copies of each key for each lock in the Building. Operator will keep doors, windows, and other means of entry to the Building secure during non-operating hours. Upon termination of this Agreement, Operator will surrender to City all keys to the Building.
- 26.13. **Animals.** No dog or other animal of any kind (except for service animals for the use of disabled persons) shall be permitted in the Building or any part thereof.
- 26.14. **Protection of Sea Turtles.** Operator and all of its authorized sub-concessionaires will comply with all Governmental Requirements pertaining to the protection of sea turtles, including but not limited to:
 - 26.14.1. Installation of appropriate lighting that does not interfere with the nesting activities of sea turtles and their hatchlings, and
 - 26.14.2. Respect for all barriers which identify and protect turtle nesting areas.
- 26.15. **Rules and Regulations.** City may from time to time adopt reasonable rules and regulations pertaining to the use and operation of the Improvements.
27. **Utilities.** During the Term of this Agreement, Operator will pay for all utilities serving the Improvements, including but not limited to water, sewer, gas, electricity, and telephone charges. Operator will pay all utility charges on a timely basis. City will pay any utility connection or impact fees applicable to the Property.
28. **Taxes and Assessments.** During the Term, Operator will be responsible for any and all taxes or assessments levied against the 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.

29. **Operating Fee.**

29.1. **Scaled Operating Fee.** 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 monthly Minimum 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 and continuing through the end of Year 5 of the Term, Operator shall pay 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. In Years 6 through 11 of the Term, Operator shall pay 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. In Years 12 through 30, Operator shall pay City the greater of (a) a Minimum Operating Fee of \$9,000.00 per month, or (b) 3.5% of Gross Revenue per year.

29.2. **Monthly Payments.** Operator shall pay the Minimum Operating Fee to City in advance on or before the first day of each month during the Term, with the first payment due on the first day of the month following the month in which the Improvements are open to the public. Monthly payments will be paid to City at the address set forth for notice in this Agreement, unless the City instructs Operator in writing to send the monthly payments to an alternate address.

29.3. **Gross Revenue.** 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 all revenue generated by the Restaurant, Beachfront Rental Facility, the Parking Spaces, and any events which may be held on 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 for remittance to the State of Florida, Division of Revenue.

29.4. **Annual Payments.** Operator must calculate its Gross Revenue and report it to City within 60 days after the end of each calendar year during the Term. If the percentage of Gross Revenue due City for the calendar year exceeds the total Minimum Operating Fee paid to City during the calendar year, Operator will remit the additional Operating Fee owed to City within 60 days after the end of the calendar year.

29.5. **Operator's Records and Gross Revenue Reporting Requirement.** Operator's annual Gross Revenue reports will be audited every five years by a certified public accountant selected by City. 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 five-year 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

29.6. **Taxes on Operating Fee.** It is the understanding of the parties that the payments by the Operator to the City of the Operating Fee, including the Minimum Operating Fee and the Percentage Fee, is exempt from sales and use taxes pursuant to Section 212.031(1)(a)10, Florida Statutes. If, however, it is subsequently determined that any taxes are due in connection with the payment of the Operating Fee, or if the payment of the Operating Fee is taxable in the future, Operator will be responsible for the payment of any taxes assessed in connection with the payments.

30. **City Option to Buy Out Operator.** In Year 15 of the Term, City will have a one-time option to buy out the Operator, to be exercised as follows:

30.1. **Notice to Operator.** If City desires to exercise its buy-out option, City must notify Operator of the exercise of its option within the first 90 days of Year 15 of the Term. If the City fails to give notice of its intent to exercise the buy-out option during the designated time period, City will be deemed to have waived and abandoned its buy-out option.

30.2. **Valuation.** City and Operator will agree upon a neutral third party to place a value on Operator's business under this Agreement. If the parties cannot agree on selection of the neutral third party within 45 days following City's notice to Operator, City and Operator will each select and appoint an M.A.I. appraiser, which appraisers will confer to attempt to reach agreement with regard to value. If the two appraisers can not reach agreement regarding value within an additional 45 days, the appraisers will jointly select a third appraiser, who will issue a report of value within 30 days of his or her selection. Once the value is determined in accordance with the foregoing process, City will have the option to buy out the Operator for a price equal to the value of the business.

30.3. **Alternative Proposals.** After completion of the valuation report, the City and the Operator will meet to review the finances and operation of the Improvements. Operator and City may propose modifications to this Agreement, including, but not limited to changes to the Permitted Uses to terminate certain unprofitable uses or propose new uses, modification of the Minimum Operating Fee or the Percentage Fee, additional capital investment, and other terms. City has the unilateral right to reject all proposed changes

to this Agreement and to proceed with the buy-out of the Operator under this Agreement at the previously determined price.

31. **Other Payments Due Under this Agreement.** Upon completion of construction of the Building described in this Agreement, and prior to the issuance of a certificate of occupancy for the Building, Operator will contribute the sum of \$200,000.00 to the City. City will apply this sum towards the maintenance of the City's parks, including but not limited to North Beach Park.
32. **Long Term Building Maintenance.**
 - 32.1. **Periodic Inspections.** During the 5th, 10th and 15th year of the Term (and in the 20th and 25th years of the Term if the City does not exercise its option to buy out the Operator as described below), City and Operator will jointly select 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, HVAC, 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 to be maintained by Operator ("Operator Areas"). Representatives of the Operator and the City must receive notice of the Periodic Inspection and will be entitled to attend the inspection.
 - 32.2. **Inspection Report.** Following the Periodic Inspection, the engineer will prepare a report ("Inspection Report") that includes a summary of its findings and makes recommendations for repair, refurbishment or replacement. The Inspection Report will identify the Building Systems and Operator Areas requiring immediate repair, replacement or refurbishment, and will also identify and provide estimates for items which will require repair, replacement or refurbishment in the next five years. Operator shall be responsible to pay for the Inspection Report.
 - 32.3. **Inspection Standard.** The engineer, in making recommendations for repair, refurbishment or replacement of the Building Systems and the Operator Areas, will use the following standard: identify work that is necessary for the Property to be placed in the condition of a properly-maintained building in a similar beachfront location, in similar use, of the same age and constructed of similar materials and finishes.
 - 32.4. **Repairs and Reserve Account.** Operator will be required to make the repairs, refurbishments and replacements identified in the Inspection Report as needing to be done currently. In addition, Operator will establish an interest-bearing reserve account ("Reserve Account") at a commercial bank doing business in Hallandale Beach for those items which will need to be repaired, replaced or refurbished within the next five years (each item a "Future Repair"), and will deposit into the Reserve Account on an annual basis a prorated amount of the cost of each Future Repair so that the Reserve Account has sufficient funds to cover the estimated cost of each Future Repair as of the year the Inspection Report recommends that the Future Repair be performed. If Operator makes any Future Repairs prior to the time the Inspection Report recommends that they be done, Operator may draw

upon only those funds in the Reserve Account which are allocated to the Future Repairs which Operator has completed, and Operator will be relieved of the obligation to fund the Reserve Account for the completed Future Repairs. Operator must submit evidence of the required funding of the Reserve Account to the City annually no later than January 1 of each year. The City will have the right to audit the Reserve Account annually at the City's cost. If Operator fails to submit evidence by January 10 of each year that it has made the appropriate deposit into the Reserve Account for the prior year, the following shall apply:

32.4.1. Operator will be required to pay a penalty to City of \$100 for each day that evidence of the Capital Repair Payment is delayed past January 10; and

32.4.2. The City will have the right to audit the Capital Account at the Operator's expense.

32.5. **Establishment of Capital Account.** Prior to January 1 following the opening of the Restaurant, Operator will establish an interest-bearing capital repair account ("Capital Account") at a commercial bank doing business in Hallandale Beach, and will deposit into the Capital Account a payment of \$10,000 ("Capital Repair Payment") which if drawn upon by Operator during each year of the Term will be replenished no later than January 1 of each successive year of the Term. Operator must submit evidence of the prior year's funding of the Capital Account to the City annually no later than January 1 of each year. The City will have the right to audit the Capital Account annually at the City's cost. If Operator fails to submit evidence by January 10 of each year that it has made the Capital Repair Payment for the prior year, the following shall apply:

32.5.1. Operator will be required to pay a penalty to City of \$100 for each day that evidence of the Capital Repair Payment is delayed past January 10; and

32.5.2. The City will have the right to audit the Capital Account at the Operator's expense.

32.6. **Use of Capital Account Funds.** Operator may use funds from the Capital Account to make the repairs, replacements and refurbishments required by the Inspection Report and for ordinary maintenance and repair of the Improvements as long as the balance of the Capital Account is replenished annually as provided above.

33. **Return of Property Upon Termination.** Upon the termination of this Agreement, whether by expiration of the Term or as the result of a buyout by City in accordance with the Agreement, Operator will deliver the Property and all Improvements (including all Capital Improvements) to City in good, clean, and fully functional condition.

34. **Assignment of the Agreement.**

34.1. **No Assignment Prior to Completion.** Prior to completion of the Improvements, Operator may not assign this Agreement to any unrelated entity without the prior written consent of the City Commission, which consent may be withheld in City's sole discretion.

