

## AMENDMENT TO ANTENNA LICENSE AGREEMENT

**THIS AMENDMENT TO ANTENNA LICENSE AGREEMENT** (this "**Amendment**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "**Effective Date**"), by and between Kokua Hospitality, LLC, a Delaware limited liability company, Receiver pursuant to Consent Order Appointing Receiver in case GCCFC 2007-GG9 Wisconsin Avenue, LLC, Petitioner v. BMC Hotel, LLC, et al., Defendants, in the Circuit Court of Maryland for Montgomery County, Case No. 339476V ("**Receiver**") and MONTGOMERY COUNTY, MARYLAND ("**Licensee**"), (collectively, the "**Parties**" and individually, "**Party**").

### RECITALS:

**R-1.** BRE/Metrocenter, L.L.C., a Delaware limited liability company, predecessor in interest to Receiver, entered into the Antenna License Agreement, dated November 1, 2002, with Licensee (the "**License**").

**R-2.** Pursuant to Consent Order Appointing Receiver in case GCCFC 2007-GG9 Wisconsin Avenue, LLC, Petitioner v. BMC Hotel, LLC, et al., Defendants, in the Circuit Court of Maryland for Montgomery County, Case No. 339476v, entered October 21, 2010 (the "**Order**"), Receiver was appointed as receiver of the hotel commonly known as the Hyatt Regency Bethesda (the "**Hotel**")(including the related facilities and the fixtures, improvements and personal property).

**R-3.** Pursuant to the Order, Receiver was granted the power and authority to hold, maintain, manage, secure, lease, operate, use, take charge of, preserve, protect, and control the Hotel, at the exclusion of others.

**R-4.** Receiver is acting as the "Owner" pursuant to the License.

**R-5.** Licensee and Receiver desire to amend the License to provide for (i) an extension of the License, and (ii) such additional provisions as contained in this Amendment.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties hereto hereby agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated as if set forth herein in their entirety.
2. **Extension of License Term.**
  - a. The Parties agree to extend the License for an additional five (5) years (the "**New License Term**") commencing upon the expiration of the currently existing Renewal Term, on November 1, 2012.

- b. Provided Licensee is not then in default under any of the terms, covenants, or conditions of the License, Licensee shall have the option (referred to in this Amendment as “**Licensee’s New Renewal Option**”) to renew the License and the New License Term for a single renewal term of five (5) years (referred to in this Amendment as the “**New Renewal Term**”) commencing upon the day immediately following the expiration of the New License Term, and expiring, unless sooner terminated pursuant to the provisions of the License, or law, on the day which immediately precedes the fifth (5<sup>th</sup>) anniversary of the first day of the New Renewal Term (referred to as the “**New Extended Expiration Date**”). The New License Term, and the New Renewal Term, if exercised by Licensee in accordance with the terms of this Amendment, shall continue the License upon all of the terms, covenants, and conditions contained in the License, except as otherwise provided in this Amendment.
- c. Licensee shall have the right to exercise the Licensee’s New Renewal Option only by the giving of a notice to Receiver (referred to in this Amendment as the “**Licensee’s New Renewal Notice**”) stating that Licensee has exercised its right on or prior to the date which is one Hundred Eighty-Two (182) days prior to expiration of the New License Term (the “**Last Renewal Date**”). Licensee agrees and acknowledges that time is of the essence with respect to the giving of Licensee’s New Renewal Notice on or prior to the Last Renewal Date and any notice given by Licensee following such date which purports to exercise Licensee’s New Renewal Option shall be of no force and effect.

3. **License Fee.**

- a. The License Fee shall increase by three percent (3%) on the Effective Date from the then current License Fee, as provided in the License. The License Fee shall be payable in accordance with the provisions of the License.
- b. In addition, on each anniversary of the Effective Date, through the New License Term, and, if applicable, the New Renewal Term, the License Fee shall increase by an additional three percent (3%).

4. **Removal or Relocation.** Notwithstanding any provisions of the License to the contrary, any costs and expenses incurred for the removal or relocation of Licensee’s Equipment, whether at the request of Receiver or Licensee, shall be the sole obligation of Licensee.

5. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the License.

6. **Counterparts; Facsimile Signatures.** This Amendment may be executed in counterparts, which together shall constitute one agreement. For purposes of determining the enforceability of this Amendment, facsimile signatures and pdf signatures electronically transmitted shall be deemed originals.

7. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

8. **Ratification.** All terms and conditions of the License not amended pursuant to this Amendment are hereby ratified and confirmed and remain in full force and effect. In the event of any inconsistency between this Amendment and the License, the terms of this Amendment shall control.

[Signature Page to Follow]

This Amendment has been executed as of the Effective Date.

**Witness:**

**RECEIVER:**

**KOKUA HOSPITALITY, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECEIVER PURSUANT TO CONSENT ORDER APPOINTING RECEIVER IN CASE GCCFC 2007-GG9 WISCONSIN AVENUE, LLC, PETITIONER V. BMC HOTEL, LLC, ET AL., DEFENDANTS, IN THE CIRCUIT COURT OF MARYLAND FOR MONTGOMERY COUNTY, CASE NO. 339476V**

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Witness:**

**LICENSEE:**

**MONTGOMERY COUNTY, MARYLAND**

By: Julie L. White

By: Ramona Bell-Pearse

Name: Ramona Bell-Pearson

Title: Asst. Chief Administrative Officer

Date: 10/16/12

Date: October 16, 2012

APPROVED AS TO FORM AND LEGALITY OFFICE OF THE COUNTY ATTORNEY

RECOMMENDED:

By: Alex Dwyer

By: Cynthia Brennan

Name: Cynthia Brennan  
Title: Director, Office of Real Estate

Date: 10/10/12

Date: 10/8/12



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett  
County Executive

David E. Dise  
Director

**MEMORANDUM**

October 8, 2012

TO: Ramona Bell-Pearson *RBell-Pearson*  
Office of the County Executive

FROM: Bernard Fitzgerald  
Department of General Services

SUBJECT: Amendment to Antenna License Agreement

An Amendment to Antenna License Agreement with Kokua Hospitality, LLC is attached for your signature.

The purpose of the Amendment is to extend the term of an Antenna License Agreement for certain County-owned telecommunications equipment located at the building housing the Hyatt Regency at One Bethesda Metro Center in Bethesda. The equipment is a very strategic part of the County's 800 MHz police, fire, and rescue public safety system. The equipment feeds inbound and outbound tracks to Medical Center and the Bethesda Metro platforms.

The current term will expire on October 31, 2012. The Amendment provides a renewal term of 5 years commencing on November 1, 2012 and expiring October 31, 2017. The Amendment also provides the County with an option to extend the term for an additional 5 year renewal term commencing in 2017.

The current license fee is \$1,109.06 per month. The license fee will increase by 3% per annum on November 1 of each year of the renewal term(s). This is a very reasonable license fee considering the magnitude of the equipment located at this facility.

Please call 7-6076 should you have any questions.

**Office of Real Estate**

101 Monroe Street, 9th Floor • Rockville, Maryland 20850 • 240-777-6001 • 240-777-6011 FAX

[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

*Located one block west of the Rockville Metro Station*