

**CONTRACTUAL AGREEMENT**  
**FOR TEMPORARY LABOR SERVICES**

**nuevo test wl & Tumi Staffing, Inc.**

Date	02-04-2019
Hotel Name & No.	nuevo test wl
Hotel Address	Bo San Cristóbal ,Cocoa ,Florida
HR Email	Michelle.Curoe@whitelodging.com
Hotel Owner's Legal Name	nuevo test wl at Vanderbilt University
Vendor's Legal Name	Tumi Staffing, Inc.
Vendor's Contact Name	Stephen Robbins phone: 210-619-3002
Vendor's Contact Email	<a href="mailto:stephenr@tumistaffing.com">stephenr@tumistaffing.com</a>
Description of Services	Temporary labor staffing services
Contract Price and Terms of Payment	Periodic lump sum payment based on invoice from Company per terms of the Agreement
Contract Commencement Date	02-04-2019
Contract Expiration Date	02-04-2020

This Agreement is made and entered into this 02-04-2019 (this "Agreement"), by and between **nuevo test wl at Vanderbilt University** ("Owner"), located at **Bo San Cristóbal ,Cocoa ,Florida** (the "Hotel"), and Tumi Staffing, Inc., having a place of business at 4150-B Freidrich Lane, Austin, TX 78744 ("COMPANY").

This Agreement sets forth the exclusive terms and conditions for the Agreement. By signing below, COMPANY stipulates and agrees that any terms and conditions proposed by COMPANY which are different from or in addition to the provisions of this Agreement are unacceptable to Owner, are expressly rejected by Owner, and are not a part of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto executed this Agreement on the date first written above.

**nuevo test wl**

Tumi Staffing, Inc.

By: White Lodging Services Corporation

By:\_\_\_\_\_

Hotel Manager

(Signature)

By: {signatureemployee}

Stephen A Robbins

Stephen A. Robbins

Vice President

## President

### 1. Definitions

The following terms, when used within this Agreement, shall have the following meanings:

- A. "Effective Date" shall mean 02-04-2019.
- B. "Assignment" shall mean the location and operation for which Owner requested COMPANY to provide Workers at the Hotel as provided in this Agreement.
- C. "Services" shall mean those activities listed in Exhibit "A".
- D. "Term" shall mean the time during which the Agreement is in effect, including any extensions and renewals thereof.
- E. "Worker" or "Workers" shall mean a person or persons provided and designated by COMPANY to provide Services at the Hotel on the Assignment.
- F. "Hotel Manager" shall mean White Lodging Services Corporation.

### 2. Scope of Word

COMPANYs employees will provide Services at the Hotel. The Workers will at all times be directed by and under the supervision of COMPANY.

### 3. Term

This Agreement shall become effective on the Effective Date and shall continue in full force and effect until 02-04-2020.

### 4. Termination

Notwithstanding any other provisions contained in this Agreement, either Owner or COMPANY may terminate this Agreement, for any reason or for no reason and without penalty, upon thirty (30) days' prior written notice sent certified mail or commercial overnight delivery to the other

### 5. Employees of COMPANY

- A. COMPANY will recruit, interview, select, hire and assign employees who, in COMPANYs judgment, are best qualified to perform the Services. As employer, COMPANY will:
  - I. Maintain all necessary personnel and payroll records for its employees;
  - II. Withhold from its employees compensation any taxes, charges or other payroll deductions required by law ;R
  - III. emit such taxes and charges to the appropriate government entity;
  - IV. Pay net wages and fringe benefits, if any, directly to employees;
  - V. Provide for liability insurance as specified in Section 6, Insurance;
  - VI. Provide Workers Compensation, Employers Liability and Employment Practices Liability Insurance (EPLI) insurance coverage in amounts as specified in Section 6, Insurance;
  - VII. Properly train its employees for their job assignments at the Hotel, including any special equipment or materials use instructions;P
  - VIII. rovide adequate on site supervision of its employees at the Hotel; and
  - IX. Provide neat, clean well groomed employees in uniforms with name tags approved by Owner.