- 34.2. **Assignment After Completion.** After completion of the Improvements, Operator may assign this Agreement to an unrelated entity with the prior written consent of the City Commission, which consent may not be unreasonably withheld, conditioned or delayed as long as Operator provides City with sufficient information to demonstrate to the City's reasonable satisfaction that the proposed assignee has the financial capacity and experience to operate the Improvements consistent with this Agreement. Operator acknowledges that City has entered into this Agreement with Operator because of Operator's experience, expertise and reputation, and that Operator's involvement in the Project is one of the primary reasons the City is entering into this Agreement. City's review of the qualifications of the proposed assignee may include, without limitation, the following:
- 34.2.1. **Restaurant Experience.** The proposed assignee must possess restaurant operation experience in the State of Florida equal to or better than the experience of the Operator.
 - 34.2.2. **Financial Resources.** The proposed assignee must submit three years of externally reviewed financial statements along with a letter from a Florida bank or other financial institution doing business in Florida indicating the credit worthiness of the assignee.
 - 34.2.3. **Character and Reputation.** The proposed assignee must submit three letters of reference from unrelated third parties regarding assignee's character and business reputation in the community.
 - 34.2.4. **No Violations.** The proposed assignee must have no outstanding material violation of a Governmental Requirement against it or against any property owned or managed by the proposed assignee in the State of Florida.
 - 34.2.5. **No Convictions or Indictments.** The proposed assignee must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction
 - 34.2.6. **No Scrutinized Companies.** In addition to being in compliance with all applicable Governmental Requirements, the assignee cannot be a "scrutinized company" as defined in Section 215.473 of the Florida Statutes, or be prohibited by Section 287.135 of the Florida Statutes from contracting with a local government, as those sections may be amended.
- 34.3. **Procedure for Assignments Requiring City's Consent.** For any assignment of this Agreement requiring City's consent, Operator must send City a written application requesting approval of the assignment and submitting all information necessary for City to evaluate the proposed assignee and the assignment. The proposed assignment will be presented to the City Commission for review and approval within 60 days after City

receives the assignment application. The City Commission may reject an assignee as long as it provides reasonable justification for why the proposed assignee is not acceptable to the City. Any consent to an assignment will not waive any of the City's rights to review and approve a subsequent assignment.

- 34.4. **Assignment Conditions.** If Operator assigns this Agreement to a related entity, or if an assignment of this Agreement to an unrelated entity is approved by the City, in order for the assignment to be effective, the following conditions must be satisfied:
 - 34.4.1. **Entire Agreement.** The assignment must be an assignment of the entire Agreement;
 - 34.4.2. **Proposed Documentation to City.** City must be given true and correct copies of the proposed assignment documents and other agreements between the parties prior to execution;
 - 34.4.3. **Assumption of Obligations by Assignee.** City must be provided with a written instrument in which the assignee, for itself and its successors and assigns, and for the benefit of the City, expressly assumes all of the obligations of Operator under this Agreement and agrees to be subject to all conditions and restrictions to which Operator is subject; and
 - 34.4.4. **Effectuation of Assignments.** No assignment will be effective until executed copies of the assignment documents and other agreements between the parties are delivered to the City.
- 34.5. **Pledge or Collateral Assignment of Agreement.** Operator is not permitted to pledge, collaterally assign, or otherwise encumber this Agreement for any purpose unless City's right to receive all payments due under this Agreement, including the Operating Fee, remains superior to the rights of any third party.
35. **Subcontracts.** Operator has the right to subcontract certain of its operation and maintenance obligations under this Agreement, subject to the following conditions:
 - 35.1. **Written Notice of Subcontracts.** Operator must provide written notice to the City Manager at least five days prior to Operator entering into any subcontract with an unrelated entity. The written notice must include a copy of the subcontract and contact information for the subcontractor.
 - 35.2. **Subcontractor Requirements.** Any subcontractor hired by Operator for the maintenance or operation of the Improvements must be a legal entity, validly formed and in good standing in the State of Florida; must possess all licenses required by the applicable Governmental Authorities; and must carry all insurance required by the applicable Governmental Authorities or be provided same by Operator.
 - 35.3. **City Issues with Subcontractors.** If City has reasonable concerns about the performance of any subcontractor retained by Operator (whether as a result

of complaints from the public, adverse publicity about the subcontractor, or City's observations), City will notify Operator of its concerns, and the parties will confer and make efforts to address the City's concerns.

- 35.4. **Subcontract for Restaurant Operation.** Any subcontract for the operation of the Restaurant will be treated as an assignment of this Agreement and must comply with the requirements applicable to assignment of this Agreement.
- 35.5. **Use of Local Businesses as Subcontractors.** In order to promote job growth in the City, Operator will use best efforts to contract for goods and services with companies that are owned by City residents or located within the City, where such companies are otherwise qualified and competitive. Operator will submit to the City on or before January 1 of each year throughout the Term a Local Business Utilization Report in the form attached as **Exhibit G**, setting forth the applicable data regarding contracts entered into with local companies under this paragraph.
36. **Indemnification by Operator.** Operator agrees to indemnify, defend (with counsel approved by the City) and hold harmless City from and against any and all claims, demands, fines, lawsuits, actions, proceedings, orders, decrees, judgments, costs, and expenses of any kind or nature, including reasonable attorneys' fees, resulting directly or indirectly from, out of, or in connection with the use or occupancy of the Property by Operator, its employees, agents, contractors, subcontractors, guests or invitees. This indemnification will not apply to matters caused by the gross negligence or willful misconduct of the City or its employees.
- 36.1. **Indemnification Includes Losses from Construction.** Operator's indemnity under this Agreement includes indemnification of City against any losses resulting from the construction of the Improvements and any subsequent renovation or alteration of the Improvements by the Operator.
- 36.2. **Indemnification from General Contractor.** Operator covenants and agrees that any contracts for work entered into by Operator and a general contractor or other contractor in privity with Operator will include the indemnities required by this Agreement from the general contractor or other contractor in privity with Operator in favor of the City.
- 36.3. **Operator Liability Not Limited By Insurance.** The liability of Operator under this Agreement will not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Agreement.
- 36.4. **City's Tort Liability.** Any tort liability to which the City is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. The City expressly does not waive any of its rights and immunities under applicable law.

37. **Insurance.** Prior to any activity by Operator on the Property, and at all times during the Term, Operator will be responsible for procuring and maintaining the insurance required by this Agreement, at Operator's sole cost and expense. In addition, Operator will ensure that its general contractor maintains the applicable insurance coverages set forth in this Agreement, unless waived or modified by the City's Risk Management Director.

37.1. General Insurance Provisions.

- 37.1.1. All policies must be executable in the State.
- 37.1.2. All insurers other than Citizens Property Insurance Corporation and the National Flood Insurance Program must maintain an AM Best rating of A or better.
- 37.1.3. Operator's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.
- 37.1.4. The Operator and its general contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies.
- 37.1.5. The City will be included as an "Additional Insured" on all Commercial General Liability and Umbrella Liability policies. The City will also be named as "Additional Insured" or alternatively as a "Loss Payee" on all of Operator's property insurance policies.
- 37.1.6. Operator will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy
- 37.1.7. Operator's insurance coverages will be primary to any insurance coverage provided by the City, State, or federal government.

37.2. **Evidence of Insurance.** Prior to the Effective Date, Operator must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request access to review a certified copy of any or all insurance policies required by this Agreement. Along with each certificate of insurance, Operator must deliver to City a letter from the agent or broker placing the insurance, certifying that the coverage provided meets the coverage required under this Agreement.

37.3. **Cancellations and Renewals.** All insurance policies must provide for a minimum of 30 days notification to the Operator and City prior to cancellation or non-renewal, and a minimum of 10 days notification for non-payment of premium

37.4. **Required Coverages.** At a minimum, Operator will procure and maintain the following insurance coverage:

37.4.1. **Commercial General Liability Insurance.** During the Term of the Agreement, Operator must maintain Commercial General Liability

Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Blanket Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.

37.4.2. **All Risk Property Insurance.** Operator must obtain Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Operator and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City, but in no case less than \$2,000,000.00 to the extent available. If such levels of coverage are not available, Operator must carry the full amounts up to \$2,000,000 (currently, \$1,000,000 for Windstorm and \$500,000 for Flood.) To the extent available, coverage will extend to furniture, fixtures, equipment and other personal property associated with the Improvements.

(a) The policy must provide a "Replacement Code" and "100% Co-Insurance" clause as respects the Improvements. The policy will also provide "Law and Ordinance" coverage, while giving deference to the age of the Improvements, with limits acceptable to both City and Operator, if available.

37.4.3. **Business Interruption Insurance.** During the term of this Agreement, Operator is required to maintain Business Interruption coverage for losses resulting from perils other than wind and flood (or either of them) utilizing a Gross Earnings Value form with limits equal to 12 months of Operator's projected profits associated with the Property. If Business Interruption coverage for losses from wind or flood becomes available on a commercially reasonable basis at a reasonable premium cost, City may require Operator to procure such coverage commencing 90 days after a determination that such coverage is reasonably available. The City and Operator will jointly review Operator's projected profits periodically, and Operator will be responsible for adjusting the limits of the policy based on this review and City's request for adjustment.

37.4.4. **Workers' Compensation and Employers' Liability.** Operator must maintain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute §440.

37.4.5. **Business Automobile Liability Insurance.** Operator must maintain Business Automobile Liability Insurance in an amount of not less than \$1,000,000 combined single limit. Coverage must be on a form no more restrictive than the latest edition of the Business Automobile Liability

Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include owned, non-owned, and hired vehicles, as may be applicable.

37.4.6. **Liquor Liability Policy.** If Operator will be selling alcohol in the Restaurant, Operator must obtain a Liquor Liability Policy in an amount of not less than, \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

37.5. **Coverage Required During Construction.**

37.5.1. **Builders Risk Insurance.** During all construction activities conducted on the Property, Operator must carry Builders Risk insurance, including the perils of Windstorm and Flood, with minimum limits equal to the "Completed Value" of the Improvements being erected or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Operator must carry the full amount available (currently \$1,000,000 for Windstorm and \$500,000 for Flood).

37.5.2. **Professional Liability Insurance.** Operator must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to the construction activities is obtained prior to the commencement of any construction activities on the Property, including without limitation, the Work. If coverage is provided on a "Claims Made" basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$3,000,000 in the aggregate annually.

37.6. **Premiums and Renewals.** Operator must pay all premiums for the insurance required by this Agreement as they become due. Operator must renew or replace each policy prior to the policy expiration date, and deliver to the City evidence of payment of the full premium for the policy. Operator will promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.

37.7. **Adequacy of Insurance Coverage.** The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Agreement. The City may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Property and Improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Operator has the right to contest the request for a change in insurance, but must be commercially reasonable.

37.8. **Appraisal.** The City will require a Replacement Cost Value appraisal from a licensed and certified appraiser at five-year intervals including bi-annual updates. The selection and expense of the appraiser will be the sole responsibility of the Operator. Operator will provide a copy of the full report to City upon completion.

- 37.9. **City May Procure Insurance if Operator Fails To Do So.** If Operator refuses, neglects or fails to secure and maintain in full force and effect any insurance required by this Agreement, the City, at its option, may procure or renew such insurance. All sums paid by the City for insurance will be immediately payable by Operator to the City together with interest at the highest rate allowed by law from the date the sums were paid by the City to the date of reimbursement by Operator. Operator must pay to City the amounts paid by the City for insurance, together with accrued interest, within ten days after notice from City.
38. **Loss or Damage to Improvements.** Loss or damage to the Improvements by fire or other casualty at any time will not operate to terminate this Agreement or to relieve or discharge Operator from the performance and fulfillment of Operator's obligations under this Agreement, including without limitation, the payment of the Operating Fee, except as set forth below. The City's acceptance or approval of any insurance agreement will not relieve or be construed to relieve Operator from any liability, duty or obligation set forth in this Agreement.
- 38.1. **Proof of Loss.** If all or any part of the Improvements (including without limitation, any personal property furnished or installed in the Improvements) is damaged or destroyed, Operator must promptly make proof of loss in accordance with the terms of the insurance policies and must proceed promptly to collect all valid claims which may have arisen against insurers or others based upon the damage or destruction. Operator is required to give City written notice within 48 hours of any material damage or destruction. For purposes of this Section, "material damage or destruction" means either (a) any casualty or other loss with a repair cost in excess of \$50,000 (based on commercially reasonable standards) or, (b) any casualty or other loss which will have a material adverse effect on the day to day operations of the Improvements, regardless of the repair cost.
- 38.2. **Payment of Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:
- 38.2.1. Directly to Operator, if the total recovery is equal to or less than \$100,000 (as adjusted for inflation over the Term), except that if an Operator Event of Default has occurred and is continuing under the Agreement, the insurance proceeds will be paid over to the City, which will apply the proceeds first to curing the Event of Default, and then to the rebuilding, replacing and repairing of the Improvements. Any remaining proceeds shall be paid over to Operator.
- 38.2.2. To an Insurance Trustee, if the total recovery is in excess of \$100,000 (as adjusted for inflation over the Term), with the proceeds to be held by the Insurance Trustee for disbursement to Operator pending establishment of reconstruction, repair or replacement costs. The Insurance Trustee will be a commercial bank or trust company designated by Operator and approved by the City, whose approval will not be unreasonably withheld or delayed.

- 38.3. **Disposition of Insurance Proceeds for Reconstruction.**
- 38.3.1. All insurance proceeds must be applied to the reconstruction, repair or replacement of the Improvements and the personal property of Operator contained in the Improvements (the "Reconstruction Work"). The Improvements and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.
- 38.3.2. The Insurance Trustee will disburse to the Operator the amount of insurance proceeds that are required for the Reconstruction Work. Operator will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and Operator.
- 38.3.3. If the City and Operator do not agree on the schedule of values, they will arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Miami, Florida.
- 38.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to Operator.
- 38.4. **Covenant for Commencement and Completion of Reconstruction.** Operator covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three months after the insurance proceeds for the destroyed or damaged Improvements have been received by Operator or the Insurance Trustee, and to fully complete the Reconstruction Work as expeditiously as possible under the circumstances, but in no event later than 24 months after receipt of insurance proceeds by Operator or the Insurance Trustee, or denial of insurance proceeds by the applicable insurance company. With respect to any Reconstruction Work, Operator must comply with all of the provisions of this Agreement regarding Changes to the Improvements.
- 38.5. **Inadequacy of Insurance Proceeds.** Operator's obligation under this Agreement to timely commence and complete restoration of any damaged or destroyed Improvements is absolute, regardless of whether any insurance proceeds received are adequate to pay for the restoration.
- 38.6. **Extension of Term After Casualty.** If the Building must be closed after a casualty, and Operator is unable to carry on any of its business, the Term of the Agreement will be extended for the period of time that the Building is closed and Operator is not operating at all. The Term will be extended for the number of days between the date of the casualty and the date of issuance of a Certificate of Occupancy for the reconstructed Improvements.
- 38.7. **Payment of Minimum Operating Fee After Casualty.**
- 38.7.1. Immediately after the occurrence of a casualty, Operator will provide to City a status report as to the anticipated payments under Operator's Business Interruption Insurance. Operator will continue to advise City as to the status of the payments.
- 38.7.2. If the Improvements must be closed after a casualty and the proceeds

of Operator's Business Interruption Insurance are sufficient to cover the Minimum Operating Payments due during the reconstruction of the Improvements, Operator will be required to pay the full amount of the payments due under this Agreement.

- 38.7.3. If Operator is able to continue operating during the period of repair or reconstruction after a casualty, but the Property is not fully operational, and the proceeds of Operator's Business Interruption Insurance are not sufficient to cover the Minimum Operating Payments due under this Agreement, during the period of time when Operator is only partially operational, Operator will not be required to pay the Minimum Operating Payment but will continue to pay to City the Percentage Fee then in effect based on the Gross Revenue generated during the period of partial operation.
- 38.7.4. If the Improvements must be closed after a casualty, and there are insufficient proceeds of Business Interruption Insurance to cover the Minimum Operating Payments due, the payments will be abated for the period of time that the Improvements are closed, up to a maximum period of 24 months after receipt of insurance proceeds by Operator or the Insurance Trustee, or denial of insurance proceeds by the applicable insurance company.

39. Condemnation.

39.1. Complete Condemnation.

- 39.1.1. If the entire Property is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu of eminent domain (in each case, a "Taking"), or if the Taking is for a portion of the Property such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis (subject, however, to the rights of the Insurance Trustee hereunder), for the operation of the Improvements, then this Agreement will cease and terminate as of the date on which the condemning authority takes possession.
- 39.1.2. If this Agreement is so terminated, the entire award for the Property or the portion taken will be apportioned between the City and the Operator as of the day immediately prior to the vesting of title in the condemnor, as follows:
 - 39.1.2.1. First, but only if the City is not the authority condemning the Property, the City will receive the then fair market value of the portion of the Property so taken or condemned considered as vacant, unimproved, and unencumbered, together with the residual value of the Improvements as of the end of the Term;
 - 39.1.2.2. Second, Operator will be entitled to the then fair market value of its interest under this Agreement and in the Improvements, less the residual value of the Improvements

allocated to the City, together with any and all business damages suffered by Operator and any relocation and reestablishment expenses to which Operator is entitled; and

- 39.1.2.3. The City and Operator shall each receive one-half of any remaining balance of the award, except that the Operator will receive the entire remaining balance of the award if the City is the authority condemning the Project.

39.2. Partial Condemnation

39.2.1. If there is a Taking of a portion of the Property, and the remaining portion can be adapted and used to operate the Improvements in the same manner it was previously operated, on a commercially reasonable basis, then this Agreement shall continue in full force and effect, and the award shall be apportioned as follows:

- 39.2.1.1. First, to the Operator to the extent required for restoration of the Improvements;

- 39.2.1.2. Second, but only if the City is not the authority condemning the Improvements, to the City the portion of the award allocated to the fair market value of the Property which is taken, considered as vacant and unimproved;

- 39.2.1.3. Third, to the Operator, the amount by which the value of Operator's interest in the Improvements and the Property were diminished by the taking or condemnation.

- 39.2.1.4. The City and Operator will each receive one-half of any remaining balance of the award, except that the Operator will receive the entire remaining balance of the award if the City is the authority condemning the Property.

39.3. Restoration After Condemnation. If this Agreement does not terminate due to a Taking, then:

- 39.3.1. Operator will be required to restore the remaining portion of the Improvements with due diligence in accordance with the provisions in this Agreement pertaining to Changes, to the extent of any award received;

- 39.3.2. The entire proceeds of the award will be deposited and treated in the same manner as insurance proceeds are to be treated under this Agreement until the restoration has been completed and Operator and the City have received their respective shares of any remaining balance of the award;

- 39.3.3. If the award is insufficient to pay for the condemnation, Operator will be responsible for the remaining cost and expense of restoring the remaining portion of the Improvements; and

- 39.3.4. The Operating Fee due under the Agreement will be adjusted

proportionately based upon the proportion that the amount received by the City with respect to the portion of the Property taken bears to the total fair market value of the overall Property at that time.

- 39.4. **Temporary Taking.** If there is a Taking of the temporary use (but not title) of all or any part of the Property, this Agreement will remain in full force and effect, but only to the extent it is commercially reasonable. There will be no abatement of any amount or sum payable by or other obligation of Operator under the Agreement. Operator will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term, and the City will receive the balance of the award.
- 39.5. **Determinations.** If the City and the Operator cannot reach agreement regarding any issue arising out of a Taking, the parties will seek a judicial determination by the court with jurisdiction over the Taking. For purposes of the Agreement provisions pertaining to a Taking, any personal property taken or condemned will be deemed to be a part of the Improvements, and the provisions of the Agreement regarding Takings will be applicable to such property.
- 39.6. **Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding will be paid in accordance with the law governing condemnation proceedings, as determined by the court, if appropriate.
40. **Operator Events of Default.** Each of the following occurrences constitutes a default ("Event of Default") by Operator under the Agreement:
 - 40.1. **Failure to Pay.** Operator's failure to pay any Operating Fee or other payment due under this Agreement within 10 days after the due date.
 - 40.2. **Failure to Perform.** Operator's failure to perform any obligation or fulfill any covenant or agreement set forth in this Agreement after receipt of notice from the City of the non-performance and expiration of a 30-day period of time to cure such non-performance. If such non-performance cannot be cured within the 30-day period, Operator will not be deemed in default as long as Operator has commenced and is diligently proceeding in good faith to cure the non-performance, and the non-performance is cured within a reasonable time after the notice of non-performance.
 - 40.3. **Voluntary Bankruptcy.** Operator (a) is voluntarily adjudicated a bankrupt or insolvent, (b) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property, (c) files a petition seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, (d) makes a general assignment for the benefit of creditors, or (e) admits in writing its inability to pay its debts as they mature.
 - 40.4. **Involuntary Bankruptcy.** If a receiver or trustee is appointed for Operator or for all or any part of its properties without consent and such appointment is not vacated within 60 days, or if a petition is filed against Operator seeking relief,

including reorganization, arrangement or similar relief, under the present bankruptcy code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, and such petition is not dismissed within 60 days after the filing thereof.

- 40.5. **Assignment of Agreement.** The assignment by Operator of this Agreement or any assignment by Operator of its rights or obligations except as expressly permitted in this Agreement.
- 40.6. **Dissolution.** If Operator voluntarily or involuntarily dissolves or liquidates, unless the dissolution or liquidation is part of a transaction specifically approved by City or is otherwise permitted under this Agreement.
41. **City Events of Default.** Each of the following occurrences constitutes an Event of Default by City under the Agreement:
 - 41.1. **Failure to Perform.** City's failure to perform any obligation or fulfill any covenant or agreement set forth in the Agreement after receipt of written notice from Operator of the non-performance and expiration of a 30-day period of time to cure such non-performance. If such performance cannot be cured within the 30-day period, the City shall not be deemed in default as long as the City has commenced and is diligently proceeding in good faith to cure the non-performance, and the non-performance is cured within a reasonable time after the notice of non-performance.
42. **Remedies for Events of Default.** If an Event of Default occurs, either party may seek all legal and equitable remedies available, including, without limitation, cancellation of the Agreement, removal of Operator from the Property, specific performance, injunctive relief, and damages.
 - 42.1. **Termination by City.** In the event of a termination of this Agreement by City after an Event of Default by Operator, Operator will have no further rights under this Agreement. Upon termination, Operator shall immediately cease all operations at the Property, and shall pay in full all amounts due City as set forth in this Agreement through the date of termination. Operator will be liable for all compensatory damages incurred by City in connection with the Event of Default.
 - 42.2. **Termination by Operator.** In the event of a termination of this Agreement by Operator after an Event of Default by City, City shall have no further rights under this Agreement.
 - 42.3. **Remedies Cumulative and Concurrent.** No right, power or remedy of City or Operator provided in this Agreement is intended to be exclusive of any other right, power, or remedy. Each right, power and remedy is cumulative, concurrent and in addition to any other right, power or remedy of either party now or hereafter existing at law or in equity. Either party may pursue its rights, powers and remedies separately, successively, or together against the other party. Failure by either party to exercise any right, power or remedy will not be construed as a waiver or release of such right, power or remedy.

- 42.4. **Waiver, Delay or Omission.** No waiver of any Event of Default extends to or affects any other Event of Default or impairs any party's rights, powers or remedies as to any other Event of Default. No delay or omission by a party to exercise any right, power or remedy may be construed to waive an Event of Default or to constitute acquiescence to an Event of Default.
- 42.5. **Proofs of Claim.** In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of Operator's property by any Governmental Authority, or other judicial proceedings affecting Operator, or any of its properties, City, to the extent permitted by law, may file the necessary proofs of claim or other documents in order to have its claim allowed for any unpaid amounts due City under this Agreement.
43. **Force Majeure.** Neither City nor Operator, as the case may be, will be considered in breach of or in default of any of their respective non-monetary obligations under this Agreement (including, without limitation, the commencement or completion of the Improvements) as a result of an unavoidable delay due to strikes, lockouts, acts of God, archaeological excavation required by law, inability to obtain labor or materials due to governmental restrictions, epidemics, quarantine restrictions, freight embargoes, fire, lightening, riot, war, hurricane, floods, extremely abnormal and excessively inclement weather, or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). Upon the occurrence of a Force Majeure, the applicable time period will be extended for the period of the Force Majeure event.
44. **Notices.** Any notice, demand or other communication required or permitted to be given by the terms of this Agreement must be in writing and must be sent by (a) a recognized overnight delivery service which provides confirmation of delivery; (b) certified or registered mail, return receipt requested; (c) hand-delivery, with a delivery receipt provided to the sender; or (d) facsimile or email, provided that the notice is also sent by one of the three foregoing methods. Notice will be effective upon delivery or refusal of delivery. A party may change its address for notice by sending written notice of the new address in accordance with this provision. The addresses of the parties for the giving of notice are as follows:

If to the City:

City of Hallandale Beach
Attn: City Manager
400 South Federal Highway
Hallandale Beach, FL 33009
Telephone: 954 457 1300
Facsimile: 954 457 1354
Email: rrichton@hallandalebeachfl.gov

With a copy to: City of Hallandale Beach
Attn: City Attorney
400 South Federal Highway
Hallandale Beach, FL 33009
Telephone: 954 457 1325
Facsimile: 954 457 1342
Email: lwhitfield@hallandalebeachfl.gov

With a copy to: City of Hallandale Beach
Attn: Parks and Recreation Director
410 SE Third Street
Hallandale Beach, FL 33009
Telephone: 954 457 1452
Facsimile: 954 457 1467
Email: cschanz@hallandalebeachfl.gov

If to Operator: PRH Beachwalk Beachclub, LLC
Attn: Mr. Eric Fordin and
Mr. Carlos Rosso
315 South Biscayne Blvd, 4th Floor
Miami, FL 33132
Telephone: 305 533-0001
Facsimile: 305 513-5800
Email: efordin@relatedgroup.com and
crosso@relatedgroup.com

With a copy to: Greenberg Traurig, P.A.
Attn: Debbie M. Orshefsky, Esq.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, FL 33301
Telephone: 954 768 8234
Facsimile: 954 765-1477
Email: orshefskyd@gtlaw.com

45. **Miscellaneous Provisions.**

- 45.1. **Amendment.** No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by both parties to this Agreement.
- 45.2. **Attorneys' Fees.** If any litigation arises out of this Agreement, the prevailing party is entitled to recover its attorneys' fees and costs at both the trial and appellate levels.
- 45.3. **Construction of Agreement.** Both parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The parties acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments, and have sought and received whatever competent

legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations set forth in this Agreement.

- 45.4. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.
- 45.5. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding among the parties relating to the subject matter of the Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the parties, concerning the matters addressed herein.
- 45.6. **Governing Law; Venue; Waiver of Jury Trial.** This Agreement will be interpreted and enforced in accordance with Florida law. Venue for any litigation arising out of this Agreement will be Broward County, Florida. The parties hereby voluntarily waive any right to a trial by jury in any litigation which may arise out of or in connection with this Agreement or the performance hereof.
- 45.7. **No Personal Liability of City.** Operator acknowledges that this Agreement is entered into by a municipal corporation. Operator agrees that no individual elected official, employee, agent, or representative of City will have any personal liability under this Agreement or any document executed in connection with this Agreement.
- 45.8. **No Third Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
- 45.9. **Section and Paragraph Headings.** The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.
- 45.10. **Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Agreement, or the application of any provisions of this Agreement, to any person or circumstance is for any reason and to any extent, invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties contained herein, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected, and will be enforced to the fullest extent permitted by law.
- 45.11. **Signatories' Authority.** The individuals signing this Agreement represent and warrant that they have the authority and approval to execute this Agreement on behalf of the party they are identified as representing below. The undersigned representatives represent that they are agents of their respective parties duly authorized to execute contracts generally and this Agreement in particular.

45.12. **Successors and Assigns.** This Agreement and all obligations of the parties under this Agreement will be binding upon and will inure to the benefit of the City and the Operator, and their permitted legal representatives, successors, and assigns.

The parties have signed this Agreement on the dates set forth after their respective signatures.

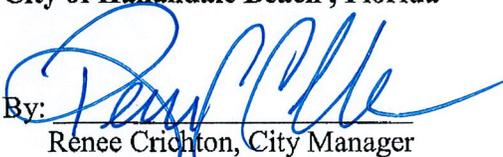
[SIGNATURE BLOCKS AND ACKNOWLEDGMENTS ON FOLLOWING PAGES]

CITY:

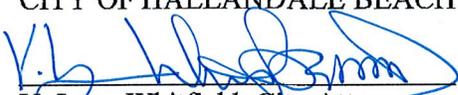
City of Hallandale Beach , Florida

ATTEST:


Sheena James, City Clerk

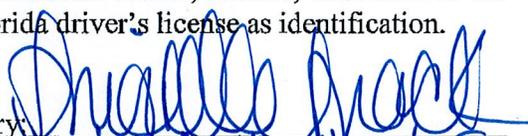
By: 
Renee Crichton, City Manager

ENDORSED AS TO FORM
AND LEGALITY FOR THE
USE AND RELIANCE OF THE
CITY OF HALLANDALE BEACH ONLY


V. Lynn Whitfield, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15th day of Nov, 2012,
by Renee Crichton, as City Manager of the City of Hallandale Beach, Florida, on behalf of the
City. She is personally known to me or produced a Florida driver's license as identification.

Notary: 
Print Name: Michelle Hunter
Notary Public, State of Florida
My commission expires: March 26, 2014

[NOTARIAL SEAL]



OPERATOR:

PRH Beachwalk Beachclub, LLC, a Florida limited liability company

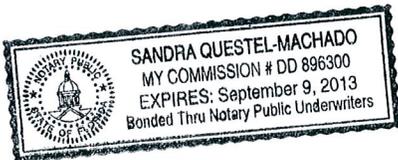
By: *Eric Fordin*
Print Name: Eric Fordin
Title: Vice President
Address: 315 S. Biscayne Blvd, Miami FL 33131
Date: 12/6/12

STATE OF FLORIDA
COUNTY OF ~~BROWARD~~ MIAMI-DADE

The foregoing Agreement was acknowledged before me this 6th day of December, 2012, by Eric Fordin, as Vice President of PRH Beachwalk Beachclub, LLC, on behalf of the limited liability company. He/she is personally known to me or produced _____ as identification.

Notary: *Sandra Questel Machado*
Print Name: Sandra Questel Machado
Notary Public, State of FLORIDA
My commission expires: 9-9-2013

[NOTARIAL SEAL]



DEVELOPER:

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

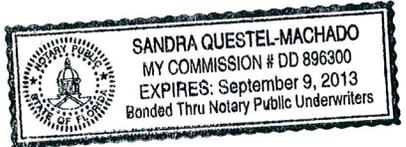
By: *Eric Fordin*
Print Name: Eric Fordin
Title: Vice President
Address: 3155 S. Biscayne Blvd Miami FL 33131
Date: 12/6/12

STATE OF FLORIDA
COUNTY OF ~~BROWARD~~ MIAMI-DADE

The foregoing instrument was acknowledged before me this 6th day of December, by Eric Fordin, as Vice President of PRH-2600 Hallandale Beach, LLC, on behalf of the limited liability company. He/she is personally known to me or produced _____ as identification.

Notary: *Sandra Questel Machado*
Print Name: Sandra Questel Machado
Notary Public, State of Florida
My commission expires: 9/9/2013

[NOTARIAL SEAL]



APPENDIX

<u>TERM</u>	<u>SECTION</u>
Agreement.....	Preamble
Beach Access Agreement.....	Section 1.6
Beachfront Rental Facility	Section 7.1.3
Building.....	Section 7.1
Building System.....	Section 32.1
Capital Account.....	Section 32.5
Capital Repair Payment.....	Section 32.5
Changes.....	Section 14
City	Preamble
City Manager.....	Section 6.2
Construction Plans.....	Section 6.7
Construction Utilization Report.....	Section 16.1
Developer	Preamble
Development Agreement	Recitals
Development Plans.....	Section 6.1
DRC	Section 6.2
Dune Restoration	Section 7.2
Effective Date	Section 5
Entry Plaza	Section 7.4
Event of Default.....	Section 40
Existing Improvements.....	Section 9
FDEP	Section 6.5
Fire Station	Section 13
Force Majeure	Section 41
Future Repairs	Section 32.4
Governmental Authority.....	Section 6.6
Governmental Requirement	Section 6.8
Gross Revenue.....	Section 29.3
Hiring Program.....	Section 15

Improvements.....	Recitals
Inspection Report.....	Section 32.2
Landscape Buffer.....	Section 7.3
Lifeguard Office.....	Section 7.1.4
Lifeguard Towers.....	Section 7.6
Minimum Operating Fee.....	Section 29.1
North Beach Facility.....	Section 8.3
Operating Fee.....	Section 29
Operator.....	Preamble
Operator Areas.....	Section 32.1
Operator Parking Spaces.....	Section 17.4
Outreach Fair.....	Section 16.4
Parking Spaces.....	Section 17.1
Pass Parking Spaces.....	Section 17.3
Percentage Fee.....	Section 29.1
Periodic Inspection.....	Section 32.1
Permitted Uses.....	Section 26.1
Plans.....	Section 6.9
Preliminary Renderings.....	Section 1.3
Preliminary Site Plan.....	Section 1.2
Property.....	Recitals
Reconstruction Work.....	Section 36.3.1
Renderings.....	Section 6.2.3
Reserve Account.....	Section 32.4
Restaurant.....	Section 7.1.1
Restrooms/Changing Rooms.....	Section 7.1.2
Sand Volleyball Court.....	Section 7.5
Taking.....	Section 39.1.1
Term.....	Section 5
Work.....	Section 10.1

Exhibit A
Legal Description of the Property

LEGAL DESCRIPTION

LOTS 11 AND 12, BLOCK 2, AMENDED PLAT OF SEMINOLE BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1 AT PAGE 15 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

TOGETHER WITH

THAT CERTAIN PARCEL OF LAND BOUNDED ON THE NORTH BY THE NORTH LINE OF LOT 11, BLOCK 2, PLAT BOOK 1, PAGE 15, EXTENDED EASTERLY TO THE EROSION CONTROL LINE ACCORDING TO THE PLAT THEREOF, RECORDED IN MISCELLANEOUS PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BOUNDED ON THE SOUTH BY THE SOUTH LINE OF LOT 10, BLOCK 12, PLAT BOOK 1, PAGE 15, EXTENDED EASTERLY TO THE EROSION CONTROL LINE ACCORDING TO THE PLAT THEREOF, RECORDED IN MISCELLANEOUS PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BOUNDED ON THE EAST BY THE EROSION CONTROL LINE ACCORDING TO THE PLAT THEREOF, RECORDED IN MISCELLANEOUS PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND BOUNDED ON THE WEST BY THE EAST LOT LINES OF LOTS 11, AND 12, BLOCK 2, PLAT BOOK 1, PAGE 15, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

TOGETHER WITH

A 20' PUBLIC WAY, AMENDED PLAT OF SEMINOLE BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1 AT PAGE 15 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BOUNDED ON THE NORTH BY THE SOUTH LINE OF LOT 12, BLOCK 2, PLAT BOOK 1, PAGE 15, EXTENDED EASTERLY TO THE EROSION CONTROL LINE ACCORDING TO THE PLAT RECORDED IN MISCELLANEOUS PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BOUNDED ON THE SOUTH BY THE NORTH LINE OF LOT 1, BLOCK 3, PLAT BOOK 1, PAGE 15, BOUNDED ON THE EAST BY THE EROSION CONTROL LINE ACCORDING TO THE PLAT THEREOF, RECORDED IN MISCELLANEOUS PLAT 5, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND BOUNDED ON THE WEST BY THE EAST RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 1, PAGE 15, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

TOGETHER WITH

LOTS 1 TO 5, BLOCK 3, AMENDED PLAT OF SEMINOLE BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1 AT PAGE 15 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

LYING AND BEING SECTION 25, TOWNSHIP 51 SOUTH, RANGE 42 EAST, CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA.

