

Act No. 3 of 1938**WATERLOO HOTEL COMPANY LIMITED
CONFIRMATION OF AGREEMENT**

An Act to confirm an agreement concluded between the Government of The Bahama Islands of the one part and the Waterloo Hotel Company, Limited, of the other part. *3 of 1938*

[Commencement 21st February, 1938]

1. This Act may be cited as the Waterloo Hotel Company Limited Confirmation of Agreement Act. *Short title.*

2. The agreement concluded on the third day of November, 1937, and appearing in the Schedule hereto is hereby confirmed. *Agreement confirmed.*

SCHEDULE

BAHAMA ISLANDS,
NEW PROVIDENCE.

AN AGREEMENT made the Third day of November One Thousand Nine Hundred and Thirty-seven BETWEEN His Excellency James Henry Jarrett, one of His Majesty's Counsel for the Bahama Islands, Administrator and Commander-in-Chief in and over the Bahama Islands, Vice Admiral and Ordinary of the same, for and on behalf of the Government of the Bahama Islands (hereinafter called the Government, which expression shall include the present and successive persons in office of Governor or Administrator respectively and his assigns) of the one part AND The Waterloo Hotel Company, Limited, a Company incorporated under the laws of the Bahama Islands and having its registered office at No. 443 on the North side of Bay Street in the City of Nassau, in the Island of New Providence, one of the Bahama Islands (hereinafter called the Company) of the other part:

WHEREAS the Government, under the authority of An Act of Assembly entitled The Hotel Act 1924 lent to the Company the sum of One Hundred and Fifty Thousand Pounds Sterling (£150,000) which sum was to bear interest at the rate of Four Pounds per centum per annum for the purpose of erecting a hotel known as the Fort Montagu Beach Hotel: *2 of 1924.*

AND WHEREAS under the authority of An Act of Assembly entitled The Hotel Amendment Act 1927 the said loan was increased to Two Hundred and Twenty Thousand Pounds Sterling (£220,000) bearing interest at the said rate: *8 of 1927.*

AND WHEREAS by an Agreement made the fourteenth day of May, 1925, between the Government and the Company (hereinafter referred to as the 1925 Agreement) the relations between the parties hereto were more clearly and definitely set out:

*26 of 1928.
4 of 1933.
11 of 1935.*

AND WHEREAS by sundry Acts of Assembly namely The Hotel Amendment Acts of 1928, 1933 and 1935 (Chapter 26 of 1928, Chapter 4 of 1933 and Chapter 11 of 1935) the 1925 Agreement was modified to the extent that interest on the said loan was remitted and reduced and the date and manner of payment thereof varied:

AND WHEREAS the Company is still indebted to the Government in respect of the said sum of Two Hundred and Twenty Thousand Pounds Sterling (£220,000) with interest:

AND WHEREAS the Company will be indebted to the Government in respect of the sum of Eight Thousand Pounds Sterling (£8,000) being interest and arrears for the years 1936 and 1937:

AND WHEREAS the Company has incurred capital expenditure in connection with improvements to the hotel property and grounds and the Government is prepared to allow the Company to assess these improvements at Five Thousand Pounds Sterling (£5,000) and add this sum to the amount of the total capital indebtedness of the Company:

AND WHEREAS under the Memorandum and Articles of Association of the Company a dividend not exceeding six per centum on the amount of Forty-eight Thousand Two Hundred and Ninety Pounds Sterling (£48,290) subscribed by the shareholders of the said Company is to be paid to the shareholders of the said Company out of any operating profits made by the hotel.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

In this agreement:

“Annual hotel year” means the twelve months ending the 31st day of May in any year.

“Hotel” means the property known as the Montagu Beach Hotel and includes all buildings thereon used in connection therewith together with all equipment, furnishings and accessories.

“Management” means a person or corporation delegated by the Company to operate the hotel on behalf of the Company.

I. THE COMPANY AGREES:

(a) To operate the hotel or cause the hotel to be operated as a first class hotel during the currency of this Agreement for a period of not less than twelve weeks in every year:

Provided that:

- (i) if the Company satisfies the Government before the first day of October in any year that it is unlikely to be able to operate the hotel or cause the hotel to be operated during the ensuing season without incurring substantial loss or if between the first day of October in any year and the ensuing season or during the season the Company will be prejudiced by the operation of the hotel during the season or any part thereof by reason of the Act of God, war, pestilence or fire; or if the Company at any time during a seasonal operation satisfies the Government that there is insufficient business to justify the hotel being operated for the full period of twelve weeks the Government may permit the hotel to be closed for the whole season or authorise the reduction of the said period of twelve weeks or may operate or cause the hotel to be operated for that season or part thereof but the Government shall not be liable to account to the Company for the proceeds of any profits arising out of any such operation of the hotel by the Government;
- (ii) if the Company without first obtaining the authority of the Government as required by sub-clause (i) of this clause fails to operate the hotel as required in sub-clause (a) the Government shall have the right to terminate this Agreement and to enter into possession of the hotel;
- (iii) upon the termination of the Agreement under the foregoing sub-clause and also in the event of the appointment of a Receiver of the Company or of its going into bankruptcy, or if any execution attachment or writ is served upon the Company or its interests in the hotel and is not discharged or bonded against within thirty days or if for any other cause within the control of the Company it shall fail to operate or cause the hotel to be operated the Government shall have the right to terminate this Agreement and to enter into possession of the hotel and exercise any of its rights as mortgagees;

(b) In the event of the Company deciding to delegate the operation of the hotel the Company shall prepare and submit to the Government for approval the document setting out the terms and conditions on which it is proposed to delegate its obligations to the management; and it is hereby agreed that in any document submitted as aforesaid it shall be permissible for that document to provide for losses, incurred in any hotel year by the management after all payments have been made to the Government in respect of interests in compliance with this Agreement, to be carried on the books of the management;

(c) During the currency of this Agreement to insure or cause the said hotel to be insured and continue to be insured against fire and hurricane with responsible underwriters, approved by the Government, in a sum of not less than One Hundred Thousand Pounds

Sterling (£100,000) in respect of fire and Fifty Thousand Pounds Sterling (£50,000) in respect of hurricane damage. The policies of insurance shall be assigned to the Government and, in the event of the partial loss or destruction of the insured property, the proceeds of the insurance shall be paid by the Government to and applied by the Company to a replacement or repair of the property so damaged and destroyed. Such replacement or repair shall be completed within one year from the date of the loss:

Provided always that in the event of the total destruction of the hotel the Company shall have the right to use the proceeds of any insurance in the construction of a new premises of substantially the same type, character, equipment and furnishings as the said hotel and that if the said hotel is not so rebuilt or replaced within two years from the date of the loss the Government shall be entitled to be repaid and/or retain as the case may be sufficient of the proceeds of the said insurance to pay any balance to the principal sums still due and owing and accrued interest thereon and shall pay the balance thereof if any to the Company.

(d) To keep the hotel in good condition and repair and to renovate the property both real and personal throughout the currency of this Agreement.

(e) To prepare and keep an inventory of the furniture, effects, utensils and things together with all fixtures and fittings in the hotel.

(f) That the Government shall have the right by a regularly appointed officer, to enter upon and inspect the said hotel and the inventory of and contents thereof at such times as may seem proper to the Government.

(g) That the premises forming the said hotel shall not be let, used or occupied for any other purpose than that of a hotel or customary accessories without the written consent of the Government.

(h) If required by the Government to give a new mortgage of the hotel in such form as shall be necessary to meet the terms of this Agreement.

II. IT IS ALSO AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

THE COMPANY AGREES:

(a) To pay to the Government annually on the first day of May of each hotel year interest at the rate of Two Pounds per centum on the sum of Two Hundred and Twenty Thousand Pounds Sterling (£220,000) less the amount of principal standing to the credit of the Reserve Fund at the time when such interest falls due and also to pay interest at the rate of Four Pounds per centum upon the sum of Five Thousand Pounds Sterling (£5,000) and on any further sum in excess of the said sum of Two Hundred and Twenty Thousand Pounds Sterling (£220,000) representing capital expenditure authorized by the Government in connection with improvements

to the hotel (hereinafter referred to as the interest) and to regard such interest as an operating expenditure incurred during the hotel year concerned and as a charge against the operating revenue of the hotel of that year.

(b) Subject to clause V (a), after the interest and other operating expenses have been paid any profits which are available in any one year shall be distributed as follow:

- (i) To the Company, a sum not exceeding Four Thousand Four Hundred Pounds sterling (£4,400) for the purpose of remunerating the management; and
- (ii) to the Company, a sum not exceeding Two Thousand Eight Hundred and Ninety-seven Pounds Eight Shillings sterling (£2,897 8s 0d.) for the purpose of paying such dividends to the shareholders as the Company shall declare; and
- (iii) to the Government any profits remaining after the payments referred to in subclasses (i) and (ii) of this clause” have been made to form a fund to be known as the “Reserve Fund”:

Provided however that where the profits available in any one year after the interest and other operating expenses have been paid are sufficient to pay the said sums of Four Thousand and Four Hundred Pounds Sterling (£4,400) and Two-Thousand Eight Hundred and Ninety-seven pounds and Eight Shillings Sterling (£2,897 8s 0d.) (referred to in sub-clauses (i) and (ii) hereof), the payment to the Government for the Reserve Fund shall be only three-quarters of the profits, and the remaining one-quarter shall be distributed to the Company for the purpose of further remunerating the management;

- (iv) payments to the Reserve Fund as described in subclause (iii) of this clause shall continue until the capital contribution to the fund amounts to Twenty-five Thousand Pounds Sterling (£25,000).

(c) To make no further expansion of the investment held by the Government in the hotel nor to increase the principal indebtedness to the Government therein until the Reserve Fund attains by capital contributions the said sum of Twenty-five Thousand Pounds Sterling (£25,000):

Provided however that in each annual hotel year it shall be permissible for the Company to expend a sum not exceeding Two Hundred Pounds Sterling (£200) on any one new addition to the hotel which sum shall not represent additional capital expenditure but shall be included in operating expenditure during the year concerned.

(d) That in the event of the operation of the hotel not earning in any one hotel year sufficient revenue to pay the interest calculated in accordance with sub-clause (a) of this clause, one-half of such interest or such lesser sum as may be standing to the credit of the

Reserve Fund shall become a charge against the Reserve Fund, and the remainder shall be paid by the Company as provided in clause II(a).

(e) That any sum due under sub-clause (b) (iii) of this clause shall be paid by the Company to the Government within ninety days after the end of each annual hotel year.

(f) That all the provisions of this clause shall apply to the annual hotel year ending the 31st day of May, 1937.

III. AND IT IS MUTUALLY AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

(a) If and as soon as capital sums carried to the Reserve Fund have reached a total of Twenty-five Thousand Pounds Sterling (£25,000) the profits calculated in accordance with clause II(b)(iii) shall continue to be paid to the Government and shall at the discretion of the Government be used:

(i) to reduce the amount of the principal sums owing by the Company to the Government;

(ii) to expand or improve the hotel premises:

Provided that interest at the rate of four per centum per annum on all sums used for this purpose shall become payable to the Government on the first day of May in each year.

(b) If, after the Reserve Fund has reached the said total sum of Twenty-five Thousand Pounds Sterling (£25,000), such sum should be reduced by any payment made in accordance with clause II(d) herein, the said three-quarter share shall be paid into the Reserve Fund until the prescribed total of Twenty-five Thousand Pounds Sterling (£25,000) be again reached.

(c) The Government may invest the whole or any part of the monies in the Reserve Fund in such investments as the Government may think fit and any interest from such investments shall not be taken into account in assessing the amount of the capital contributions to be made to the said fund under clauses II (b) and III (b) of this Agreement, but shall be paid into the general revenue of The Bahamas.

(d) The annual property taxes of the hotel premises and/or property and/or capital and/or income of the Company shall not exceed One Hundred and Fifty Pounds Sterling (£150) for such taxable year.

IV. THE COMPANY AGREES:

That its books of accounts shall be audited by a competent auditor at the close of each annual hotel year and a certified statement of accounts shall be submitted to the Government by the Company within a month after the end of each annual hotel year. The said statement shall include reference to the maintenance of the satisfactory inventory of the equipment, furnishings and accessories of the said hotel:

Provided that if, in any year, the said certified statement of accounts shall be considered unsatisfactory by the Government, a further audit may be made by the Government by an auditor appointed in consultation with the Company. The said accounts as finally determined shall govern the payments provided for in clause II(b) hereof.

V. AND IT IS HEREBY FURTHER AGREED BETWEEN THE PARTIES HERETO THAT:

(a) If in any successive years the proportion of the profits referred to in clause II(b)(iii) and III(a) shall fall below the sum of Two Thousand Five Hundred Pounds Sterling (£2,500) in each year all of the provisions of clause II(b) of this Agreement shall be suspended as to the future and the future question of remuneration of the management and other disbursements to be made by the Company shall be referred to the Government to determine in consultation with the Company.

(b) All differences and disputes which may arise between the parties hereto under this Agreement shall be referred to a single arbitrator in case the parties agree upon one; otherwise to two arbitrators, one to be appointed by each party under a Chairman appointed by the parties or, in the event of dispute as to such appointment, under a Chairman to be appointed by the Chief Justice. Such Chairman shall have a casting vote, and a decision of such arbitration shall be final. The procedure to be followed in any such arbitration as aforesaid shall be that provided in the Arbitration Acts of the Bahama Islands.

(c) This Agreement shall be constructed and interpreted according to the Laws of the Bahama Islands and may be sued on in any Court of Law therein having jurisdiction to decide any cause or matter arising between the parties hereto.

(d) This Agreement shall remain in force for a period of twenty years from the date hereof.

(e) This Agreement shall be subject to the confirmation of the Legislature by Statute.

IN WITNESS WHEREOF His Excellency – James Henry Jarrett, one of His Majesty’s Counsel for the Bahama Islands, Administrator and Commander-in-Chief in and over the Bahama Islands hath hereunto set his hand and seal the third day of November, 1937.

J.H. JARRETT,
Administrator. (Seal)

Signed, Sealed and Delivered in the presence of
R.W. TAYLOR,

AND The Common Seal of The Waterloo Hotel Company Limited was hereunto affixed and this Agreement signed and counter-signed by the Secretary thereof as of the third day of November, 1937.

THE WATERLOO HOTEL COMPANY LIMITED (Seal).

RALPH G. COLLINS,
President.

Attest:

Secretary:

W.A. BINNIE,
Witness.