



STAFFING AGREEMENT

By and Between

TUMI STAFFING, INC.

and

Aloft Element Austin Downtown

Effective as of 2018-09-27

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Staffing Agreement

This Staffing Agreement (“the Agreement”), executed by and between **TUMI STAFFING, INC.**, a Texas corporation (“**TUMI STAFFING**”), and **Aloft Element Austin Downtown**, (“**HOTEL**”), shall be effective as of August 4, 2018 (“Effective Date”). Tumi Staffing and HOTEL may be referred to individually as “Party” or collectively as “Parties”.

HOTEL owns or operates the property Located at 109 E 7th St, Austin, TX 78701 (“Property”). TUMI STAFFING provides staffing services for properties similar to or the same as Property. HOTEL intends for TUMI STAFFING to provide staffing services necessary for operation of Property.

Therefore, the Parties agree to the following:

1. Duties & Responsibilities

1.1. TUMI STAFFING

TUMI STAFFING will:

- a. Select employees (“TUMI EMPLOYEES”) to perform the type of work described in Exhibit D at the location described therein;
- b. Pay TUMI EMPLOYEES wages, those wages being subject to all Federal, State, and Local taxes, withholdings and garnishments;
- c. Pay, withhold, and transmit payroll taxes, provide unemployment insurance, workers’ compensation benefits, and handle unemployment and workers’ compensation claims involving all TUMI EMPLOYEES;
- d. Require TUMI EMPLOYEES assigned to work at the HOTEL to sign agreements (in the form of Exhibit B) acknowledging that they are not entitled to payment of benefits paid by HOTEL to direct-hire employees of HOTEL, such benefits including vacations, disability benefits, insurance, pensions or retirement plans, or any other benefits provided by HOTEL to its direct-hire employees;
- e. Require TUMI EMPLOYEES assigned to work at the HOTEL to sign confidentiality agreements (in the form of Exhibit C) before they begin their assignments to HOTEL; and

1.2. HOTEL

HOTEL will:

- a. Provide oversight of TUMI EMPLOYEES performing work for HOTEL and be responsible for timekeeping of TUMI EMPLOYEES hours, and be responsible for HOTEL’s business operations, products, services and intellectual property;
- b. Properly supervise, control, and safeguard HOTEL’s Property, premises, processes, equipment, property, or systems, and not permit TUMI EMPLOYEES to operate any vehicle or mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without TUMI STAFFING’s express prior written approval or as strictly required by the job descriptions provided to TUMI STAFFING in Exhibit D of this Agreement;
- c. Provide TUMI EMPLOYEES with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site;
- d. Provide uniforms for TUMI EMPLOYEES;
- e. Not change TUMI EMPLOYEES job duties without TUMI’s express prior written approval;
- f. Schedule TUMI EMPLOYEES on a weekly basis and provide copies of schedules and changes to schedules promptly to TUMI STAFFING. Schedule requests and changes will be communicated

promptly by both HOTEL and TUMI STAFFING. HOTEL agrees to pay TUMI STAFFING a minimum 4 hours for any TUMI EMPLOYEE who arrives to work as scheduled, but is sent home before his work schedule is completed. Same day requests for employees will be subject to a rate premium as outlined in Exhibit A.

- g. Exclude TUMI EMPLOYEES from HOTEL's benefit plans;
- h. Not make any comment, offer, or promise relating to TUMI EMPLOYEES' compensation or benefits; and
- i. Provide connectivity for TUMI STAFFING time clock via a direct dial telephone line or Internet connection.

2. PAYMENT TERMS BILLING RATES AND FEES

2.1. Rates; Payment; Invoicing

HOTEL will pay TUMI STAFFING pursuant to the rates set forth on EXHIBIT A and will also pay any additional costs or fees set forth in this Agreement. TUMI will invoice HOTEL on a weekly basis after such work is performed. TUMI STAFFING will support each Invoice will be supported by the pertinent time sheets or other agreed system for documenting time worked by TUMI EMPLOYEES. HOTEL's signature or other agreed method of approval of the work time submitted for TUMI EMPLOYEES certifies that the documented hours are correct and authorizes TUMI to bill HOTEL for those hours. If a portion of any invoice is disputed, HOTEL will pay the undisputed portion.

2.2. Delinquent Payments

Payment is due on receipt of invoice. Any invoice will be considered "past due" or delinquent if not received by TUMI STAFFING within 15 days of the date on the invoice. Delinquent invoices will be subject to a 1.5% past-due penalty, compounded monthly.

2.3. Premium Billable Hours

"Premium Billable Hours" shall be those hours of work performed by TUMI EMPLOYEES under this Agreement and for the benefit of HOTEL which constitute overtime, holiday, or same day requests. TUMI EMPLOYEES shall not work or incur Premium Billable Hours unless expressly directed, authorized, requested, or otherwise allowed by HOTEL. Premium Billable Hours will be billed by TUMI STAFFING to HOTEL at the same multiple of the regular billing rate as TUMI STAFFING is required to apply to the TUMI EMPLOYEE's regular pay rate. (For example, when a TUMI EMPLOYEE works in excess of 40 hours in a work week, requiring 150% pay rate to that employee, HOTEL will be billed at 150% of the base rate for that position.)

2.4. Labor Costs

In addition to the billing rates specified in EXHIBIT A of this AGREEMENT, HOTEL will pay TUMI STAFFING the amount of all new or increased labor costs associated with HOTELS assigned employees from TUMI STAFFING, that TUMI STAFFING is legally required to pay – such as wage increases, benefits, payroll taxes, social programs contributions, or charges linked to benefit levels – until the parties agree on new billing rates.

3. Term & Termination

3.1. Term

This AGREEMENT shall remain in effect until and unless cancelled by either HOTEL or TUMI STAFFING.

3.2. Rate Adjustments

Rates in EXHIBIT A will be adjusted at the beginning of each calendar year, or more frequently as needed, based in fluctuations in prevailing wages and worker availability in the marketplace.

3.3. Termination

This Agreement may be terminated by either Party upon 30 days written notice to the other Party, except that, if a Party becomes bankrupt or insolvent, discontinues operations, or fails to make any payments as required by this Agreement, either Party may terminate the agreement upon 72 hours written notice. Under no circumstances shall any termination of this Agreement affect, eliminate, or otherwise alter a Party's obligations to pay any fees or amounts outstanding to the other Party as of the date of termination.

4. INSURANCE OBLIGATIONS

4.1. Insurance by TUMI STAFFING

TUMI STAFFING will cover its operations for HOTEL with at least the following types and limits of insurance of other coverage:

- a) Commercial General Liability Insurance; covering all operations or activities, arising out of or connected with this Agreement providing insurance for bodily injury, property damage, personal injury, and contractual liability, with limits of not less than \$ 1, 000, 000 per occurrence and in the aggregate on \$2, 000, 000.
- b) Automobile Public Liability and Property Damage Insurance covering all vehicles, owned, leased, operated or licensed by the Contractor, with a combined single limit on \$1,000,000 for each incident for bodily injury, death or property damage.
- c) Worker's compensation Insurance as require by any applicable law or regulation, and, in

accordance with the laws of the state having jurisdiction over each employee and employer's liability insurance in an amount of not less than \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease,

d) Umbrella Liability Insurance on an occurrence basis with a minimum limit of at least \$1,000,000 combined single limit for each occurrence, in excess of the insurance under policies indicated in Sections 1 (a), (b) and (c). Minimum limit of \$2,000,000 may be met using a combination of primary and umbrella/excess policies.

e) The insurance provided by TUMI STAFFING pursuant to the above shall be provided in accordance with the following terms and conditions:

i. The policy referenced in 1(a) and (b) above, shall name the "Lebanon & Tree City Hotel Associates LLC" and their officers, directors, employees, agents or servants as Additional insureds with respect to this Agreement;

ii. Each such policy shall contain a "cross liability" clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;

iii. Such policies shall be primary to and non-contributory with any insurance maintained by Aloft Element Austin Downtown, with respect to such liabilities and shall grant a waiver of subrogation;

iv. Each such policy shall provide that a thirty (30) day written notice shall be given to Aloft Element Austin Downtown prior to any material change or cancellation of such policy; and

v. You will provide certificates of insurance to Aloft Element Austin Downtown when this Agreement is signed and within a reasonable time after such coverage is renewed or replace, if the insurance certificates are not submitted within seven (7) days from the date of this agreement or subsequent insurance renewal, this Agreement maybe cancelled at Aloft Element Austin Downtown's option.

f) If TUMI STAFFING uses a contractor and/or a sub-contractor, they will ensure that the contractors and/or sub-contractors comply with the insurance provisions contained herein.

g) TUMI STAFFING agrees that the insurance coverages required to be maintained under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.

4.2. Insurance by HOTEL

HOTEL represents and warrants that Property is covered by a general liability insurance policy with limits of at least \$1,000,000.00 / \$2,000,000.00. HOTEL further represents and warrants that it maintains commercial automobile liability insurance on vehicles owned, leased, or rented by HOTEL ("HOTEL Vehicles") and which TUMI EMPLOYEES may operate in order to fulfill the duties set forth in this Agreement. Prior to any TUMI EMPLOYEE operating any HOTEL Vehicle, HOTEL will deliver to TUMI STAFFING documentation certifying such insurance coverage further certifying that

TUMI STAFFING is identified as an additional insured under such policy.

5. PROTECTIONS

5.1. Non-Solicitation; Non-Circumvention.

a. HOTEL agrees that during the Term of this agreement, 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 TUMI STAFFING. If such employee is hired to work at the Hotel prior to such time period, either directly or through a third party, (UNAUTHORIZED EMPLOYMENT), HOTEL agrees to pay TUMI STAFFING a fee of Five Thousand Dollars (\$5,000). HOTEL, however, shall not be responsible to pay the fee if HOTEL inadvertently hired an employee of TUMI STAFFING, but terminates that employee within 48 hours of receiving written notice from TUMI STAFFING of a violation of this provision.

b. Both parties agree that once an individual employee has completed Two Thousand and Eighty (2080) hours of billable service under TUMI STAFFING, the Hotel may request, subject to the agreement of the employee, to convert that employee to a "Direct Hire" employee of the hotel. In such case, upon the agreement of the employee, the Hotel agrees to pay a conversion fee of One Thousand Dollars (\$1,000). Upon completion of the payment of the conversion fee, TUMI STAFFING will then release the employee to work as a Direct Hire of the hotel. The employee will then be an employee of the hotel and all responsibilities for payment of wages, benefits, and insurance, will then belong to the HOTEL. TUMI STAFFING makes no warranties or guarantees that the employee will then continue to work for the hotel for any minimum specified period of time, and is not liable should the employee quit, abandon their job, fail to perform or in any other way prove unsatisfactory as an employee of the hotel.

c. For the Purposes of this agreement an EMPLOYEE of TUMI STAFFING is defined as any person hired by TUMI STAFFING to work at HOTEL, at any time during the term of this agreement, without regard to the work status of the EMPLOYEE with TUMI STAFFING at the time the UNAUTHORIZED EMPLOYMENT takes place.

6. Confidential Information

For purposes of this Agreement, "Confidential Information" means information or material of either Party which is proprietary, sensitive, valuable, or confidential to such Party, which may be, but is not limited to, network data, survey information, trade secret information, customer information, ideas, technical information, scientific processes, business methods, product or business plans, marketing plans, proposals, patent applications, forecasts, financial information, business records, "know-how" or plans, ***including the terms and conditions of this Agreement.*** **Exclusions:** Confidential Information does not include information and data which the receiving Party can show (a) was

publicly available at the time of disclosure or has become publicly available through no violation of this Agreement by the receiving Party; (b) was validly in the receiving Party's possession prior to receipt thereof from the disclosing Party; (c) was rightfully received by the receiving Party from a third party without restriction and without breach of any agreement; or (d) was developed independently by the receiving Party without any reference to Confidential Information received from Company.