- B. COMPANY will comply with all laws, regulations and orders to the extent applicable to COMPANY.
- C. The employees assigned by COMPANY to the Hotel as provided in this Agreement, shall remain employees of COMPANY and COMPANY shall require each employee to sign an acknowledgement in the form attached as Exhibit "B", outlining the COMPANY'S role as employer and recognizing that Hotel is not the employer. COMPANYs employees shall not be entitled to participate in any Owner, Hotel Manager White Lodging Services Corporation or the Hotel employee benefit plans, including but not limited to, pension, Section 401(k) profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation or holiday pay, sick pay, Paid Time Off (PTO), stock purchase, severance pay and other similar plans, programs and agreements, whether reduced to writing or not. COMPANY employees are not to be considered to be leased employees under Internal Revenue Code Section 414(N).
- D. COMPANY agrees to indemnify, defend and hold harmless Owner, Hotel Manager White Lodging Services Corporation and Hotel from and against any and all claims, lawsuits, damages and liabilities whatsoever, together with all related expenses and attorney's fees (herein "CLAIMS") including without limitation to any CLAIMS, by a federal, state or local governmental agency wherein COMPANY's status as an independent contractor is at issue.
- E. COMPANY agrees to screen all its employees assigned to provide Services prior to being hired by COMPANY to the extent permitted by law. The screening process shall include, but not be limited to:
  - I. Completion of COMPANY's application which shall provide for references, employment history, IRCA compliance as required in Exhibit "D" and disclosure of criminal convictions;
  - II. Reference checks, including at least three (3) previous employers, if possible; and
  - III. Drug testing and criminal background checks. White Lodging shall pay the cost of drug testing of all employees assigned to provide Services, and shall have the option to select the vendor to perform drug testing.
  - IV. COMPANY shall ensure that its employees assigned to provide Services at the Hotel will be held to the same standards and rules as employees at the Hotel. COMPANY agrees to remove from the Hotel any COMPANY employees at Owner's request by providing forty-eight (48) hours' notice to COMPANY in the form attached as Exhibit "E". Upon COMPANY'S receipt of a request from Owner that a specific Worker be removed, COMPANY shall promptly remove employee and will use its best efforts to replace that Worker within forty-eight (48) hours of receiving the Owner's request. This does not suggest or infer separation of employment with COMPANY. COMPANY agrees to assist and cooperate with any investigation initiated by Owner which may involve any employee of COMPANY providing Services at the Hotel.
- F. COMPANY agrees to inform its Workers of work hours, meal and break procedures, and appropriate dress code.
- G. Owner agrees that during the Term and for a period of one year following the termination of this Agreement, Hotel shall not knowingly solicit (other than general solicitations for employment) for employment at the Hotel any employee of the COMPANY. If such employee is hired to work at the Hotel prior to such time period, Owner agrees to pay COMPANY a fee of Five Thousand Dollars (\$5,000). Owner, however, shall not be responsible to pay the fee if Owner inadvertently hired an employee of the COMPANY, but terminates that employee within 48 hours of receiving written notice from COMPANY of a violation of this provision.

## 6. Insurance

- A. Prior to the Effective Date and to commencement of any activity contemplated under this Agreement, COMPANY shall provide Hotel Manager with a certificate of insurance evidencing the existence of valid and enforceable minimum insurance requirements as follows:
  - I. Commercial General Liability insurance with a limit no less than \$1,000,000 Each Occurrence, \$2,000,000 General and Products/Completed Operations Aggregates, \$1,000,000 Personal & Advertising Injury Liability.
  - II. Workers Compensation and Employers' Liability in accordance with the laws of the state where the Hotel is located, and Employers Liability with a limit not less than the required statutory limit, or \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease and \$1,000,000 policy limit for disease, whichever is greater.
  - III. Commercial Automobile Liability insurance with a limit of no less than \$1,000,000 Combined Single

Limit including Owned, Hired and Non-Owned Auto.

