

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “Agreement”), dated as of _____ (the “Effective Date”), is entered into by and between MPH Hotels, Inc. (the “Assignor”) and Diya Salem Hotels, LLC (the “Assignee”).

RECITALS

WHEREAS, Assignor desires to assign that certain Development Incentive Agreement Between the City of Salem and MPH Hotels, Inc. Regarding the Construction of a new Hotel within the Main/I-57 Business District (the “Assigned Contract”), dated as of January 5, 2015, by and between Assignor and City of Salem, Illinois, an Illinois municipal corporation (the “Non-Assigning Party”), to Assignee.

WHEREAS, Assignee desires to accept such assignment from Assignor and assume Assignor’s obligations under the Assigned Contract pursuant to the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Assignment.** Assignor hereby transfers and assigns to Assignee all of Assignor’s right, title, and interest in and to the Assigned Contract (attached hereto as Exhibit A and incorporated herein by this reference). Such assignment (the “Assignment”) shall be irrevocable, and shall include all of Assignor’s rights and obligations as set forth in the Assigned Contract as of the Effective Date.
- 2. Assumption.** Assignee hereby accepts the Assignment from Assignor, including all of Assignor’s rights and obligations as set forth in the Assigned Contract as of the Effective Date. Without limitation on the foregoing, Assignee assumes and agrees to perform all of the obligations and covenants of Assignor as set forth in the Assigned Contract to the extent that they accrue on or after the Effective Date, subject to any and all applicable covenants, conditions, stipulations, obligations, liabilities, and agreements of the Assignor in the Assigned Contract.
- 3. Novation.** The parties hereto agree to simultaneously enter into the novation agreement (the “Novation”) attached hereto as Exhibit “B” and incorporated herein by this reference. The Novation shall be executed by the Assignor, the Assignee, and the Non-Assigning Party. This Agreement shall not become effective or enforceable in any way unless and until the Novation is fully executed by all of the parties thereto. Once the Novation and this Agreement are both fully executed, the Assignor shall be fully released from its obligations under the Assigned Contract and as such, no longer secondarily liable to the Non-Assigning Party with respect thereto.
- 4. Representations and Warranties.**
 - (a) Mutual Representation and Warranties.** Each party hereby represents and warrants to the other party as follows: (i) it is a validly existing organization in good standing under the laws of the state in which it was organized; and (ii) it has the full right to

enter into this Agreement and bound by all of the terms set forth herein without violating any applicable law, rule, or regulation.

(b) Representation and Warranties of Assignor. Assignor additionally represents and warrants to Assignee as follows: (i) there is no breach or default by Assignor under the Assigned Contract (which is in full force and effect and attached hereto as Exhibit A in its true and complete form), and Assignor is in full compliance with all of its terms up through the Effective Date; and (ii) it is the sole owner of all of the rights granted to Assignee hereunder, free and clear of any lien, claim, threatened claim, security interest, or other encumbrance of any kind.

(c) Representation and Warranties of Assignee. Assignee additionally represents and warrants to Assignor that it will dutifully fulfill all of the obligations assumed by it pursuant to this Agreement to the best of its ability and in a timely manner pursuant to the Assigned Contract.

- 5. Indemnification.** Each party shall indemnify, defend, and hold harmless the other party, along with such other party's officers, directors, agents, employees, parents, affiliates, successors-in-interest and permitted assigns, from and against any loss, cost, expense, liability, fine, deficiency, claim, action, judgment, settlement, interest, award, penalty, injury, or damage of any kind, including without limitation reasonable outside attorneys' fees and related costs, to the extent caused by its breach hereof (including without limitation any representation or warranty set forth herein), and/or its negligence, willful misconduct, or illegal act.
- 6. Cumulative Remedies.** Other than with respect to the indemnification rights as set forth above, the rights and remedies provided herein are cumulative (i.e., not exclusive). As such, the exercise by either party of any right or remedy granted hereunder does not preclude the exercise of any other right or remedy now or hereafter available at law or in equity by such party.
- 7. Equitable Remedies.** Each party acknowledges and agrees that a breach or threatened breach of any obligations hereunder by one party may cause irreparable harm to the other party for which monetary damages may not be an adequate remedy. As such, each party shall be entitled to seek equitable relief (including without limitation an injunction) in order to enforce the terms hereof.
- 8. Severability.** If any term hereof is found to be invalid, illegal, or unenforceable in any way, such invalidity, illegality or unenforceability shall not affect any other term hereof.
- 9. Governing Law.** This Agreement shall be governed by the laws of the State of Illinois without regard to its conflict of laws principles.
- 10. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and together which shall constitute one and the same instrument.