Exhibit B
Preliminary Site Plan for the Property

Composite Exhibit C



Composite Exhibit C



Composite Exhibit C



Composite Exhibit C



Exhibit D
Form of Construction Utilization Report

Exhibit E
Valet Parking Code of Conduct

Valet Parking Code of Conduct

- (1) All employees who operate motor vehicles shall have in their possession a valid Florida Driver's License in good standing and shall abide by all City, County, and State traffic regularions.
- (2) All employees shall be in similar uniform.
- (3) All employees shall wear on their uniform a name tag identifying the employee's name and the name of the valet operator/company.
- (4) All employees shall perform their duties in a courteous professional manner.
- (5) All employees must comply with the requirements of this Agreement and all applicable laws, statutes, ordinances, rules and regulations relating to traffic safety.
- (6) Pricing for services shall be identified on any "signage" used by the valet operator. The size print of the foregoing information shall be equal to the largest size print used on any "signage" used to identify the service or valet operator. Claim tickets shall also indicate the price for the service. The print size of the foregoing shall be equal to that used for any other information displayed on the ticket.
- (7) The claim ticket shall identify the valet operator's company name, correspondence address and a phone number for questions/complaints; all of the foregoing print shall be of equal size.
- (8) The valet parking service shall not interfere with the regular flow of vehicular or pedestrian traffic.
- (9) The permittee/operator shall not load or unload passengers within traffic lanes that are open to through traffic.

Exhibit F
Beach Access Agreement

Exhibit F

This instrument prepared by,
and after recording should be returned to:

David J. Coviello, Esq.
c/o Shutts & Bowen LLP
201 South Biscayne Boulevard
Suite 1500
Miami, Florida 33131

(Space Reserved for Clerk of Court)

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 13th day of June, 2012, by and between **BEACH ONE RESORT, LLLP**, a Florida limited liability limited partnership, whose mailing address is 1300 Brickell Avenue, Miami, Florida 33131 ("Beach One"), and **THE CITY OF HALLANDALE BEACH**, a municipal corporation existing under the laws of the State of Florida ("City"), having an address of c/o City Manager, 400 South Federal Highway, Hallandale Beach, Florida 33009 (the "City").

RECITALS:

WHEREAS, the City adopted the Hallandale Beach City Wide Parks Master Plan, in order to provide a roadmap to improve the city-wide park system (the "Park Plan"); and

WHEREAS, the Park Plan includes the redevelopment and expansion of the North Beach Park generally located east of the intersection of East Hallandale Boulevard and South Ocean Drive (the "North Beach Park"); and

WHEREAS, there is a twenty (20) foot public beach access way (the "Beach Access") that exists within the limits of the North Beach Park site, as shown on that certain plat entitled "Amended Plat of Seminole Beach" recorded in Plat Book 1, Page 15 of the Official Records of Broward County (the "Plat"), and as more particularly described on **Exhibit "A"** attached hereto; and

WHEREAS, the Beach Access is located between Lot 1, Block 3 and Lot 12, Block 2 of the Plat, which are owned by the City, and abuts public right-of-way within the limits of the City of Hollywood commonly known as Atlantic Boulevard or Surf Road ("Surf Road"), as more clearly shown on that certain plat entitled "Gateway Hollywood Plat" recorded in Plat Book 178, Page 33 of the Official Records of Broward County, a copy of which is attached hereto as **Exhibit "B"**; and

WHEREAS, the City acknowledges the public importance and benefit of preserving public beach access; and

WHEREAS, in connection with the redevelopment and expansion of the North Beach Park, the City hereby agrees to preserve and maintain the Beach Access in perpetuity and ensures that such Beach Access shall be direct, unobstructed and freely accessible from its point of intersection with Surf Road; and

WHEREAS, Beach One is the owner of real property located at 4111 South Ocean Drive (the "Beach One Parcel") generally located west of the North Beach Park, as more particularly described on **Exhibit "C"** attached hereto; and

WHEREAS, Beach One has agreed to contribute funds to the City for the North Beach Park in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, in consideration of the aforementioned contribution by Beach One, the City has agreed to provide Beach One and subsequent owners of the Beach One Parcel, together with all future residents, tenants and guests of the Beach One Parcel, with direct, continuous and unobstructed access to the North Beach Park through the Beach Access at its point of intersection with Surf Road; and

WHEREAS, in the event that the City vacates the Beach Access or if such Beach Access is otherwise obstructed, the City agrees to grant and convey a non-exclusive pedestrian access easement in favor of the Beach One Parcel from Surf Road over, upon and through a portion of Lot 1, Block 3 of the Plat, as more particularly described herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Access.** The redevelopment and expansion of the North Beach Park site shall preserve and maintain the Beach Access in perpetuity for the benefit of the Beach One Parcel. Beach One and subsequent owners of the Beach One Parcel (including owners of condominium units, if applicable), together with all future residents, tenants and guests of the Beach One Parcel, shall have direct, continuous and unobstructed pedestrian access to the North Beach Park through the Beach Access at its points of intersection with Surf Road.
3. **Park Plan Contribution.** Within thirty (30) days from receipt of written notice by the City confirming that the redevelopment and expansion of the North Beach Park site has been fully completed pursuant to the Park Plan, Beach One and/or its successors and assigns shall pay to the City the amount of Three Hundred Thousand (\$300,000.00) dollars as a contribution to the North Beach Park (the "Park Plan Contribution").

4. Alternative Access. In the event that the City vacates the Beach Access or if such Beach Access is otherwise obstructed, the City will grant and convey direct, continuous and unobstructed access to the sandy beach via a non-exclusive pedestrian access easement in favor of the Beach One Parcel from Surf Road over, upon and through a portion of Lot 1, Block 3 of the Plat immediately south of the Beach Access. Said easement shall not be less than twenty (20) feet in width.

5. Valet Management Plan. The City, Beach One and the City of Hollywood entered into that certain Settlement Agreement in connection with a lawsuit filed by the City challenging the development approval of a hotel project on the Beach One Parcel. In connection with the Settlement Agreement, Beach One agreed to be bound by that certain Special Events Valet Parking Operations Management Plan attached thereto (the "Parking Plan"), a copy of which is attached hereto as **Exhibit "D"**. With the execution of this Agreement, the City shall execute a release or termination of the Parking Plan.

6. Enforcement. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity, including injunctive relief, by the parties and/or the respective successors and assigns, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels. In the event that a condominium association is established on the Beach One Parcel, said association may enforce this Agreement through its board of directors.

7. Construction. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this Agreement have participated fully in the negotiation of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

8. Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the applicable party to the address set for such party set forth at the top of this Agreement (or to such other address as either party shall hereafter specify to the other in writing).

9. Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

10. Covenant Running with the Land. This Agreement shall constitute a covenant running with the land and shall be recorded in the public records of Broward County, Florida and shall remain in full force and effect until such time as the same is modified or released.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Further Assurances. Each party hereto shall at any time and from time-to-time after the execution of this Agreement, execute and deliver such further instruments and documents as may be necessary in order to carry out the intent and purpose of this Agreement.

13. Modification, Amendments, Release. No modification, amendment or release shall be effective unless in writing signed by the parties and recorded in the Public Records of Broward County, Florida. Any future condominium association with valid authority to act on behalf of the majority of the owners of the Beach One Parcel may execute the instrument modifying, amending or releasing this Agreement upon submission of proof of authority to act on behalf of the majority of owners.

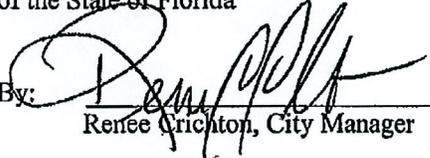
14. Governing Law. This Agreement shall be deemed to be an agreement made under the laws of the State of Florida.

15. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supercedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year above written.

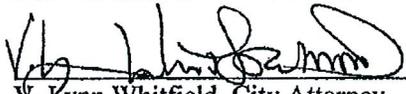
CITY OF HALLANDALE BEACH, a
municipal corporation existing under the laws
of the State of Florida

By: 
Renee Orichton, City Manager

ATTEST:


Sheena D. James, City Clerk

APPROVED AS TO LEGAL
SUFFICIENCY AND FORM:


V. Lynn Whitfield, City Attorney

WITNESSES:

[Signature]

Print Name: _____

[Signature]
Print Name: Brian Brodeur

BEACH ONE RESORT, LLLP, a Florida limited liability limited partnership

By: ACACIA BEACH GP LLC, a Florida limited liability company, its sole general partner

[Signature]
By: _____
Name: Edgardo Defortuna
Title: Manager

[CORPORATE SEAL]

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 13 day of June, 2012, by Edgardo Defortuna, as Manager, of ACACIA BEACH GP LLC, a Florida limited liability company, as General Partner of BEACH ONE RESORT, LLLP, a Florida limited liability limited partnership, on behalf of the partnership. He is personally known to me or has produced a driver's license as identification.

[NOTARIAL SEAL]

[Signature]
Notary: _____
Print Name: SUDIAN PEREZ
Notary Public, State of Florida
My Commission Expires: 3-2-2016

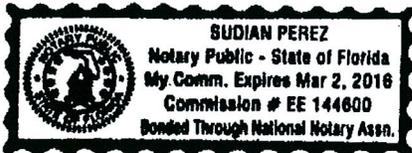


EXHIBIT "A"

[Legal Description of the Beach Access]

The 20 foot public way located between Lot 1, in Block 3 and Lot 12 in Block 2 of the Amended Plat of Seminole Beach, according to the Plat thereof, as recorded in Plat Book 1 at Page 15 of the Public Records of Broward County, Florida.

EXHIBIT "C"

[Legal Description of the "Beach One Parcel"]

Parcel "A", of GATEWAY HOLLYWOOD PLAT, according to the Plat thereof, as recorded in Plat Book 178, Page 33, Public Records of Broward County, Florida.