- IV. Employment Practices Liability (EPLI), in an amount not less than \$1,000,000.
- V. Umbrella (Excess) Liability insurance with a limit of no less than \$5,000,000 Each Occurrence and \$5,000,000 Aggregate.
- B. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A-VIII. Failure to maintain the required insurance may result in termination of this Agreement at Owner's option.
- C. **Owner, Hotel and Hotel Manager do not represent, and specially disclaim any contrary statement or implication, that the insurance coverage or limit specified herein shall be adequate or reasonable for the protection of COMPANY. COMPANY has made its own determination that the insurance it has in place is adequate and appropriate for its activities.**
- D. Cancellation: All insurance obtained by COMPANY as herein required shall contain a provision that coverages afforded under said policies shall not be canceled or materially changed without at least 30 (thirty) calendar days written notice to Hotel Manager.
- E. Additional Insured:
  - I. On all insurance coverage set forth above (except Workers' Compensation and Employer's Liability), Hotel, Hotel Manager and their Owners, franchisors, licensors, and their respective officers, directors, employees, agents, and representatives must be named as an Additional Insured. This insurance shall apply as primary and non-contributory with respect to any other insurance or self-insurance available to Owner, Hotel or Hotel Manager.
  - II. Owner shall have the right to reject any additional insured endorsement that, in its discretion and judgment, unduly limits the carrier's obligations to Owner, Hotel or Hotel Manager as an additional insured.
- F. Waiver of Subrogation: For all insurance coverages set forth above, COMPANY shall waive, on its behalf and its insurers, all rights to recover against Hotel, Hotel Manager, franchisors and licensors and their respective agents, officers, directors, and employees for any loss or damage to COMPANY arising from any cause required to be carried by COMPANY pursuant to this Section to the extent of the limits of such policy(ies).
- G. Compliance: The COMPANY shall comply with all requirements of the insurers issuing the aforesaid policies. The carrying of any of the aforesaid insurance shall not be interpreted as relieving COMPANY from any obligation hereunder.
- H. Certificates: Prior to commencement of any activity contemplated under this Agreement, COMPANY shall furnish Hotel Manager with certificates of insurance and endorsements evidencing compliance with this Agreement executed by a duly authorized representative of each insurer.
  - I. The insurance policies shall contain a provision that coverages afforded under the policies will not be cancelled due to non-payment of premiums without at least ten (10) days' prior written notice to Hotel Manager and otherwise will not be cancelled, not renewed, or materially modified until at least thirty (30) days' prior written notice is given to Hotel Manager.
  - II. Certificate of insurance shall specifically state that the insurance evidenced thereby is primary and non-contributory to any other valid and collectible insurance.
  - III. The Description of Operations section of the certificate of insurance shall state: Hotel and Hotel Manager, their owners, franchisors, licensors, and their respective shareholders, members, managers, partners, officers, directors, employees, agents, and representatives, are named as additional insured for liability, per the terms of the contract. Insurance is provided on a primary & non-contributory basis. COMPANY waives for itself and its insurer any and all rights of subrogation against Hotel and Hotel Manager and their affiliates. Policy cancellation clause provides 30 days' notice of cancellation, except for non-payment of premium, which provides 10 days' notice.
  - IV. Evidence shall be delivered to Hotel Manager via email to the Hotel General Manager.
  - V. Failure of Hotel Manager to demand evidence of compliance with these insurance requirements or failure of Hotel Manager to identify a deficiency from evidence that is provided shall not be construed as a waiver of COMPANY's obligation to maintain such insurance.

