

STATE OF [redacted]

**EMERGENCY TEMPORARY OCCUPANCY AGREEMENT**

<u>TEMPORARY OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT</u> [Name] [Address] [City], [State] [Zip]
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.</u> [Insert number]
<u>STATE AGENCY</u> [redacted]

**Preamble** THIS TEMPORARY OCCUPANCY AGREEMENT (this "Agreement"), made and entered into this XXth day of \_\_\_\_\_, 2020 by and between

**[INSERT LEGAL OWNER]**

hereinafter called the Owner, without distinction as to number or gender, and the State of [redacted], acting by and through [redacted], hereinafter called the State.

**WITNESSETH**

**Description** 1. The Owner hereby authorizes the State and the State hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of [City Name], County of [County Name], State of [State Name], and more particularly described as follows:

The entire [Insert Name] Hotel located at [Address], [City], CA [Zip] (the "Hotel") as outlined in red on the attached Exhibit "A" aerial site plan, consisting of one (1) page, dated [Insert date], said Exhibit "A", hereby being incorporated into this occupancy agreement, and including all nonexclusive unobstructed parking spaces contiguous to the subject hotel building that are part of the Hotel and owned by Owner, and including all furnishings, fixtures and equipment located therein, but excluding the following areas or items: [TBD by applicable Hotel/Owner; Excluded Areas may include restaurants, bars, fitness center, pool, spa, areas leased/licensed to third parties, certain back of house areas, certain equipment]. Such premises that may be occupied pursuant to this Agreement are sometimes referred to herein as the "Occupied Space", the "premises" or the "occupied premises" and the foregoing excluded areas are sometimes referred to herein as the "Excluded Areas".

The State shall have access to and use of the occupied premises set forth in this occupancy agreement 24 hours per day, seven (7) days per week with no exceptions. The State shall have no right to use or enter the Excluded Areas at any time without the prior written consent of Owner in its sole discretion.

**Term** 2. The term of this occupancy agreement shall commence on March XX, 2020 (the "Commencement Date"), and shall expire at 11:59 p.m. on the date that is [90 days] after the Commencement Date, with such rights of termination as may be hereinafter expressly set forth (the "Initial Term"). The Initial Term of this occupancy agreement will be automatically extended

for successive periods of thirty (30) days each, unless either Owner or the State elects not to so extend by giving thirty (30) days prior written notice to the other party.

**Early Termination**

3. The State may terminate the Initial Term of this occupancy agreement at any time by giving written notice to the Owner at least thirty **(30)** days prior to the date when such termination shall become effective. If the State fails to complete its move out and comply with all actions required under this occupancy agreement in connection with expiration or earlier termination of this occupancy agreement and remains in the premises, additional consideration shall be paid and prorated on a thirty (30) day month in accordance with section 4, based on the actual number of days the State occupies the premises following the effective date of termination.

**Consideration**

4. A fee for use of the Occupied Space shall be paid by the State to Owner, from legally available funds, on the first day of each month during said term as follows:

**AMOUNT AND XX/100 DOLLARS (\$XX.XX) FROM MARCH XX, 2020 THROUGH MARCH 31, 2020 THEN**

**AMOUNT AND XX/100 DOLLARS (\$XX.XX) FROM APRIL 1, 2020 THROUGH APRIL 30, 2020 AND MONTHLY THEREAFTER**

THE DAILY RATE FOR PURPOSES OF THE ABOVE CALCULATIONS IS BASED ON \$XX PER DAY.

Payments due under this section for any period of time less than one month shall be determined by prorating the monthly payment herein specified based on a thirty (30) day month. Payments shall be paid to Owner at the address specified in Paragraph 5 or to such other address as the Owner may designate by a notice in writing.

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**Notices**

5. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver’s signature required; and addressed as follows:

**To the Owner:** [Name] \_\_\_\_\_  
 [Address] \_\_\_\_\_  
 [City], CA Zip \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ **Phone No.:** \_\_\_\_\_  
 \_\_\_\_\_ **Hotel No.:** \_\_\_\_\_  
 \_\_\_\_\_ **Email:** \_\_\_\_\_

**With a copy to the Manager:**

[Name] \_\_\_\_\_  
 [Address] \_\_\_\_\_  
 [City], CA Zip \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ **Phone No.:** \_\_\_\_\_  
 \_\_\_\_\_ **Hotel No.:** \_\_\_\_\_  
 \_\_\_\_\_ **Email:** \_\_\_\_\_

**To the State:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ **Phone No.:** \_\_\_\_\_  
 \_\_\_\_\_ **FAX No.:** \_\_\_\_\_  
 \_\_\_\_\_ **Email:** \_\_\_\_\_

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE STATE AGENCY AND PREMISES ADDRESS

Consideration and other payments due hereunder shall be made payable to:

\_\_\_\_\_

and mailed to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

**Parking**

6. Parking spaces that are part of the occupied premises, upon the Commencement Date, shall be unobstructed by Owner and its agents and completely accessible for State’s use.

**Services, Utilities, and Supplies**

7. Owner, the third party that Owner has engaged to manage or operate the Hotel (“Manager”), and their respective affiliates, agents and employees shall have no obligation to provide services, supplies or support to the Hotel, any occupants of the Hotel, or the State during the term of this Agreement. Owner agrees to use commercially reasonable efforts to maintain

contracts for basic critical utilities (electricity, gas, water/sewer, and HVAC) and other basic services contracts as may be mutually agreed upon by Owner and State in writing; provided, however, that all costs of the provision of such utilities and services during the term of this Agreement shall be at State's sole cost and expense. The State shall reimburse Owner for such costs within ten (10) days of invoice.

In the event of failure by the Owner to furnish any of the above utilities in a satisfactory manner, the State may furnish the same at its own cost.

**Repair and  
Maintenance**

8. During the term of this occupancy agreement, the State shall maintain the occupied premises and all furnishings, fixtures and equipment therein in good repair and condition at the State's sole cost and expense. In addition, the State agrees that it will follow the reasonable directives of Owner and Manager representatives regarding the maintenance of the Hotel and furnishings, fixtures and equipment therein during the term of this occupancy agreement.

**Assignment  
and  
Subletting**

9. The State shall not assign this occupancy agreement or any of its rights or obligations hereunder or sublet the Occupied Space without the express prior written consent of Owner. If Owner gives its consent to any assignment or subletting, the State shall at all times remain fully responsible and liable for compliance with all of the State's obligations under this Agreement.

**Destruction**

10. If the occupied premises are destroyed in whole or in part by fire or other casualty, this occupancy agreement shall terminate.

**Surrender of  
Occupancy**

11. Upon termination or expiration of this occupancy agreement, the State will peacefully surrender to the Owner the occupied premises in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof and damage by fire or other casualty over which State has no control. State shall ensure, at no cost to Owner, that all its employees, guests, and invitees have completely vacated the Hotel prior to the termination of this Agreement.

If the State fails to surrender the occupied premises to Owner on the date and in the condition required hereby or by any other provision of this Agreement and to take all other actions required by this Agreement in connection with termination, the State shall be liable for all costs incurred by Owner (or third parties under contract with the Owner) to repair or restore the occupied premises to the required condition or to satisfy such other obligations. The State's liability under this section shall survive the expiration or earlier termination of the Agreement.

**Time of  
Essence,  
Binding upon  
Successors**

12. Time is of the essence of this occupancy agreement, and the terms and provisions of this occupancy agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns to the respective parties hereto, subject to the restrictions on assignment and subletting hereunder. If more than one person or entity has executed this Agreement as "State" or as "Owner", the obligations of such persons or entities hereunder will be joint and several with respect to the applicable party.