11. Entire Agreement. This Agreement, together with the Exhibit[s] attached hereto and incorporated herein, sets forth the entire agreement between the parties with respect to the subject matter hereof. As such, this Agreement shall supersede and replace any and all prior and contemporaneous communications (whether written or oral) of any kind or nature with respect to the subject matter contained herein.

Signatures to Follow

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption with Novation Agreement to be executed as of the date first above written.

ASSIGNOR

MPH Hotels, Inc.

By: _____



Name: Michael P Holtz

Title: President

ASSIGNEE

Diya Salem Hotels, LLC

By: _____



Name: Dipali Patel

Title: Member

Exhibit A. Complete Copy of Assigned Contract.

Exhibit B. Novation Agreement.

This Novation, dated as of the Effective Date, is entered into by and among Assignor, Assignee, and Non-Assigning Party. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Assignment and Assumption Agreement to which this Novation is attached and therein incorporated.

- 1. Assigned Contract.** Assignor and Non-Assigning Party are parties to the Assigned Contract (attached to the Assignment and Assumption Agreement as Exhibit A).
- 2. Novation.** The parties hereto agree that with respect to the Assigned Contract, Assignee shall be substituted for Assignor. As such, Assignee shall acquire all of the rights and obligations of Assignor as set forth therein as of the Effective Date.
- 3. Consideration.** The transfer of rights and delegation of duties as set forth above shall serve as each party's respective consideration to the other party.
- 4. Release.** Despite anything set forth to the contrary in the Assigned Contract, and subject to the terms hereof and the terms of the Assignment and Assumption Agreement, Assignee and the Non-Assigning Party fully release and forever discharge Assignor, along with Assignor's employees, agents, officers, directors, shareholders, affiliates, and representatives (collectively, the "Released Parties") from (i) Assignor's performance obligations as set forth in the Assigned Contract accruing on or after the Effective Date; and (ii) all claims, threatened claims, suits, debts, expenses, costs, deficiencies, damages, or demands that the Non-Assigning Party may have against any of the Released Parties to the extent arising out of the non-fulfillment of performance obligations set forth in the Assigned Contract on or after the Effective Date. Without limitation on the foregoing, this release shall in no way affect the obligations required to be performed under the Assigned Contract before the Effective Date.
- 5. Acknowledgement by Non-Assigning Party.** The Non-Assigning Party acknowledges and agrees that Assignee is Assignor's successor-in-interest in and to the Assigned Contract. As such, Assignee is entitled to all right, title and interest of Assignor in and to the Assigned Contract existing on or after the Effective Date. Assignee and Non-Assigning Party shall be fully bound by the terms of the Assigned Contract as if the Assignee were named as a party thereto.

Signatures to Follow

IN WITNESS WHEREOF, the parties hereto have caused this Novation Agreement to be executed as of the Effective Date.


ASSIGNOR

MPH Hotels, Inc.

By: 
Name: Michael P Holtz
Title: President

ASSIGNEE

Diya Salem Hotels, LLC

By: 
Name: Dipali Patel
Title: Member

NON-ASSIGNING PARTY

City of Salem, Illinois, an Illinois municipal corporation

By: _____
Name:
Title: