

MANAGEMENT SERVICES AGREEMENT

This MANAGEMENT SERVICES AGREEMENT (this "Agreement") dated as of _____, 2016, is entered by and between the City of Killeen Civic & Conference Center Complex, a municipal corporation, whose mailing address is P. O. Box 1329, Killeen, Texas, 76540-1329 (hereinafter called "Permittee"), and YH SH LLC DBA Jester's, whose mailing address is P.O. Box 2397 Harker Heights, Texas 76548 (hereinafter called "Manager"), upon the following terms and conditions:

RECITALS

WHEREAS, Permittee is the owner of the Killeen Civic & Conference Center Complex located at 3601 South W.S. Young Drive, Suites A, B & C, in Killeen, Texas, 76542 (the "Complex"); and

WHEREAS, Manager, by virtue of its operation of the Complex, has sufficient staff, expertise, and knowledge to provide certain operating, accounting, and other services to Permittee in connection with Permittee's service of alcoholic beverages to its members and their guests at the Complex.

NOW, THEREFORE, in consideration of the covenants and mutual benefits contained herein, the parties agree as follows:

1. *Appointment.* Permittee hereby grants Manager the exclusive right to provide management services for the operation of Permittee's mixed beverage service at the Complex, including the service of beverages, both alcoholic and non-alcoholic, (the "Operation") at the Complex. Manager will provide such services during the term of this Agreement in accordance with the terms and conditions herein contained.

The performance of all activities by Manager hereunder shall be in the name of and for the account of Permittee. It is expressly understood and agreed between the parties hereto that Permittee shall at all times maintain control of its operations and employees. Permittee shall retain the right to purchase alcoholic beverages for use at the Complex.

2. *Term and Termination.*

2.1 *Term.* Subject to the terms of Section 2.2 below, this Agreement shall begin on March 15, 2016 and shall continue for a period of three (3) years. If both parties agree, this agreement may be extended by up to three (3) additional one-year terms. All of the terms of and conditions of this agreement shall apply during any renewal term. A renewal shall be completed in writing by both parties not less than 90 days before the expiration of the prior term.

2.2 *Termination.* This Agreement may be terminated at any time by either Permittee or Manager upon ninety (90) days written notice given to the other party.

3. *Management of Operation.* Manager will provide management, supervision, and direction of the Operation in a manner that is in accordance with standards comparable to those prevailing in other first-class mixed beverage operations in Texas. Such management services

will include, without limitation, serving beverages, both alcoholic and non-alcoholic, to Permittee's customers in accordance with their needs, maintaining all records and financial information required by the Texas Alcoholic Beverage Commission (hereinafter called "Commission"), and submitting same to the Commission pursuant to its requests; negotiating on behalf of Permittee service contracts required in the ordinary course of business; advising and consulting with Permittee personnel regarding operational matters; and generally providing day-to-day supervision and direction for the Operation.

4. *Maintenance of Inventories; Procurement.* Manager will maintain sufficient inventories of all alcoholic beverages, beverage mixers and supplies. Such items and services will be purchased from dependable suppliers at competitive prices, taking into account the quality and quantity required by Permittee for the necessary and proper maintenance of the Operation.

Permittee shall pay for the cost of procurement of all alcoholic beverages. Permittee shall retain full authority and control over the purchase and storage of alcoholic beverages. Permittee shall pay for the cost of procurement of all other beverages, supplies, equipment, and outside services which are directly related to the service of alcoholic beverages.

Permittee shall deliver its initial inventory of alcoholic beverages to Manager upon the date of commencement of this Agreement for Manager's use in the Operation in accordance with the terms hereof. Costs of alcoholic beverages used in the Operation on a monthly basis shall be determined by adding purchases made during each Accounting Period, as defined in Section 7 below, to the opening inventory for that Accounting Period and then subtracting the value of ending inventory for that Accounting Period. Inventory on hand at the Complex upon termination of this Agreement shall be delivered to Permittee at no further cost.

Manager shall conduct a monthly inventory and provide ending inventory balances to Permittee within five (5) days of completion of the inventory. Permittee will be given sufficient notice of each upcoming inventory and will be present at each inventory. Each monthly inventory shall fully report spills and/or breakage of alcoholic beverages, and sufficient documentation of the spills and/or breakage shall be appended to each monthly inventory.

An inventory will be conducted by Manager at initial set up and at the end of each alcohol related event. An inventory report shall be submitted to Permittee within forty-eight (48) hours after the close of last bar.

