



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 4/10/2025

File ID: 2025-315

Department: Legal

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Settlement Agreement and Release among the City of Huntsville, Hammons of Huntsville, LLC, JD Holdings, LLC, and Atrium Hospitality LP.

Resolution No.

Finance Information:

Account Number: NA

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: NA

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 25-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, directed, and requested to enter into a Settle Agreement and Release among Hammons of Huntsville, LLC, a Missouri limited liability company, JD Holdings, LLC, a Connecticut limited liability company, Atrium Hospitality LP, a Delaware limited partnership and the City of Huntsville.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the settlement agreement and any other documents consistent with, or required pursuant to, the terms of this resolution.

ADOPTED this the 10th day of April, 2025.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of April, 2025.

Mayor of the City of
Huntsville, Alabama

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is entered into as of _____, 2025 (the "Effective Date") between Hammons of Huntsville, LLC, a Missouri limited liability company ("Owner"), JD Holdings, L.L.C., a Connecticut limited liability company ("JDH"), and Atrium Hospitality LP, a Delaware limited partnership ("Manager"), on the one hand, and the City of Huntsville, Alabama, a municipal corporation (the "City"), on the other hand. (Throughout this Agreement, Owner, JDH, Manager and the City are referred to collectively as the "Parties" and individually as a "Party.").

Recitals

WHEREAS, Owner owns the hotel commonly known as the Embassy Suites by Hilton Huntsville located at 800 Monroe Street, Huntsville, Alabama 35801 (the "Hotel"), as successor in interest to the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated (the "JQH Trust");

WHEREAS, Owner (as successor by assignment from the JQH Trust and John Q. Hammons Hotels, L.P., a Delaware limited partnership) and the City are parties to that Operating Agreement dated July 8, 2004 (the "Operating Agreement") which provides for, among other things, the joint marketing, mutual booking, and use of the South Hall meeting room space in the Von Braun Center (the "VBC") and the maintenance of an elevated walkway owned by the City and that connects the VBC to the Hotel (the "Elevated Walkway");

WHEREAS, on June 26, 2016, the JQH Trust, together with its affiliated debtors and debtors in possession, including, without limitation, Owner (collectively, the "Debtors") commenced with the United States Bankruptcy Court for the District of Kansas, Kansas City Division (the "Court"), voluntary cases pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), in which JDH was the largest creditor of the Debtors;

WHEREAS, on March 16, 2018, JDH filed its Amended Joint and Consolidated Chapter 11 Plans of Reorganization for All Debtors (collectively, the "Plans");

WHEREAS, the City raised certain objections to the approval of the Plans (the "Objections") relating to its proof of claim (the "Claims");

WHEREAS, JDH and certain affiliates and the City entered into a Claims Allowance and Settlement Agreement, to resolve fully and finally the matters related to the Claims, the Objections and the Plans (the "2018 Settlement Agreement").

WHEREAS, on May 11, 2018, the Court approved the Plans;

WHEREAS, on May 18, 2018, the Plans became effective date pursuant to which certain affiliates of JDH acquired the Hotel and the equity interests in Owner, and Manager assumed management of the Hotel from the prior manager;

WHEREAS, the City asserted that JDH, Owner, and Manager (collectively, "Atrium") defaulted on certain obligations under the Operating Agreement and the 2018 Settlement Agreement, specifically those concerning the renovation of the Hotel and the opening of a new restaurant (such claims, and any other claims as were or could have been made against any of Owner, JDH or Manager or any of their affiliates or related parties under the Operating Agreement, the 2018 Settlement Agreement or applicable law, the "City Claims"), and as a result, the City withheld commissions owed to Owner under the Operating Agreement from August 2020 to the Effective Date;

WHEREAS, Atrium disputes it defaulted on any of their obligations under the Operating Agreement or the 2018 Settlement Agreement;

WHEREAS, Atrium asserts that the City defaulted under the Operating Agreement by withholding commissions payable to Owner and by failing to perform and contribute to the maintenance, repair and security for the Elevated Walkway described in Section 5.5(e) of the Operating Agreement (such claims, and any other claims as were or could have been made against the City under the Operating Agreement, the 2018 Settlement Agreement, or applicable law, the "Atrium Claims");

WHEREAS, the City disputes that it defaulted on any off its obligations under the Operating Agreement or the 2018 Settlement Agreement; and

WHEREAS the City Claims and the Atrium Claims are sometimes collectively referred to as the "Dispute"; and

WHEREAS, the Parties desire to settle the Dispute in accordance with the terms and provisions set forth below in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and releases set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. 2018 Settlement Agreement. The Parties acknowledge and agree that all obligations by each Party under the 2018 Settlement Agreement have been performed in full and that no further obligations or liabilities remaining outstanding under the 2018 Settlement Agreement.

2. Operating Agreement. The Parties acknowledge and agree that the Operating Agreement remains in full force and effect until it expires or terminates in accordance with its terms, that the releases provided in this Agreement in connection with the Dispute are for acts or omissions before the Effective Date, and that the Parties do not release any claims for future acts or omissions, including without limitation, any failure to perform under the Operating Agreement on or after the Effective Date. Without limiting the foregoing, the City shall, in addition to paying the Outstanding Commissions (as defined below), continue paying the commissions due to Owner under the Operating Agreement when due and payable from and after the Effective Date. Upon

Owner's request, the City shall provide Owner reasonable access to VBC books and records, during regular business hours, to permit Owner to verify commission amounts payable to Owner.

3. City's Payment of Withheld Commissions. Within five (5) days after the Effective Date, City shall pay to Owner all commissions owed to Owner under the Operating Agreement, including without limitation, the outstanding commissions reflected in the report generated by the City as of December 31, 2024, attached hereto as Exhibit A, and all commissions currently due and owing but not included in the report through the Effective Date of this Agreement (collectively, the "Outstanding Commissions").

4. Owner's Completion of HVAC Work on Elevated Walkway. Within thirty (30) days after the Effective Date, Owner shall re-engage with its contractor to install in the Elevated Walkway four fan coil units ("FCUs") currently located in the Hotel's parking garage. The Parties acknowledge that actual timing of the installation will depend to an extent on the contractor's schedule. Owner shall have such work performed at its sole cost and expense.

5. Maintenance, Repair and Security for the Elevated Walkway. From and after the Effective Date, the City (acting through the VBC) shall assume responsibility for the maintenance, repair, and security of the Elevated Walkway, and Owner shall be responsible for twenty-five percent (25%) of the cost thereof, all in accordance with Section 5.5(e) of the Operating Agreement; provided, that nothing in this Section 5 shall modify Owner's obligation to complete the FCU installation work at its sole expense as provided in Section 4 above. The City shall reasonably cooperate with Owner and its contractor to allow such installation work.

6. Expiration Date of the Operating Agreement. The Parties acknowledge that the Operating Agreement is scheduled to expire on October 19, 2031. Nothing in this Agreement modifies that expiration date.

7. Release of City. Subject to the performance by the City of its obligations under this Agreement, including without limitation, its payment of the Outstanding Commissions, Atrium, for themselves and on behalf of each of their affiliates and related parties (and including for this purpose also on behalf of any past manager of the Hotel), and each of their respective current and former shareholders, members, partners, principals, trustees, beneficiaries, directors, managers, officers, employees, agents, attorneys and representatives, and the predecessors, successors and assigns of each of the foregoing (in each case, the "Atrium Releasing Parties"), hereby absolutely, conditionally, irrevocably, fully and forever release and discharge the City, its affiliates and related parties (including without limitation, the VBC), and each of its respective current and former directors, managers, officers, employees, agents, attorneys and representatives, and the predecessors, successors and assigns of each of the foregoing (in each case, the "City Released Parties") from any and all claims, demands, causes of actions, obligations, liabilities, debts and expenses whatsoever, whether in law or in equity, whether known or unknown, asserted or unasserted, fixed or contingent, liquidated or unliquidated, disclosed or undisclosed, known or unknown, relating to the Dispute, which now exist, or have existed previously, by reason of any matter, cause, thing or circumstances whatsoever occurring on or any time prior to the Effective Date. Notwithstanding anything to the contrary in this Agreement, this release by the Atrium

Releasing Parties of the City Released Parties shall not apply to any obligations or liabilities of the City under this Agreement, or any fraud or willful misconduct by any City Released Parties.

8. Release of Atrium. Subject to the performance by Atrium of their obligations under this Agreement, the City, for itself and on behalf of each of its affiliates and related parties (including without limitation, the VBC), and each of its respective current and former directors, managers, officers, employees, agents, attorneys and representatives, and the predecessors, successors and assigns of each of the foregoing (in each case, the "City Releasing Parties"), hereby absolutely, conditionally, irrevocably, fully and forever release and discharge Atrium, their affiliates and related parties (and including for this purpose, any past manager of the Hotel), and each of their respective current and former shareholders, members, partners, principals, trustees, beneficiaries, directors, managers, officers, employees, agents, attorneys and representatives, and the predecessors, successors and assigns of each of the foregoing (in each case, the "Atrium Released Parties") from any and all claims, demands, causes of actions, obligations, liabilities, debts and expenses whatsoever, whether in law or in equity, whether known or unknown, asserted or unasserted, fixed or contingent, liquidated or unliquidated, disclosed or undisclosed, known or unknown, relating the Dispute, which now exist, or have existed previously, by reason of any matter, cause, thing or circumstances whatsoever occurring on or any time prior to the Effective Date. Notwithstanding anything to the contrary in this Agreement, this release of the Atrium Released Parties by the City Releasing Parties shall not apply to (i) any obligations or liabilities of the Atrium Released Parties under this Agreement, (ii) any fraud or willful misconduct by any Atrium Released Parties, nor (iii) any claims for taxes due to City by Owner or any party controlled by Owner, including, but not limited to, lodging, sales, business privilege, consumer use, or liquor taxes now accrued or accruing in the future.