6.1. Use of Confidential Information

Each Party may use the other Party's Confidential Information only for the purpose of performing his or her obligations under this Agreement. Confidential Information shall be used for no other purpose. The receiving Party (the Party receiving Confidential Information) agrees that it will not disclose the disclosing Party's (the Party disclosing its Confidential Information) Confidential Information to any third party without the disclosing Party's prior written consent. The receiving Party shall not be liable, however, for any disclosure if the disclosure is required by law or order of court or governmental agency, provided that the receiving Party notify the disclosing Party sufficiently in advance of the required disclosure so that the disclosing Party may act to protect the confidentiality of its information, and provided that the receiving Party assert the disclosing Party's claim of confidentiality in making the disclosure.

6.2. Non-Attribution

No knowledge, possession, or use of HOTEL's Confidential Information will be imputed or attributed to TUMI STAFFING as a result of TUMI EMPLOYEES' access or ability to access to HOTEL's Confidential Information.

6.3. Survivability; Specific Performance.

This Protections Section shall survive termination of this Agreement and shall extend for **12 months** after such termination of this Agreement. Breach of the provisions of this Section may cause irreparable injury to TUMI STAFFING for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the provisions of this Section may be enforced by specific performance.

7. INDEMNIFICATION

7.1. Duty to Indemnify; Procedure

Each Party (the "Indemnifying Party") will defend, indemnify, and hold the other Party and its parent, subsidiaries, directors, officers, agents, representatives, and employees (the "Indemnified Party") harmless from all claims, losses, and liabilities (including court costs and reasonable attorneys' fees) to the extent caused by the Indemnifying Party's breach of this Agreement; the Indemnifying Party's failure to discharge its duties and responsibilities set forth in paragraph in this Agreement; or the negligence,

gross negligence, or willful misconduct of the Indemnifying Party or its officers, employees, or authorized agents in the discharge of those duties and responsibilities. As a condition precedent to indemnification, the Indemnified Party will inform the Indemnifying Party in writing within 10 business days after it receives notice of any claim, loss, liability, or demand for which it seeks indemnification under this Agreement. Each Party agrees to cooperate and to provide reasonable assistance to the other Party in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought by or that may involve Tumi Employees or otherwise arises under this Agreement.

7.2. Disclaimer of Consequential and Special Damages

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY NOR ANY RELATED ENTITY THEREOF SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY, ANY RELATED ENTITY THEREOF, OR ANY OTHER THIRD PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE, OR PUNITIVE DAMAGES OR FOR LOST OR IMPUTED PROFITS, LOST DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), INDEMNITY, OR CONTRIBUTION, AND IRRESPECTIVE OF WHETHER A PARTY OR ANY RELATED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

8. No Guaranties

TUMI STAFFING does not guaranty any performance result by TUMI EMPLOYEES. TUMI STAFFING further does not guarantee the credentials or expertise of any TUMI EMPLOYEE supplied by TUMI STAFFING. TUMI STAFFING does not provide, and hereby disclaims, any express or implied warranties.

9. MISCELLANEOUS

- A. Definitions.** All capitalized terms shall have the definitions set forth herein.
- B. Survivability.** Provisions of this Agreement, which by their terms extend beyond the termination or non-renewal of this Agreement, will remain effective after termination or non-renewal.
- C. Amendment.** No provision of this Agreement may be amended or waived unless agreed to in writing and signed by both Parties.
- D. Severability.** Should any provision of this Agreement for any reason be declared invalid or unenforceable by final order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

E. Merger. This Agreement and any attached Exhibits contain the entire understanding between the Parties and supersede all prior agreements and understandings relating to the subject matter contained therein.

F. Binding. The provisions of this Agreement will inure to the benefit of and be binding on the parties and their respective representatives, successors, and assigns.

G. Waiver. The failure of a Party to enforce the provisions of this Agreement will not be a waiver of any provision or the right of such Party thereafter to enforce each and every provision of this Agreement.

H. Assignment. HOTEL's duties under this Agreement are not assignable nor in any way transferrable without the prior written consent of TUMI STAFFING, nor may HOTEL transfer or assign this Agreement without TUMI STAFFING's prior written consent.

I. Notice. Any notice or other communication will be deemed to be properly given only when sent via the United States Postal Service or a nationally recognized courier, addressed as shown in the first page of this AGREEMENT.

J. Force Majeure. Neither Party will be responsible for failure or delay in performance of this Agreement if the failure or delay is due to labor disputes, strikes, fire, riot, war, terrorism, acts of God, or any other cause beyond the control of the nonperforming Party.

K. Authorization. The signatories to this Agreement represent and warrant they have the authority, permission, and ability to bind their respective parties.

Execution by the Parties

Authorized representative of the parties have executed this AGREEMENT below to express the parties' agreement to its terms.

HOTEL

TUMI STAFFING, INC.

Aloft Element Austin Downtown

By:



Name: dasda a asdada

Title: Line cook

Date: 2018-09-27

By:

Signature

Name: Stephen A. Robbins

Title: President

Date: 2018-09-27

EXHIBIT A
Rate Schedule

EXHIBIT B
Benefits Waiver

EXHIBIT C
Staff Confidentiality Agreement

EXHIBIT D
Job Descriptions

Exhibit A
Rate Schedule

For:

Aloft Element Austin Downtown

109 E 7th St, Austin, TX 78701

The following rate schedule is applicable for the calendar year 2018:

DEPARTMENT	POSITION	SHIFT	2018 RATES
Housekeeping	Line Cook 1	2nd	15

Rates are effective until 12/31/2018.

Work week will be defined as the 7 day period beginning Sunday through Saturday. Rates are based on regular time (0 – 40 hours) per work week.

Same day requests are an additional \$1.00 per hour regardless of position.

Overtime rates (Over 40 hours per work week) are 1.5 times regular rate.

Holiday rates are 1.5 times regular rate. Applicable Holidays are: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day

Exhibit B

Benefits Waiver

In consideration of my assignment to the Aloft Element Austin Downtown by TUMI STAFFING, Inc., I agree that I am solely an employee of TUMI STAFFING, INC for benefits plan purposes and that I am eligible only for such benefits as TUMI STAFFING may offer to me as its employee.

I further understand and agree that I am not eligible for or entitled to participate in or make any claim upon any benefit plan, policy, or practice offered by the Aloft Element Austin Downtown, its parents, affiliates, subsidiaries, or successors to any of their direct employees, regardless of the length of my assignment to the Aloft Element Austin Downtown by TUMI STAFFING, and regardless of whether I am held to be a common-law employee of the Aloft Element Austin Downtown for any purpose; and therefore with full knowledge and understanding, I hereby expressly waive any claim or right that I may have, now or in the future, to such benefits and agree not to make any claim for such benefits.

TUMI STAFFING EMPLOYEE:

WITNESS

Signature

Signature

Stephen A. Robbins

Printed Name

2018-09-27

Date

Signature

Printed Name

Date

Exhibit C
Confidentiality Agreement

TUMI STAFFING CONFIDENTIALITY AGREEMENT

As a condition of my assignment by Tumi Staffing, Inc. to any Client, I hereby agree as follows:

I will not use, disclose, or in any way reveal or disseminate to unauthorized parties any information I gain through contact with materials or documents that are made available through my assignment at CLIENT or which I learn about during such assignment.

I will not disclose or in any way reveal or disseminate any information pertaining to CLIENT or its operating methods and procedures that come to my attention as a result of this assignment.

Under no circumstances will I remove physical or electronic documents or copies of documents from the premises of CLIENT.

I understand that I will be responsible for any direct or consequential damages resulting from any violation of the agreement.

The obligations of this agreement will survive my employment by TUMI STAFFING, INC.

TUMI STAFFING EMPLOYEE:

WITNESS

Signature

Signature

Stephen A. Robbins

Printed Name

2018-09-27

Date

Signature

Printed Name

Date

Exhibit D

Job Descriptions

Aloft Element Austin Downtown

109 E 7th St, Austin, TX 78701

Aloft Element Austin Downtown will provide Job Descriptions, which will be incorporated as part of EXHIBIT D, for the following positions:

No	DEPARTMENT	POSITION
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1		
2		
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