5. *Personnel.* Manager will designate an Operation Manager and such other employees necessary to perform services for the benefit of Permittee. Manager will train, supervise, direct, discipline, and, if necessary, discharge personnel working at the Operation in accordance with Manager's personnel policies.

6. *Cleaning; Maintenance; Repairs.* Manager will be responsible for maintaining the Operation and all equipment and fixtures related thereto in good condition and repair. Manager will provide cleaning service as needed to support functions when necessary for the Operation to operate according to the highest sanitary standards and in compliance with all applicable health and sanitation laws and regulations.

7. *Accounting; Monthly Operating Statement; Audit.* Permittee will keep and maintain complete and accurate books of account, and all tax records and returns incident to the service of alcoholic beverages at the Complex, including the gross receipts tax on service charges on mixed beverages and sales and use tax on complimentary drinks for the Operation. Such books and records will reflect the gross receipts of all service charges. All such records and books will be kept and prepared in accordance with generally accepted accounting principles and comply with the record keeping requirements of the Commission.

Within thirty (30) days after the close of each calendar month (each such calendar month being hereinafter referred to as an "Accounting Period"), Permittee will furnish Manager with an operating statement showing in reasonable detail the results of the Operation during such prior Accounting Period, including a balance sheet and income statement. Permittee will also submit payment of the Management Fee for such Accounting Period or Partial Accounting Period along with the required operating statements.

Manager shall have the right to audit all of Permittee's accounts, books, and records at any time upon reasonable notice. Permittee will keep all financial books, accounts, and records of receipts and disbursements relating to the Operation for three (3) years, and will make same available for examination for Manager or its auditors during normal business hours. The City Auditor will audit Permittee's accounts, books and records at least annually.

Permittee and Manager shall at all times absolutely comply with all laws, ordinances, rules, and regulations of any governmental authority, including, without limitation, the Commission.

8. *Utilities.* Permittee will provide, or cause to be provided, all utility services, including gas, electricity, hot and cold running water, heat, air conditioning, and all other services needed for the efficient, economical, and sanitary running of the Operation.

9. *Licenses and Permits.* Permittee will obtain and maintain in full force and effect all licenses and permits as are necessary to run the Operation. Permittee will be responsible for the keeping of records and preparation and filing of reports required by the Commission related to the purchase, storage, and service of alcoholic beverages at the Complex. The operations and business of Permittee and Manager shall at all times be in compliance with the Texas Alcoholic Beverage Code (hereinafter called "Code"), as amended, and all rules and regulations of the Commission. Purely by way of example and not by limitation, Manager specifically agrees that it will not serve any inebriated or underage person at the Complex.

10. *TABC Certification.* All persons involved in the service, dispensing, or delivery of alcoholic beverages in the Operation shall hold a currently-effective certificate issued by the Commission evidencing his/her successful completion of a Commission-certified Seller Training Program in accordance with the provisions of Section 106.14 of the Code and the rules of the Commission promulgated thereunder. Manager agrees that (a) any new employees who do not hold such a currently-effective certificate on the date of employment shall successfully complete a Commission-certified Seller Training Program within thirty (30) days of such date, and (b) it will comply with all other applicable provisions of the Code to insure that Permittee is at all times in full compliance with the requirements of the Code and the Commission's rules to obtain the benefits afforded under Section 106.14, as same may be amended from time to time.

11. *Cash Receipts.* Manager will collect and be accountable for all cash receipts from the Operation. Manager is responsible for any losses that occur between collection of the cash and delivery of the cash to Permittee. Notwithstanding anything herein to the contrary, all cash and other receipts collected by the Manager from the Operation shall be delivered to Permittee on a daily basis at a designated location. Cash receipts shall be supported by sales reports (register tapes), which shall be date stamped and signed by the Manager's staff. Immediately after tallying the receipts for an event, Manager shall send notice of the amount collected to Permittee via email. An inventory report of each bar will be conducted at initial set-up for an event and at the conclusion of the event. The report shall be submitted to Permittee on a daily basis, or within forty-eight (48) hours of the conclusion of the alcohol-related event.

12. *Operating Expenses.* The term "Operating Expenses" as used in this Agreement shall mean all direct costs and expenses incurred in connection with the Operation whatsoever, including, without limitation, the Management Fee required under Section 13 herein below, exclusive of salaries, wages, benefits, and other costs of Manager's employees working in the Operation; including the costs of inventories, beverages, supplies, equipment, utensils, and goods (including the cost of replacement), services, repair, replacement and maintenance of equipment; office expenses; all taxes or charges levied or assessed with respect to the Operation, including gross receipts taxes, sales and use taxes, and taxes levied or assessed on wages, salaries, beverages, services, goods, and Manager's property, if any, used or sold in the Operation; and any penalties, fines, interest, fees, charges, and other expenses incurred by Manager; licenses or permit fees, including renewal fees, or other charges attributable to the Operation; and professional fees, including accounting and legal fees. Notwithstanding the foregoing, Operating Expenses shall not include any penalties, fines, interest, fees, or charges assessed against Permittee and/or Manager based upon its violation of the terms of this Agreement, the Code or any other law, ordinance, rule, or regulation of any governmental authority.

12.1 *All Actions on Permittee's Behalf.* It is understood and agreed that everything done by Manager in the performance of its obligations hereunder, and all expenses incurred pursuant thereto, shall be and on behalf of Permittee and for Permittee's account.

13. *Management Fee.* Permittee agrees to pay Manager as compensation the following percentages of the gross receipts realized by Permittee for alcoholic beverage service charges at the Complex (the "Management Fee") during the previous calendar month:

- (a) Forty Percent (40%) of Gross Receipts realized by Permittee for alcoholic beverage service charges at the Complex (including service charges collected on behalf of Permittee hereunder);

As used herein, the term "gross receipts" shall mean all monies paid or payable to Permittee for alcoholic beverage service charges at the Complex under the alcoholic beverage licenses or permits issued to Permittee by the Commission for its operations at the Complex.

14. *Insurance.*

14.1 *Insurance Coverage.* Permittee will secure and maintain at all times during the

term of this Agreement, liquor liability insurance with a separate liability limit of \$1,000,000 either as a separate policy or endorsement. Forty Percent (40%) of the cost of the liquor liability insurance shall be reimbursed by Manager annually. The annual cost will be prorated over a twelve (12) month period. Permittee shall cause Manager to be at all times named as an additional insured on such policies.

14.2 *Policies.* All policies of insurance shall be written by solvent insurance companies admitted to do business in the State of Texas that have at least an “A” rating with AM Best.

15. *Events of Default; Notice.* The following events shall be deemed an event of default (“Event of Default”) under this Agreement:

- (a) Any violation or default by either party of any requirement under the Code for which it is responsible hereunder, or the violation of any law, ordinance, rule, or regulation of any governmental authority;
- (b) The failure by either party to perform or observe the covenants, terms, and conditions of this Agreement.

Upon the occurrence of an Event of Default by one party under the terms of this Agreement, the other party shall give the defaulting party written notice of its intention to terminate this Agreement unless the Event of Default is cured on or before the expiration of thirty (30) days from the receipt of such notice. If the defaulting party fails or refuses to cure the Event of Default on or before the expiration of the thirty (30) day period, this Agreement shall be terminated at the end of such period without further notice or demand.

No waiver by the parties hereto of any default or breach of any term or agreement of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term or agreement contained herein.

16. *Miscellaneous.*

16.1 *Exhibits.* All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied in full length herein.

16.2 *Captions.* The captions or headings of paragraphs in this Agreement are inserted for convenience only and shall not be considered in construing the provisions hereof if any questions of intent should arise.

16.3 *Assignment.* This Agreement shall not be assignable without the prior written consent of the non-assigning party.

16.4 *Notices.* Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to either party hereto at its respective address set out above, or at such other address as it has theretofore specified by written notice delivered in accordance herewith.

16.5 *Governing Law.* THIS AGREEMENT IS PERFORMABLE IN BELL COUNTY, TEXAS, AND IS BEING EXECUTED AND DELIVERED IN THE STATE OF TEXAS, AND THE LAWS OF SUCH STATE SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT.

16.6 *Attorneys' Fees.* If either party brings an action at law or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover its attorneys' fees and all court costs in addition to all other relief. "Prevailing party" shall include, without limitation, a party who obtains substantially the relief or result sought by it from the other party in any such action irrespective of whether such relief or result is obtained prior to or following full adjudication on the merits.

16.7 *Entirety; Amendments.* This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Complex, and may be amended or supplemented only by an instrument in writing executed by the parties.

16.8 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the contract.

16.9 *Time of the Essence.* It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.

16.10 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

EXECUTED as of the date first written above.

PERMITTEE:

City of Killeen
a municipal corporation
Civic & Conference Center Complex

By _____
Glenn Morrison, City Manager

MANAGER:

YH SH LLC DBA Jester's

By _____
Sam Halabi
Co-Owner

By _____
Younes Halabi
Co-Owner