**No Oral  
Agreements**

13. It is mutually understood and agreed that no alterations or variations of the terms of this occupancy agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

**Insurance**

14. **[NOTE: EACH STATE MAY HAVE ITS OWN REQUIRED INSURANCE PROVISION]** State shall be required, and hereby agrees, to procure and maintain at all times during the term of this Agreement (or during any other period in which the State is present at the Hotel or conducting any activities or operations relating to the Agreement) insurance coverage of the following types:

a. Workers Compensation insurance in full satisfaction of applicable laws and Employers Liability insurance with a limit not less than \$[TBD] each accident for bodily injury, \$[TBD] each employee for bodily injury by disease, and \$[TBD] policy limit for disease.

b. Commercial General Liability (CGL) insurance with a limit of coverage not less than \$[TBD] each occurrence covering liability arising from independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Indemnified Parties (as hereinafter defined) shall be included as additional insureds under the CGL on form CG 20-10 or equivalent.

c. If the State's or State's subcontractors' scope of work under this Agreement requires or involves the ownership, maintenance or use of an auto, Commercial Auto Insurance with a limit of insurance not less than \$[TBD] each accident covering "any auto" whether owned, scheduled, leased, hired or other.

d. At the State's option, insurance covering the State's personal property, it being understood and agreed that, pursuant to section 27 below, neither Owner nor Manager nor any of the Indemnified Parties shall be liable for any damage to or loss of personal property sustained by the State, whether or not it is insured, even if such loss is caused by the negligence of any such parties.

This insurance shall apply as primary with respect to any other insurance or self-insurance available to Owner. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A-/VII. Failure to maintain the required insurance may result in termination of the Agreement at Owner's option. By requiring insurance herein, Owner does not represent that coverage and limits will be adequate to protect the State. The requirements contained herein shall not be construed in any manner to relieve or limit the State's indemnification obligations for any loss or claim arising out of the Agreement.

The State unconditionally waives on behalf of itself and its insurers all rights against Owner and Manager, each of their affiliates, and the agents, officers, directors, and employees of each of them, for recovery of damages to the extent these damages are covered by its insurance, regardless of deductibles, if any. Prior to the Commencement Date or commencement of any activity contemplated under the Agreement, whichever is earlier, the State shall furnish Owner with certificates of insurance providing evidence of compliance with the above requirements. Thirty (30) days' written notice to Owner prior to cancellation or material change is required.

The State shall require that any permitted assignee and any contractor and/or subcontractor performing any work in the Occupied Space maintain policies of insurance satisfying the requirements imposed upon the State under this Agreement, including, but not limited to, the requirement that such policies shall name the Indemnified Parties as additional insureds.

**Hazardous Substance**

15. State agrees that it will comply with all applicable laws existing during the term of this occupancy agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event Owner or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the State's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the State shall indemnify, defend, and hold harmless any of these individuals against such liability. Where the State is found to be in breach of this provision due to the issuance of a government order directing the State to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the State or any person acting under State's direct control and authority, State shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by Owner or any of its affiliates, successors, principals, employees, or agents in connection with or in response to such government order.

**Restoration of Premises**

16. Upon termination of this occupancy agreement, Owner agrees that the equipment installed by the State shall be and remain the property of the State, and State shall remove such property when vacating the premises. State shall restore the Occupied Space, to the condition as originally received by the State and existing prior to the installation of any of the State's property, including, without limitation, restoration and repair of all surfaces, floors, walls, ceilings, including restoring damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces, and including restoration and repair of all furnishings, fixtures and equipment. State shall clean the premises per the then current health and safety protocols established by public health officials and otherwise to the satisfaction of Owner and Manager, during the term and immediately prior to vacating the premises. State must use cleaning service providers that have been pre-approved by Manager and the franchisor of the brand under which the Hotel is operated.

**Operational Hand-off**

17. Owner shall provide operational hand-off with instructions as needed and as of the Commencement Date, the hotel shall be completely vacated and no staff, including contractors, will be permitted to enter without prior authorization from State.

**Taxes**

18. Owner is solely responsible for all property taxes with respect to the Hotel. The State will ensure that property taxes with respect to the Hotel site will not be increased as a result of this Agreement or the State's use of the Hotel.

**No Tenancy; Relief from Eviction Laws**

19. In no event will this Agreement be deemed or construed to run with the land or create any tenancy or other permanent possessory rights on the part of the State or its invitees. This Agreement does not create any recordable interest and will not be recorded in any land records. No tenancy and/or eviction laws, regulations, rules, requirements, processes and proceedings ("Eviction Laws") shall be applicable with respect to the use of the Hotel by the State and its invitees hereunder. The State shall waive the applicability of all Eviction Laws with respect to the Hotel and ensure that any and all other applicable government entities, agencies, instrumentalities, subdivisions or other bodies of any regional, local or other governments waive any such Eviction Laws. In the event any individual is claiming tenancy rights, then the State, at the State's sole cost and expense, shall take all such necessary actions to remove such individual from the premises prior to expiration or termination of the Agreement.

**Permitted Use**

20. The State may use the Occupied Space solely for the [redacted], and for no other purpose.

**State's  
Operations**

21. State will be solely responsible for providing the resources necessary for conducting its operations and activities at the Occupied Space, including without limitation providing all necessary staffing and providing for the safety and security of its invitees, and State is responsible for the costs of its operations. The State, at its sole cost and expense, during the term of this Agreement shall furnish all consumable items used at the Occupied Space including food and beverages, amenities, fuel, cleaning materials, printed materials, and other similar items as well as all non-consumable items including all china, glassware, linens, silverware, uniforms and other similar items. Any alcoholic beverages stored at the Hotel will not be use or accessed by the State, its employees, guests, or invitees. The State shall ensure that its operations and activities at the Occupied Space at all times comply with this Agreement and all applicable laws and regulations.

**Licenses &  
Permits  
(including  
Liquor  
Licenses);  
Zoning**

22. The State shall, at the State's sole cost and expense, be responsible to obtain and maintain all licenses, permits, or other similar authorizations required for its operation on the premises. This obligation shall include renewal (or cooperating with Owner for the renewal, as applicable) of any permits for the premises that expire or need to be renewed during the term of this Agreement. The State shall comply with (or obtain the necessary waivers of) all zoning requirements for its operation on the premises during the term of this Agreement.

In addition, the State guarantees and will work with any other government agencies and instrumentalities, whether state or local, that have jurisdiction over the Hotel to ensure that the State's occupancy of the Occupied Space will not in any way affect the liquor license (if any), certificate of occupancy, zoning permits or exceptions, or any other licenses, permits, or approvals for the Hotel or the property on which the Hotel is located in effect as of the Commencement Date, and that any issues with the foregoing will be tolled during the duration of the State's occupancy. The State shall ensure that all licenses or permits (including the liquor license, if any) required for the operation and management of the Hotel as a hotel or transient lodging establishment shall be reinstated or continue in full effect after the expiration or termination of this Agreement without cost or expense to Owner.

**Indemnification**

23. **[NOTE: MAY VARY DEPENDING ON STATE LIMITATIONS]** The State shall indemnify, defend and hold harmless Owner, Manager, **[HOTEL BRAND / MANAGER PARENT COMPANY]**, their respective owners, franchisees, affiliates and subsidiaries, the successors and assigns of the foregoing, and each of their respective partners, officers, directors, employees, agents, contractors, subcontractors, invitees, licensees and representatives, now and in the future (each an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against any and all claims, allegations, demands, liabilities, obligations, losses, costs, fines, penalties, injuries or damages of any kind or nature, including, but not limited to, reasonable attorneys' fees and court costs (collectively, "Claims") that may be asserted against any one or more of the Indemnified Parties, whether by reason of the actions or omissions of the State under the Agreement, the use of the Occupied Space, the State's breach of any of its representations, warranties, covenants or obligations under the Agreement, the violation of any legal or contractual obligation by or on behalf of the State, the acts or omissions of any State employees, any work done in the Occupied Space, the conduct of the State's operations, the presence, condition or operation of any of the State's equipment or other personal property, or any other act, omission or condition for which the State is responsible under law, tort, contract or principles of equity; provided, that the foregoing indemnification obligations of the State shall not apply with respect to a particular Claim to the extent that such Claim has arisen directly from the gross negligence or willful misconduct of Owner. In the event that any such Claim is made or any action or proceeding is brought against any one or more of the Indemnified Parties relating to the foregoing, any such Indemnified Party may, by notice to the State, elect to require the State, at the State's

sole risk, cost and expense, to resist such Claim or take over the defense of any such action or proceeding and employ for such purpose counsel approved in writing by such Indemnified Party. If, for any reason the foregoing indemnifications are unavailable to any Indemnified Party or insufficient to hold any of them harmless, then the State shall reimburse the Indemnified Parties for all amounts paid or payable by the Indemnified Parties as a result of such Claims. The section shall survive the expiration or earlier termination of the Agreement.

- Liens** 24. State agrees to keep the Occupied Space, the Hotel and all equipment and property of Owner or Manager free and clear of any and all liens for work performed or materials furnished to or at the request of State.
- Alterations** 25. State shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement to) the Occupied Space or other portions of the Hotel without the prior written consent of Owner in its sole discretion.
- No Use of Names** 26. State agrees not to use the name of the Hotel, the name of Owner or its affiliates, the name of Manager or its affiliates, or any other trade names, trademarks, service marks, or other intellectual property of Owner (or its affiliates), or of the Manager (or its affiliates), or any variation of any of the foregoing, without the express written approval of Owner and Manager, which may be given or withheld in their the sole discretion of Owner or Manager.
- Limitation of Liability** 27. Neither Owner, Manager, nor any of their respective affiliates, nor any of the other Indemnified Parties, shall be liable for damage to any equipment or other property of the State or for injury to State's employees, invitees or any other person on, in or about the Occupied Space from any cause, whether in or about the Occupied Space or elsewhere in the Hotel. It shall be the State's sole obligation, at its sole risk and cost, to protect, safeguard and insure against all damage or injury to any such persons or property. Further, the Owner and Manager Parties shall under no circumstances be liable for any special, incidental, punitive, exemplary or consequential damages.
- Remedies** 28. In the event of any breach of the terms of this Agreement by the State, Owner shall be entitled to pursue any and all legal and equitable rights and remedies permitted by applicable law.
- Relationship of Parties** 29. The relationship between Owner and State is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency or tenancy.
- Confidentiality** 30. The terms of this Agreement will be kept confidential by the parties, except as disclosure may be required by law or on a need-to-know basis, without the written consent of the other party.
- Survival of Covenants** 31. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.
- Entire Agreement** 32. This Agreement sets forth the entire agreement and understanding between the parties concerning the subject matter of the Agreement, and supersedes any and all prior oral or written agreements between the parties relating to that subject matter.
- Governing Law** 33. The Agreement shall be governed by and constructed in accordance with the laws of the state in which the Hotel is located, not including the choice of law provisions thereof.

**Counterparts;  
Electronic  
Signatures**

34. This Agreement may be executed in any number of duplicate originals and each duplicate original will be deemed to be an original. This Agreement may be executed in any number of counterparts, each of which constitutes an original, and all the counterparts together constitute one and the same Agreement. Electronic copies of this Agreement and signatures thereon will have the same force, effect and legal status as originals.

**Remainder of Page Intentionally Left Blank**

**IN WITNESS WHEREOF, this occupancy agreement has been executed by the parties hereto as of the dates written below**

STATE OF [REDACTED]

OWNER

[DEPARTMENT OF [REDACTED]]

[NAME]  
[NAME]

By \_\_\_\_\_  
[NAME], AUTHORIZED SIGNATORY

By \_\_\_\_\_  
[NAME], AUTHORIZED SIGNATORY

Date \_\_\_\_\_

Date \_\_\_\_\_