EXHIBIT "D"

SPECIAL EVENTS VALET PARKING OPERATIONS MANAGEMENT PLAN

- A. **PURPOSE:** This is a *Special Events Valet Parking Operations Management Plan* (the **PLAN**) for Beach One Resort, Hollywood, Florida (the **PROJECT**). The **PROJECT** consists of the uses approved on October 15, 2008 by the City of Hollywood City Commission pursuant to Ordinance PO-2008-20 and Resolution R-2008-327. The purpose of the **PLAN** is to ensure that inbound traffic to Beach One Resort resulting from the use of the Ballroom/Meeting Space approved in the **PROJECT** does not impact traffic operations at the intersection of SR A1A and Hallandale Beach Boulevard by causing traffic to spill back onto SR A1A from the Beach One Resort inbound driveway, with the unintended result of blocking the east leg of the intersection of SR A1A and Hallandale Beach Boulevard which serves as the ingress and egress to the City of Hallandale Beach Fire Station.
- B. **APPLICABILITY:** This **PLAN** becomes applicable upon the scheduled use of the Ballroom/Meeting Space approved in the **PROJECT** for **SPECIAL EVENTS** that will accommodate 400 or more event attendees who are defined as **OUTSIDE GUESTS** and arrive within 30 minutes of a scheduled event. **OUTSIDE GUESTS** are those event attendees for **SPECIAL EVENTS** who are not staying overnight as hotel guests of Beach One Resort.
- C. **NOTIFICATION:** The City Managers or their designees of both the City of Hollywood and the City of Hallandale Beach will be notified in writing of the scheduling of **SPECIAL EVENTS** at Beach One Resort at least seventy-two hours prior to such events. This notification may be provided in the form of a monthly calendar of **SPECIAL EVENTS** so that each City can plan accordingly.
- D. **AUTHORITY:** It is understood that this **PLAN** is consistent with and in no way modifies or otherwise impacts the approvals for the **PROJECT** as embodied in Ordinance PO-2008-20 and Resolution R-2008-327, adopted by the City of Hollywood City Commission on October 15, 2008.
- E. **QUALIFICATION:** It is understood that this **PLAN** has been prepared without the benefit of detailed construction plans, and the **PROJECT's** hotel and valet operators have not yet been selected. Therefore, minor modifications may be made to the **PLAN** to improve valet operations so long as such modifications achieve the purpose set forth herein as interpreted by the City Manager of the City of Hollywood, or his designee. Such modifications shall be submitted to the City Manager of the City of Hollywood with a copy to the City Manager of Hallandale Beach, and shall be approved by the City Manager of the City of Hollywood or his designee.
- F. **COMPLIANCE:** Compliance with this **PLAN** is incumbent upon the Owners and their successors and assigns for the **PROJECT**, as well as contracted hotel and valet operators. Because the **PLAN** was developed specifically for the **PROJECT** based upon the particular layout and configuration of the proposed structure, a change to the **PROJECT** which is deemed to be a "major modification" by the Planning Director of the City of Hollywood, may render the **PLAN** inapplicable and of no further effect. Similarly, to the extent that the **PROJECT** is abandoned and/or the City of Hollywood approves a new development project, the **PLAN** may also become inapplicable and of further effect. Should the **PLAN** become inapplicable under either scenario, the Owners and their successors and assigns, as well as contracted hotel and valet operators, shall have no obligation to comply with the **PLAN**.
- G. **VALET STATIONS:** *EXHIBIT A* (Stacking Levels 1-4): ALL PARKING AT ALL TIMES IS BY VALET ONLY. Valet Stations may be flexibly located to suit specific needs. The number of valet attendants can be expected to range from 2-3 per station. The number of stations will vary with the goal of processing vehicles at an average of 45 seconds service time per vehicle in order to prevent queues.

The attached Stacking Plans (*EXHIBIT A*) show the arrival sequence for patrons who during **SPECIAL EVENTS** drive up to the 4th level where there are 15 valet stations. Space for 10 additional valet stations is available in Level 1 where valet attendants pick up vehicles from patrons, make a three point turn and then stack additional vehicles for movement into the garage. In addition to the valet stations, the site as proposed provides space for stacking 22 vehicles within the site.

H. DROP-OFF/PICK-UP AREAS: Vehicles not intending to park (pick-up/drop-off, taxicabs, emergency and security vehicles), will be able to circulate in the driveway adjacent to the first lobby without interfering with any vehicles that may be waiting for valet services, as shown in *Exhibit A*.

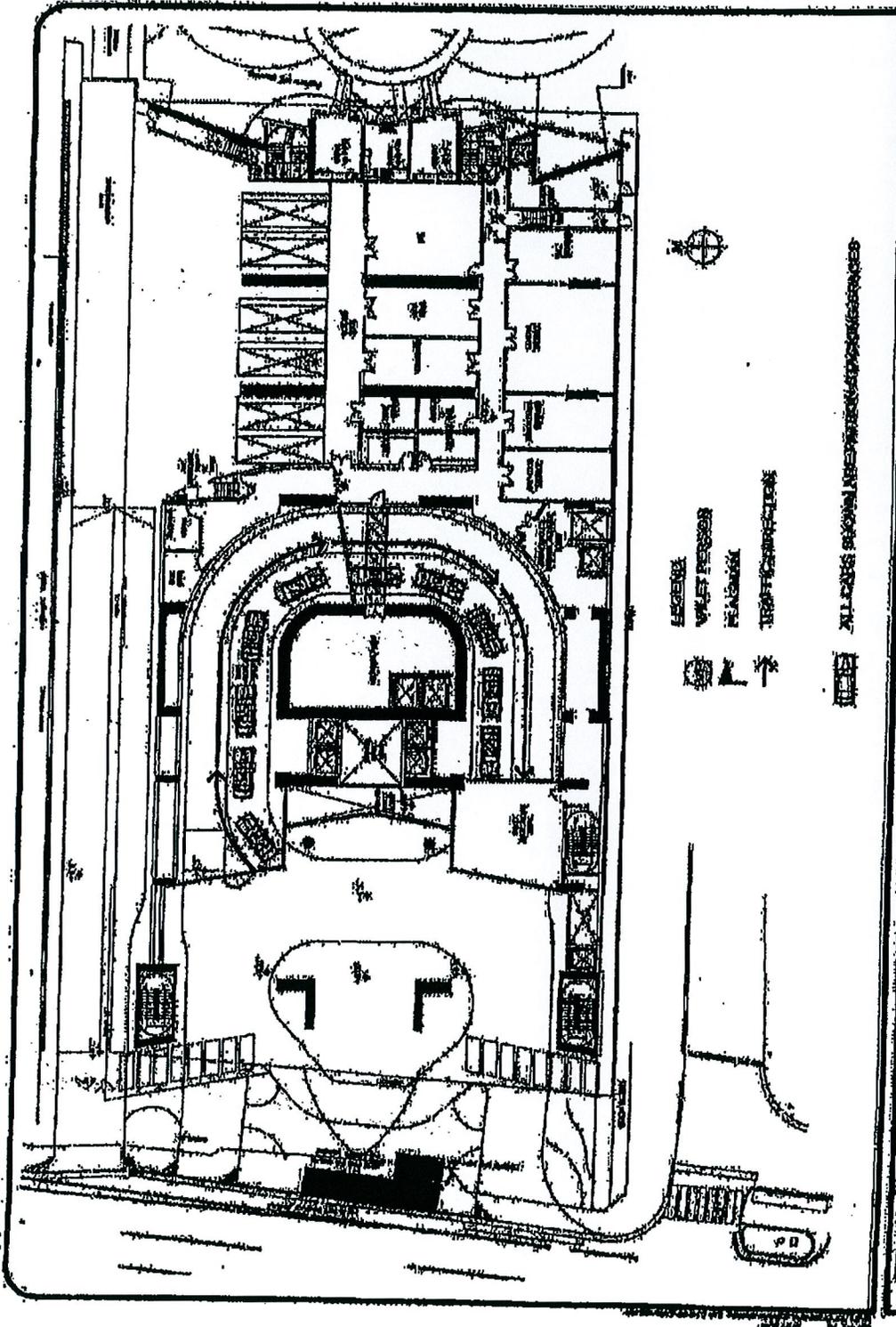
I. PARKING: The Parking Supply for the PROJECT's hotel, amenities and **OUTSIDE GUESTS** is 661 spaces. The current site plan accommodates 495 standard parking spaces and 83 tandem spaces (which provide capacity for 166 vehicles). Additional parking will be needed to accommodate the parking demand during **SPECIAL EVENTS** when the Beach One Resort hotel is at or above 90% occupancy, and **SPECIAL EVENTS** are planned with more than 462 **OUTSIDE GUESTS** (see Note 1). Under these circumstances, additional parking will be required and shall be provided as outlined below:

• Hotel Parking	661
• Additional Valet Tandem	99
• Service & Loading Dock (by special permit)	<u>45</u>
• TOTAL POTENTIAL SPACES	805

Additional parking will be needed to accommodate the parking demand during **SPECIAL EVENTS** when the Beach One Resort hotel is at or above 90% occupancy, and **SPECIAL EVENTS** are planned with more than 750 **OUTSIDE GUESTS** (see Note 2). Under these circumstances, additional parking will be required and shall be provided as outlined below:

- Off-site parking and busing of Beach One Resort Employees
- Short term lease of adjacent public parking for **OUTSIDE GUESTS**

