

ATTACHMENT A

FIRST AMENDMENT TO CONVENTION CENTER QUALIFIED MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO CONVENTION CENTER QUALIFIED MANAGEMENT AGREEMENT dated as of the ____ day of June 2018 (this “Amendment”), is made and entered into by and between the **CITY OF WINSTON-SALEM**, a municipal corporation (“City”), and **HOSPITALITY VENTURES MANAGEMENT GROUP, LLC** (“Manager”).

Preliminary Statement

WHEREAS, the City and Manager have heretofore entered into that certain Convention Center Qualified Management Agreement dated as of June 30, 2004 (the “Management Agreement”) respecting the operation of that certain property and buildings known as the Benton Convention Center located in Winston-Salem, Forsyth County, North Carolina; and

WHEREAS, the City and Manager desire to amend the Management Agreement as set forth herein.

NOW, THEREFORE, in consideration of \$10.00 and the mutual promises and covenants herein contained, the City and Manager agree to the following:

1. **Definitions.** The following defined terms shall be added to the Management Agreement in Section 1.1:

- (a) Hotels shall mean the Marriott Hotel and the Hotel.
- (b) Marriott Hotel shall mean the existing Marriott Hotel east tower.
- (c) Marriott Owner shall mean Noble Winston-Salem Associates East, LLC, or its permitted successors and assigns.
- (d) Banquet and Catering Food Revenue shall mean all banquet and catering food revenue. Expressly excluded from the definition of Banquet and Catering Food Revenue are the following: banquet and catering beverage, audio/visual, miscellaneous banquet revenue, function/meeting room rental, deposit forfeiture income, cancellation fees charged, income from attrition, surcharges and service charges not paid to employees and concessions at the BCC and the Hotels.
- (e) Total Banquet and Catering Revenue shall mean all Banquet and Catering Food Revenue, as defined above, banquet and catering beverage, audio/visual, function/meeting room rental, deposit forfeiture income, cancellation fees

charged, income from attrition, surcharges and service charges not paid to employees and concessions at the BCC and the Hotels.

(f) Total Food and Beverage Revenue shall mean all food and beverage revenue including Total Banquet and Catering Revenue, as defined above, restaurant food and beverage revenue, room service revenue and concessions at the BCC and the Hotels.

(g) Total Revenue for the purposes of the calculations set forth herein shall mean all revenues and receipts derived from the operation of the BCC and the Hotels, without limitation, income (from both cash and credit transactions) from the rental of guestrooms; Total Food and Beverage Revenue, as defined above; income from telephone and wired and wireless internet; income from office rental; income from vending machines; and service charges at the BCC and the Hotels. Expressly excluded from the Hotels' definition of Total Revenue are the following: other income as further defined by the Uniform Systems to include, but not limited to, business center, gift shop, wholesale and retail sales of merchandise, guest laundry/dry cleaning, movies, postage, and interest income; income from retail leases and rooftop tower leases; and income from parking; and proceeds, if any, from business interruption or other loss of income insurance; gratuities to employees of the Hotel; federal, state, and local excise, sales or use taxes or any other taxes collected directly from patrons or guests or included as part of the sales price of any goods or services; proceeds from the sale of FF&E; insurance proceeds (other than proceeds from loss of rents, business interruption, or other loss of income insurance, all of which are expressly included in Total Revenue); condemnation proceeds (other than awards for a temporary taking, which are expressly included in Total Revenue); any proceeds from any sale of the Hotel or from the refinancing of any debt encumbering the Hotel; contributions by Owner; or damage awards received from third parties (other than for loss rents, business, or income, which awards are expressly included in Total Revenue).

(h) Uniform System shall mean the Uniform System of Accounts for the Lodging Industry, "Eleventh Revised Edition," January 2015, published by the American Hotel & Lodging Educational Institute, as the same may hereinafter be revised.

2. Annual Operating Projection. During any time period that the Hotels are owned by the same owner or Affiliates, part of Section 4.1 of the Management Agreement shall be deemed replaced with the following:

Commission acknowledges that any Annual Operating Projection is a reasonable estimate and that any projections set forth in the Annual Operating Projection is subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Manager's reasonable control and that such projections are not to be construed as a guaranty by Manager of the actual results

of operations to be obtained. ~~Not later than ninety (90) days prior to the commencement of each Fiscal Year, Manager shall submit the draft Annual Operating Projection to the Commission for review. Not later than forty five (45) days prior to the commencement of each Fiscal Year, Manager shall submit the final Annual Operating Projection to the Commission for the Owner's Approval.~~ Manager shall submit the draft Annual Operating Projection to City management no later than April 1 prior to the commencement of each Fiscal Year. Manager shall submit the final Annual Operating Projection to the Commission for the Owner's Approval no later than May 1. Notwithstanding anything contained in Section 4.1, and solely for the Fiscal Year commencing July 1, 2004, the Manager shall submit the Annual Operating Projection to the Commission forty-five (45) days prior the commencement of such Fiscal Year. The Annual Operating Projection shall contain the following:

