

UNIVERSITY ADDENDUM

RE: ADDENDUM TO AGREEMENT BETWEEN (“THE HOTEL”) AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, ACTING FOR AND ON BEHALF OF, THE UNIVERSITY OF ARKANSAS, FAYETTEVILLE (“THE UNIVERSITY”) DATED THE _____ DAY OF _____, 20____ (“THE AGREEMENT”).

Notwithstanding any other terms and conditions of the Agreement, the parties hereby agree as follows. In the event of a conflict, the terms of this addendum shall control.

1. Liability. Pursuant to Article 12, § 12 of the Arkansas Constitution, the University may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages. The parties are responsible for their own negligent conduct and that of their respective officers, employees, agents and designated representatives acting within the official scope of their position.

2. Governing Law. The laws of the State of Arkansas shall govern the interpretation of the Agreement and resolution of any issues, as well as all related defenses, counterclaims and cross claims, which may arise in connection with the Agreement or between the parties, without regard to its conflicts of interest principles. The place of execution, jurisdiction and venue governing the Agreement is the State of Arkansas. Any agreement to submit to arbitration is deleted.

3. Immunity. The University is an instrumentality of the State of Arkansas and is entitled to sovereign immunity. The parties agree that all claims, demands or actions for loss, expense, damage, liability or other relief, either at law or in equity, for actual or alleged personal injuries or property damage arising out of or related to this Agreement by the University or its officers, employees, agents or designated representatives acting within the official scope of their position, must be brought before the Claims Commission of the State of Arkansas. With respect to such claims, demands or actions, the University agrees that: (a) it will cooperate with the Hotel in the defense of any claim, demand or action brought against the Hotel seeking the foregoing loss, expense, damage, liability or other relief; (b) it will in good faith cooperate with the Hotel should the Hotel present any claim, demand or action of the foregoing nature against the University to the Claims Commission of the State of Arkansas; (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing. Nothing in the Agreement between the Hotel and the University shall be construed as a waiver of any immunities available to the University, its officers, agents and employees, or of the University’s right to assert in good faith all claims and defenses available to it in any proceeding.

4. Attorney’s Fees. Neither party shall be liable to the other for any payment of attorneys’ fees or collection costs on any claim, demand or action related to or regarding the validity, construction, interpretation, breach or enforcement of the Agreement.

5. Prepayment. Any provision of the Agreement requiring a deposit or prepayment is deleted. Any such prepayment amount stated in the Agreement shall instead be due within twenty (20) days following the Event.

6. Late Fees. Pursuant to Arkansas Code Annotated § 19-11-224, no interest or late fees shall accrue until sixty (60) days past the due date. The interest rate shall be an annual rate of six percent (6%), consistent with Ark. Code Ann. § 4-57-101(d).

7. Confidential or Proprietary Information. To the extent any provision in the Agreement restricts dissemination of confidential or proprietary information by the University, it shall not be construed to prohibit disclosure of such information to comply with a request by valid subpoena, court order or other applicable law.

8. Force Majeure. Neither party shall be considered to have breached this Agreement and shall not be liable for any costs, fees or damages for cancelling this Agreement at any time arising out of or caused by, directly or indirectly, forces beyond the parties’ reasonable control, including without limitation, riots, natural disasters or acts of God, epidemic, pandemic, quarantine, acts or threats of war or terrorism, civil disturbances, fire, flood, hurricane, tornadoes, earthquake, loss or malfunction of public utilities, court order, actions by a government or public authority, outbreak of disease or illness, curtailment of transportation, or cancellation or postponement of the underlying event

or purpose for the Hotel reservations (“Force Majeure Event”). This cancellation without penalty for a Force Majeure Event is effective upon written notice from one party to the other. Hotel shall refund the University any amounts paid to Hotel within ten (10) business days of the date either party provides written notice of cancellation under this section.

9. Cancellation. In the event the University cancels some or all of its reservations for a reason other than a Force Majeure Event or Hotel’s breach of this Agreement, Hotel agrees to use reasonable efforts to resell rooms in the University’s room block (if the Agreement includes the booking of rooms) and book an alternative event for the meeting room(s) (if the Agreement involves the booking of such an event); and any revenues received, less reasonable costs of resale, shall be credited against the damages/fees owed by the University to Hotel for the cancellation. Prior to billing and payment, Hotel must submit to the University a copy of Hotel’s city ledger or daily report showing the rooms that were not resold and were available for sale. Hotel agrees that after receipt of this payment it will not seek additional damages for not utilizing the full room block or any other Hotel services or amenities.

10. Insurance. Any provisions stating that the University shall purchase liability insurance are hereby deleted in their entirety. As an entity of the State of Arkansas and therefore entitled to sovereign immunity, the University does not maintain commercial or general liability insurance.

11. Alcohol. Alcoholic beverages may not be purchased with state or federally appropriated funds. Therefore, the University shall not be responsible for payment for any alcoholic beverages served at the event, if applicable.

12. Anti-Boycott Israel Notice. In accordance with Ark. Code Ann. § 25-1-503, Hotel hereby certifies to University that Hotel (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of this Agreement not to engage in a boycott of Israel. A breach of this certification will be considered a material breach of contract. In the event that Hotel breaches this certification, University may immediately terminate this Agreement without penalty or further obligation and exercise any rights and remedies available to it by law or in equity.

13. Intellectual Property. At all times and for all purposes, each party to this Agreement shall retain ownership to its intellectual property, including, without limitation, all trade names, trademarks, service marks, logos, slogans, images, trade dress, uniforms, mascots, symbols or other indicia of intellectual property (collectively, “IP”). Neither party may use any IP belonging to the other party without the other party’s prior written consent from the undersigned representatives. The fact that the parties have entered into this Agreement shall not give either party a license or other right to use the IP of the other party without the other party’s written permission.

14. Performance Based Standards. Pursuant to Ark. Code Ann. § 19-11-267, Hotel represents that, consistent with industry standards and throughout the duration of this Agreement, represents that Hotel has (a) purchased and will maintain sufficient insurance coverage; (b) that all products and services provided hereunder will be in good working order and safe and fit for the purpose for which they are intended; (c) it will comply with all applicable federal, state and local laws and ordinances; (d) perform this Agreement in a professional manner; and (e) possesses all required permits, certificates and licenses necessary to perform this Agreement.

15. Amendment to the Agreement. To the extent any prior agreements, negotiations, representations or any provision of the Agreement contradict or otherwise conflict with the terms or conditions of this Addendum, such provisions are canceled, superseded and revoked. The Agreement shall not be otherwise altered or amended other than an agreement in writing signed by the parties hereto.

THE UNIVERSITY:

THE HOTEL:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____