Note 1: [661 spaces - 430 spaces for hotel rooms at 90% occupancy = 231 spaces x 2 PPV = 462 **OUTSIDE GUESTS**]
Note 2: [805 spaces - 430 spaces for hotel rooms at 90% occupancy = 375 spaces x 2 PPV = 750 **OUTSIDE GUESTS**]



LEGEND
 VALET PERSONS
 PEAKS
 TRAFFIC



EXISTING WALLS
 NEW WALLS
 EXISTING DOORS
 NEW DOORS
 EXISTING STAIRS
 NEW STAIRS
 EXISTING ELEVATORS
 NEW ELEVATORS
 EXISTING WINDOWS
 NEW WINDOWS
 EXISTING ROOF
 NEW ROOF

EXISTING WALLS A2	2 LEVEL SPECIAL EVENTS MANAGEMENT BUILDING	2ND LEVEL SPECIAL EVENTS MANAGEMENT BUILDING
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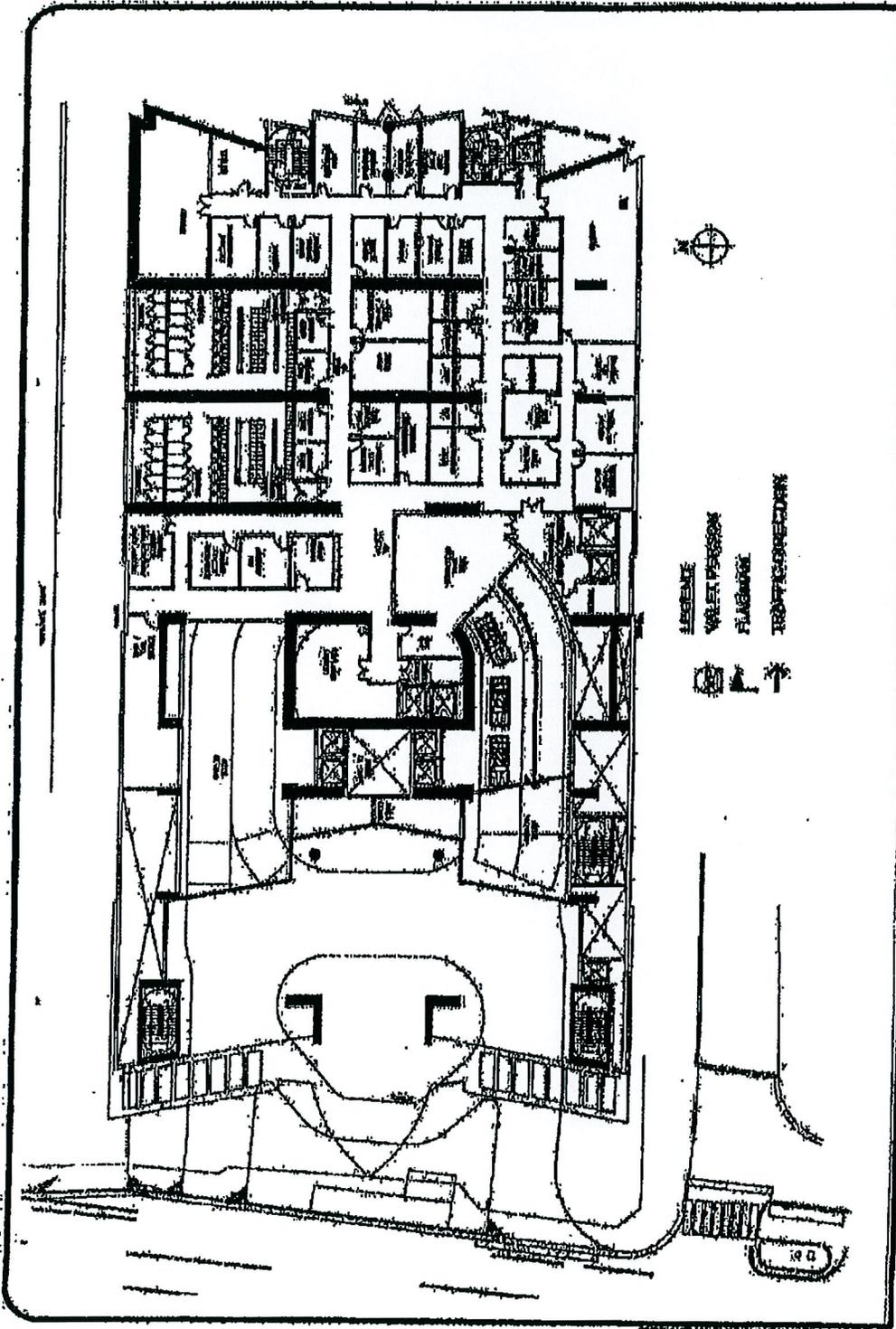


EXHIBIT NO. A3

SPECIAL EVENTS VALET PARKING PLAN LEVEL 3

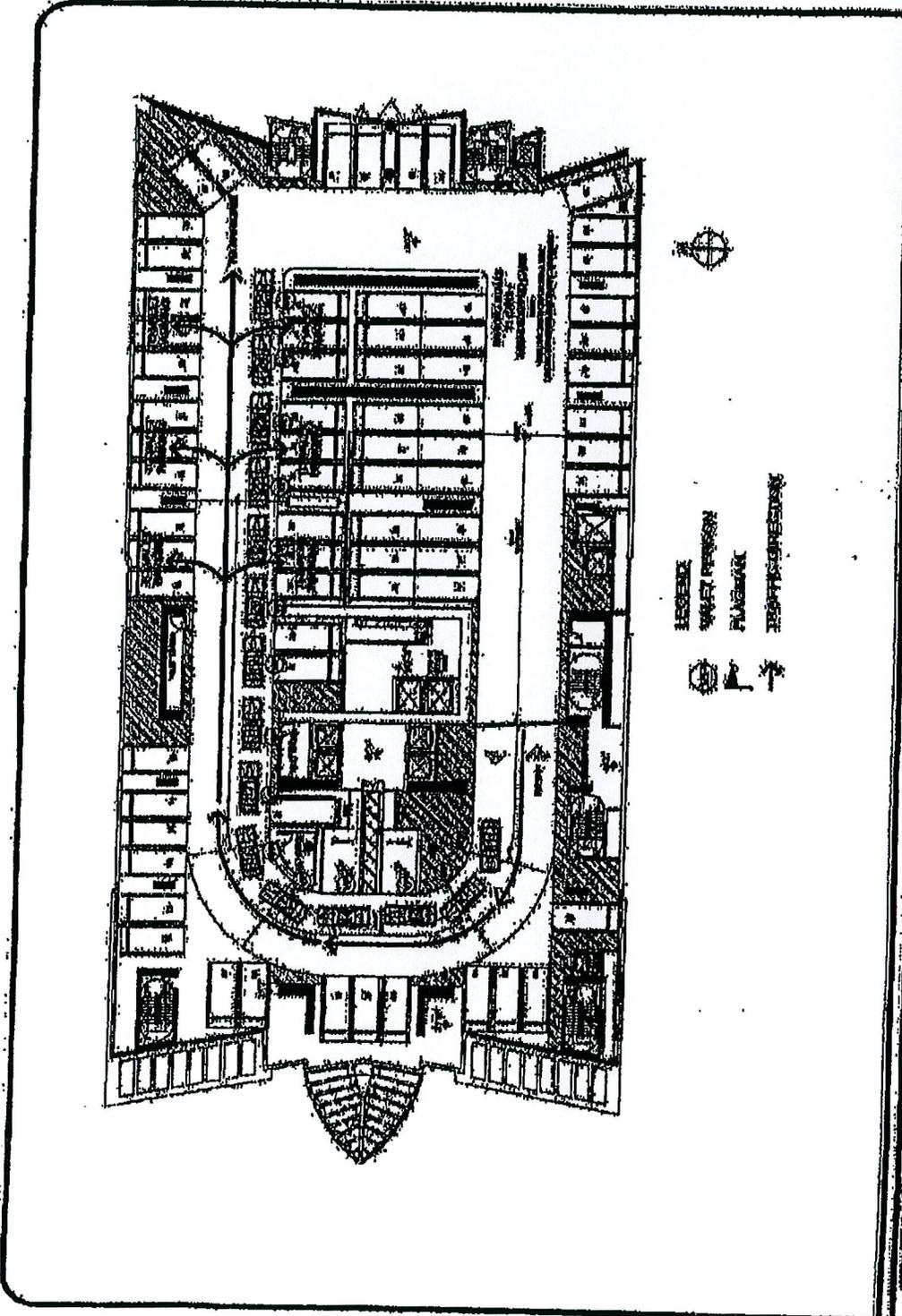
BRANCH BUSINESS CENTER



Revised April 8, 2009

Page 5 of 6

Special Events Valet Parking Operations Management Plan



LEGENDE
 WATER PIPING
 PLUMBING
 REPAIRS/REVISIONS

	BEACH OPERATIONS	SPECIAL EVENTS VALET PARKING PLAN LEVEL A	DRAWING NO. A4
	SPECIAL EVENTS VALET PARKING OPERATIONS MANAGEMENT PLAN		REVISIONS

Page 6 of 8

Special Events Valet Parking Operations Management Plan

Revised April 6, 2009

Exhibit G
Form of Local Business Utilization Report