9. No Admission of Liability. Nothing in this Agreement, whether expressed or implied, is intended to be or constitutes an admission of liability or wrongdoing on the part of any of the Parties.

10. Representations and Warranties. Each Party hereto represents and warrants to the others that:

10.1 Organization. Such Party is duly incorporated or formed (as the case may be), validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation.

10.2 Authority and Binding Obligation. (a) Such Party has full power and authority to execute this Agreement and all other documents to be executed by such Party pursuant to this Agreement, and to perform all obligations of such Party under this Agreement, (b) the execution by the signer on behalf of such Party, and the performance by such Party of its obligations under this Agreement, has been duly and validly authorized by all necessary action by Purchaser, and (c) this Agreement, when executed, will constitute the legal, valid, and binding obligations of such Party enforceable against such Party in accordance with its terms.

10.3 Consents and Approvals: No Conflicts. (a) No filing with, and no consent, approval, or other authorization of, any governmental authority or other person or entity is necessary for the execution by such Party, or the performance by such Party of any of its

obligations under this Agreement, and (b) neither the execution by such Party, nor the performance by such Party of any of its obligations under this Agreement, will (i) violate any provision of such Party's governing documents, (ii) violate any applicable law to which such Party is subject, or (iii) result in a violation or breach of, or constitute a default under, any agreement or other obligation to which such Party is subject.

11. Governing Law. The validity, interpretation, and enforcement of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama, without giving effect to any choice of law or conflict of law rules.

12. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY WAIVES RIGHT TO JURY TRIAL IN ANY DISPUTE ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT.

13. Severability. If any term or provision of this Agreement is held to be invalid or unenforceable under such applicable law, then such term or provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or affecting in any manner the remainder of this Agreement, except that if the City's payment of the Outstanding Commissions is held to be invalid or unenforceable, then this Agreement shall be null and void, with no force or effect, as if the Parties never entered into this Agreement.

14. Entire Agreement. This Agreement constitutes the complete agreement of the Parties with respect to the subject matters described in this Agreement, and supersedes all prior or contemporaneous negotiations, promises, understandings, and agreements (written or verbal), all of which have been integrated into this Agreement.

15. Amendment or Waiver. No amendment, modification, or other change to this Agreement, and no waiver of any obligation, liability or other term of this Agreement shall be binding unless is made in a writing signed by all Parties.

16. Counterparts. This Agreement may be executed in counterparts, and all such counterparts taken together shall constitute the same agreement. Executed copies of this Agreement may be delivered by electronic mail (e.g., via pdf) and the same shall be deemed the equivalent of delivery of a hard copy original.

[END OF TEXT – CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

Hammons of Huntsville, LLC

By: _____
Name: _____
Title: _____

JD Holdings, L.L.C.

By: _____
Name: _____
Title: _____

Atrium Hospitality LP

By: _____
Name: _____
Title: _____

City of Huntsville, Alabama

By: _____
Name: _____
Title: _____

EXHIBIT A

Outstanding Commissions as of December 31, 2024

Von Braun Center
Advance Payables / Embassy Suites Held Funds
A/C # 2500-00
12/31/2024

Vendor	Amount
Embassy Suites - Split	
August 2020 - July 2021	\$22,686.00
August 2021	\$6,682.00
September 2021	\$10,809.00
October 2021	\$3,360.00
November 2021	\$16,625.00
December 2021	\$12,385.00
January 2022	\$1,078.00
February 2022	\$1,996.00
March 2022	\$2,387.00
April 2022	\$10,252.00
May 2022	\$17,725.00
June 2022	\$16,354.00
July 2022	\$9,694.00
August 2022	\$25,099.00
September 2022	\$16,669.00
October 2022	\$4,072.00
November 2022	\$21,882.00
December 2022	\$21,888.00
January 2023	\$12,864.00
February 2023	\$12,467.00
March 2023	\$7,007.00
April 2023	\$13,841.00
May 2023	\$16,785.00
June 2023	\$14,771.00
July 2023	\$1,741.00
August 2023	\$11,742.00
September 2023	\$11,313.00
Balance @ 9/30/23	\$324,274.00
October 2023	\$29,216.00
November 2023	\$8,818.00
December 2023	\$11,135.00
January 2024	\$8,349.00
February 2024	\$12,495.00
March 2024	\$7,645.00
April 2024	\$10,626.00
May 2024	\$8,714.00
June 2024	\$0.00
July 2024	\$9,335.00
August 2024	\$4,654.00
September 2024	\$23,322.00
Balance @ 9/30/24	\$454,583.00
October 2024	\$12,603.00
November 2024	\$16,890.00
December 2024	\$25,201.00
	\$509,277.00