## 7. Indemnification

- A. COMPANY will indemnify, defend, and hold harmless Owner, Hotel Manager White Lodging Services Corporation and Hotel and their respective owners, franchisors, shareholders, directors, officers, members, managers, employees, agents and affiliated companies, partnerships or corporations under common contract from and against all demands, claims, actions, losses, judgment, costs and expenses (including reasonable attorneys fees) imposed upon or incurred by any of them arising out of any of the following:
1. COMPANY's failure to comply with applicable laws, regulations, or orders;
  2. Any negligent act or omission or intentional misconduct on the part of COMPANY, its officers, employees (including its employees on assignment), or agents;
  3. Breach of any obligation of COMPANY provided in this Agreement;
  4. Any direct claim for workers compensation benefits or personal injury claims for job-related bodily injury or death asserted against Owner or the Hotel or any indemnified party by any of COMPANY's employees or, in the event of death, by personal representatives, including alleged wrongful termination, harassment, discrimination, wrongful demotion or retaliation.
  5. Any liability of Owner, Hotel Manager White Lodging Services Corporation or Hotel under any federal, state, or local law for CLAIMS by, on behalf of, or relating to COMPANY's employees, including, but are not limited to, CLAIMS based on any of the laws described in paragraph 17 of this Agreement.
- B. COMPANY'S INDEMNIFICATION OBLIGATIONS SHALL APPLY WHETHER SUCH CLAIMS, DAMAGES, SUITS, LOSSES AND LIABILITIES ARE BASED UPON OR RESULT IN WHOLE OR IN PART FROM THE ACTIVE OR PASSIVE NEGLIGENCE OF OWNER, HOTEL MANAGER WHITE LODGING SERVICES CORPORATION OR ANY OTHER INDEMNIFIED PARTY, OR STRICT LIABILITY IN TORT, BREACH OF CONTRACT, DUTY TO INDEMNIFY OR ANY OTHER BASIS OR CAUSE WHATSOEVER WHEREBY WHITE LODGING AND/OR THE INDEMNIFIED PARTY MIGHT BE HELD LIABLE; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE CONSTRUED TO BE AN AGREEMENT TO INDEMNIFY OWNER, HOTEL MANAGER WHITE LODGING SERVICES CORPORATION OR ANY INDEMNIFIED PARTY AGAINST THE SOLE NEGLIGENCE OF OWNER, HOTEL MANAGER WHITE LODGING SERVICES CORPORATION OR ANY INDEMNIFIED PARTY, UNDER CIRCUMSTANCES WHEREBY SUCH AGREEMENT WOULD BE IN VIOLATION OF ANY APPLICABLE LAW.
- C. To facilitate the effective and efficient processing of claims by COMPANY, Owner agrees to promptly notify COMPANY of any claim Owner believes may be subject to these indemnification provisions and to share with COMPANY any and all relevant and non-confidential information Owner may have concerning such claim. The provisions of this paragraph 7 shall survive any termination of this Agreement.

#### 8. Payment and Billing

- A. Owner agrees to pay COMPANY as provided in Exhibit "A" for each hour worked by Workers at the Hotel as provided in this Agreement. For each such labor hour worked over forty (40) hours per individual work-week, for non-exempt hourly position only, Owner agrees to pay COMPANY one and a half (1-1/2) times the hourly rate as provided in Exhibit "A".
- B. The payments due COMPANY from Owner as provided in this Agreement will be billed weekly by COMPANY with payment due in thirty (30) days following receipt by Owner.

#### 9. Entire Agreement

- A. Owner and COMPANY each agrees that this Agreement is the total agreement between them with respect to its subject matter and that no other document, subsequent modification, or oral agreements exists other than as stated in or attached to this Agreement. Any subsequent modification or amendment to this Agreement shall be reduced to writing, signed by Owner and COMPANY.
- B. It is understood and agreed that the intent of this Agreement is to include everything necessary for the proper and orderly execution and completion of the Services. Any and all services or material described in words, which have a well-known technical or trade meaning shall be interpreted in accordance with such technical or trade meaning.

## 10. Notices

Whenever, by the terms of this Agreement, notice, demand, or other communication shall, or may be given, to either party, same shall be in writing and shall be sent by certified mail or commercial overnight delivery:

If intended for Owner:

Stephen A. Robbins, President

White Lodging Services Corporation, Hotel Manager

701 East 83rd Avenue

Merrillville, IN 46410

Telecopy: 219-472-2034

With copy to:

Paula Spada, General Counsel

White Lodging Services Corporation

701 East 83rd Avenue

Merrillville, IN 46410

Telecopy: 219-472-2034

If intended for COMPANY:

Tumi Staffing, Inc.

PO Box 592715

San Antonio, TX 78259

Telecopy: 512-572-3832

If intended for COMPANY:

## 11. Headings

The section or paragraph headings throughout this Agreement are for convenience and reference only, and the words contained in the headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

## 12. Invalidity of Particular Provision

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent of the law.

## 13. Choice of Law

The parties agree that this Agreement shall be construed under and governed by the laws of the State of Indiana. All litigation in connection with this Agreement shall be in the applicable court for Lake County, Indiana.

#### 14. Licenses and Permits

If any governmental license or permit is required for the proper and lawful conduct of COMPANY's business or other activity carried on at or for the Hotel, or if a failure to procure such a license or permit might or would in any way affect the operations of the Hotel, then COMPANY, at its expense, shall duly procure and thereafter maintain such license or permit and submit a copy of the permit to Owner. COMPANY, at its sole cost and expense, will at all times comply with the requirements of each such license or permit. COMPANY further agrees to comply promptly with all requirements or any legally constituted public authority and to abide by the Hotel's Rules and Regulations noted in the applicable Hotel Associate Handbook.

#### 15. Assignment

Neither Party may assign any portion of this Agreement, voluntarily or involuntarily (except by operation of law), and any attempt to do so shall be null and void. Other than as provided in this Agreement, no person or entity not a party hereto shall have any interest herein or be deemed a third party beneficiary hereof and nothing contained herein shall be construed to create any rights enforceable by any other person or third party.

#### 16. Trade Names

COMPANY acknowledges that Hotel and its related entities or other parties are the sole and exclusive owners of the Hotel trademarks, service marks, trade names and logos and the Hotel trademarks, service marks, trade names and logos (together, "the Marks"). COMPANY agrees that it will not make any use of the Marks except with Hotel's prior written consent, which consent may be withheld or conditioned at the sole and exclusive option of the owner of the Marks, and that any use of the Marks by COMPANY and the goodwill associated with such use shall inure to the Hotel's benefit. COMPANY agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or COMPANY's use of the Marks.

#### 17. Compliance with Laws

COMPANY agrees that it shall not discriminate on the basis of race, color, religion, sex, age, national origin, disability, and/or veteran status. COMPANY affirms that it is an equal opportunity and affirmative action employer and it will comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations and orders governing employment, including, but not limited to, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (as amended), the Older Workers Benefit Protection Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Civil Rights Acts of 1866, 1871, and 1991, the Rehabilitation Act of 1973, the Employee Retirement Income Security Act of 1974, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Executive Order 11246, the Equal Pay Act of 1963, the Immigration Reform and Control Act of 1986, the Americans with Disabilities Act Amendments Act, the National Labor Relations Act, and the Immigration Control Act of 1990.

COMPANY agrees that it will, in response to a request from White Lodging, provide assurances that COMPANY is complying with all applicable local, state and federal laws. In addition, COMPANY will, upon Owner's request, provide documentation demonstrating COMPANY's compliance with such laws and, if requested allow White Lodging to complete an on-site audit of COMPANY's records.

#### 18. Independent Contractor

In its performance of this Agreement, COMPANY will at all times act in its own capacity and right as an independent organization and nothing contained herein may be construed to make COMPANY an agent, partner, or joint venture of Owner or Hotel. Neither COMPANY nor its employees will have any claim to Owner or Hotel revenues from work at the Hotel.

#### 19. Counterparts

This Agreement may be executed in two or more counterparts through the exchange of electronic, e.g. (PDF), or facsimile signatures, each of which shall be an original, and together, will constitute one in the same agreement. The signed copy of this Agreement delivered by email, facsimile, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this

Agreement.

**EXHIBIT "A"**

(List of Positions and Rates)

Rates for:

**nuevo test wl**

Bo San Cristóbal ,Cocoa ,Florida

DEPARTMENT	POSITION	SHIFT	2019 RATES
Housekeeping	HouseKeeper	2nd	75.04
Banquet	waiter	2nd	13.44
Restaurant	waitrees	2nd	13.44

Rates are effective through 02-04-2020. Rates are based on a 40 hour work week. The work week at the Hotel is defined as Saturday through Friday. Overtime rates, that is any time worked and recorded that exceeds 40.0 hours in the defined work week at the Hotel, will be charged at 1.5 times the regular rate identified above.

Rates for HOLIDAY WORKED are 1.5 times the above rates. Applicable Holidays are: New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day and Christmas Day.

There are no exceptions to these rates.



**EXHIBIT "B"**

**Tumi Staffing, Inc.**

**Employment Acknowledgement**

1. I understand that I am an employee of Tumi Staffing, Inc. and am on assignment with, but not an employee of, nuevo test wl or White Lodging Services Corporation (collectively "Owner").
2. I understand that Tumi Staffing, Inc., not Owner, will determine and communicate my pay rate to me, as well as any information about benefits to which I may be entitled from Tumi Staffing, Inc.
3. I understand that I will receive a paycheck from Tumi Staffing, Inc., not Owner, and that this paycheck may be picked up at or distributed by Tumi Staffing, Inc.
4. I understand that as a Tumi Staffing, Inc. employee, I am not eligible to participate in any benefits plans, policies, or programs established or administered by Owner, including, among other things, vacation, holiday pay, health or life insurance, profit sharing, or stock purchase plans.
5. I waive any right or claim to participate in or receive benefits from Owner for any time period during which I am an employee of Tumi Staffing, Inc.
6. I understand that any issues, concerns, or grievances relating to my assignment with Owner       Lodging should be addressed to Tumi Staffing, Inc.
7. I understand that Tumi Staffing, Inc. will handle routine personnel matters, such as reference and credit checks. There will be no common personnel records between Tumi Staffing, Inc. and Owner.

have read and understand the above policies and guidelines.

---

Employee's Signature

---

Date

**Tumi Staffing, Inc.**

## **EXHIBIT “C”**

Insurance Certificates

## EXHIBIT "D"

Tumi Staffing, Inc.

Certification of IRCA Compliance

Stephen A. Robbins (COO, Tumi Staffing, Inc.) hereby certifies on behalf of Tumi Staffing, Inc. ("COMPANY"):

1. That it has verified and will continue to verify the employment eligibility of each and every worker it has assigned and will assign to work at the **nuevo test wl** ("Hotel");
2. That proper and complete I-9 documentation has been and will be completed for each and every worker assigned to work at the Hotel;
3. That all the workers assigned by COMPANY to work at the Hotel are legally authorized to work in the United States; and
4. That in the event it becomes known to COMPANY that a worker assigned to work at the Hotel is no longer authorized to work in the United States COMPANY will immediately remove that worker from the assignment at the Hotel.

---

	Date
Signature	

Stephen A. Robbins, Tumi Staffing, Inc.

## EXHIBIT "E"

### RE: Request for Removal and Replacement of Worker

Tumi Staffing, Inc.

4150-B Freidrich Lane

Austin, TX 78744

Attention: President and COO

Dear Tumi Staffing, Inc.:

Pursuant to Section 5. F. of the Services Agreement between nuevo test wl ("Owner") and Tumi Staffing, Inc. ("COMPANY");

Owner requests the removal of \_\_\_\_\_ (Worker's name) from his/her position as \_\_\_\_\_ (position) (the "Worker") at the **nuevo test wl**.

COMPANY must use its best efforts to remove and replace the Worker within forty-eight (48) hours of receipt of this request.

General Manager Signature:

\_\_\_\_\_ Date: \_\_\_\_\_