3. Manager's Base Fee. During any time period that the Hotels are owned by the same owner or Affiliates, part of Section 5.2 of the Management Agreement shall be deemed replaced with the following:

Commencing in Year Seven and each year thereafter, the Manager's Fee shall also escalate on a Fiscal Year basis at a rate equal to the Consumer Price Index increase with respect to the prior ~~Fiscal Year~~ calendar year. Manager is authorized to disburse to itself from the Agency Account the amounts owing as Manager's Fee in equal monthly installments on the last day of each Accounting Period.

4. Allocable Operating Expenses. During any time period that the Hotels are owned by the same owner or Affiliates, Section 5.3.2(a) through and including Section 5.3.2(h) of the Management Agreement shall be deemed replaced with the following:

(a) ~~Food and Beverage Director.~~ Total expenses incurred for the following positions, unless property specific, shall be allocated between the BCC and the Hotels based on the respective percentage of ~~food~~ Total Banquet and ~~beverage~~ revenues Catering Food Revenue at each in a Fiscal Year.:

- i. Banquet Chef
- ii. Banquet Cook(s)
- iii. Steward(s)

(b) ~~Executive Chef.~~ Total expenses incurred for the following positions, unless property specific, shall be allocated between the BCC and the Hotels based on the respective percentage of ~~food~~ Total Banquet and ~~beverage~~ revenues Catering Food Revenue at each in a Fiscal Year.:

- i. Director of Banquets
- ii. Assistant Director of Banquets
- iii. Banquet Manager(s)

~~(e) — Sous Chef. Total expenses incurred shall be allocated between the BCC and the Hotels based on the respective percentage of food and beverage revenues at each in a Fiscal Year.~~

- ~~iv. Director of Catering and Event Planning~~
- ~~v. Catering Sales Manager(s)~~
- ~~vi. Convention Services Manager(s)~~
- ~~vii. Event Coordinator(s)~~

~~(d)(c) Event Coordinators—Total expenses incurred for the following positions, unless property specific, shall be allocated between the BCC and the Hotels based on the respective percentage of Total Food and Beverage Revenue at each in a Fiscal Year:~~

- ~~i. Director of Food and Beverage~~
- ~~ii. Executive Chef~~
- ~~iii. Sous Chef~~
- ~~iv. Area Managing Director~~
- ~~v. Director of Human Resources~~
- ~~vi. Human Resource Manager~~
- ~~vii. Director of Finance~~
- ~~viii. Accounting Personnel~~
- ~~ix. Chief Engineer~~

~~(d) Total expenses incurred for the following positions, unless property specific, shall be allocated between the BCC and the Hotels based on the respective percentage of Total Revenue at each in a Fiscal Year.:~~

- ~~i. Director of Sales~~
- ~~ii. Sales Manager(s)~~
- ~~iii. Sales Admin(s)~~

~~(e) Maintenance Personnel. No allocation, properties each have a dedicated staff.~~

~~(f) — Administrative and General — Total Banquet & Catering expenses incurred — non-property specific shared expenses used in the course of business at the BCC and Hotels shall be allocated between the BCC and the Hotels based on the respective percentage of ~~food~~ Total Banquet and beverage revenues Catering Revenues generated at each in a Fiscal Year.~~

~~(g) (f) Administrative & General expenses – non-property specific shared expenses used in the course of business at the BCC and Hotels shall be calculated on the respective percentage of Total Food & Beverage Revenues generated at each in a fiscal year.~~

~~(g) Human Resources expenses – non-property specific shared expenses used in the course of business at the BCC and Hotels shall be calculated on the~~

respective percentage of Total Banquet and Catering Revenues generated at each in a fiscal year.

(h) Advertising and Sales – Total expenses meant to, directly or indirectly and unless property specific, attract and generate business at the BCC and Hotels shall be calculated on the respective percentage of Total Revenues generated at each in a Fiscal Year, ~~including Rooms and all other revenues at the Hotels and BCC.~~

5. Full Force and Effect. Except as otherwise expressly set forth herein, the Management Agreement is unamended and remains in full force and effect.

6. Capitalized Terms. Terms that are capitalized herein, but are not defined herein, shall have the meaning ascribed to them in the Management Agreement.

7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. A party may deliver executed signature pages to this Agreement by facsimile or other email transmission to any other Parties, which facsimile or email copy shall be deemed to be an original executed signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

CITY OF WINSTON-SALEM

By: _____
Name: _____
Title: _____

MANAGER:

HOSPITALITY VENTURES MANAGEMENT GROUP, LLC

By: _____
Name: _____
Title: _____