

STATE OF CALIFORNIA

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING PREMISES</u> <u>LOCATED AT</u> [Name] [Address] [City], CA [Zip]
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.</u> [Insert number]
<u>OWNER AGENCY</u> Department of Social Services

Preamble THIS OCCUPANCY AGREEMENT, made and entered into this XXth day of March 2020 by and between

[INSERT LEGAL OWNER]

hereinafter called the Owner, without distinction as to number or gender, and the State of California, acting by and through the Director of the Department of General Services, hereinafter called the State. **This Agreement is entered into pursuant to the Governor's State of Emergency Proclamation dated March 4, 2020 and Executive Order N-25-20, in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety.**

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 California, and more particularly described as follows:

The entire [Insert Name] Hotel located at [Address], [City], CA [Zip] 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, and unlimited use of the building's common facilities. 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.

Term 2. The term of this occupancy agreement shall commence on March XX, 2020, and shall continue month to month, with such rights of termination as may be hereinafter expressly set forth.

Early Termination 3. The State may terminate this occupancy agreement at any time by giving written notice to the Owner at thirty (30) days prior to the date when such termination shall become effective. If the State fails to complete its move out within the notice period and remains in the premises, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the State occupies the premises following the effective date of termination.

Rent

4. Rental payments shall be paid by the State, from legally available funds and subject to the California Constitution, in arrears on the last 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.

Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified based on the actual number of days in the month. Rental 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.

Remainder of Page Intentionally Left Blank

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:

To the State:

Phone No.:
FAX No.:
Email:

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
STATE AGENCY AND PREMISES ADDRESS

Rental warrants 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, upon commencement of the occupancy agreement, shall be unobstructed and completely accessible for State's use.

Services, Utilities, and Supplies

7. Owner, at Owner's sole cost and expense, during the term of this occupancy agreement shall furnish the following services, utilities, and supplies to the area occupied by the State, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, etc., which State shares with other users, if any:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- B. Elevator (if any) service.
- C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for State's operations.
- D. Pool, pool area, and pool equipment, if any.
- E. [Add any other service or supply unique to the hotel]

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the State may furnish the same at its own cost; and, in addition to any other remedy the State may have, may deduct the amount thereof, including State's administrative costs, from the rent that may then be, or thereafter become due hereunder.

**Repair and
Maintenance**

8. During the term of this occupancy agreement, the State shall maintain the occupied premises in good repair.

**Assignment
and
Subletting**

9. The State shall have the ability to assign this occupancy agreement.

**Quiet
Possession**

10. The Owner agrees that the State, while keeping and performing the covenants herein contained, shall at all times during the existence of this occupancy agreement, peaceably and quietly have, hold, and enjoy the occupied premises without suit, trouble, or hindrance from the Owner or any person claiming under Owner.

Destruction

11. If the occupied premises are totally destroyed by fire or other casualty, this occupancy agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the occupied premises unusable for the purpose intended, Owner shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to State of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, State, in either such event, at its option may terminate this occupancy agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and State.

In the event of any such destruction other than total, where the State has not terminated the occupancy agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the State shall have the option to terminate this occupancy agreement or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and State.

In the event the State remains in possession of said premises though partially damaged, the rental as herein provided shall be reduced by the same ratio as the net square feet the State is thus precluded from occupying bears to the total net square feet in the occupied premises. "Net square feet" shall mean actual inside dimensions and shall not include public corridors, stairwells, elevators, and restrooms.

It is understood and agreed that the State or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the State's request, the Owner shall immediately identify an appropriate route through the building to access the State occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the State may use any and all means of access at its discretion in order to enter its occupied space.

**Subrogation
Waived**

12. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein occupied premises, Owner hereby waives the subrogation rights of the insurer, and releases the State from liability for any loss or damage covered by said insurance.

**Prevailing
Wage
Provision**

13. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:
Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102
Phone: (415) 703-4774
Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

**Fair
Employment
Practices**

14. During the performance of this occupancy agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding State agency to implement such article.

Holding Over

15. In the event the State remains in possession of the premises after the expiration of the occupancy agreement term, or any extension or renewal thereof, this occupancy agreement shall be automatically extended on a month to month basis, subject to a forty-five day (45) days termination by the State and otherwise on the terms and conditions herein specified, so far as applicable. If the last rental amount shown in Paragraph 4 included the amortization of a capital sum expended by Owner for certain alterations and improvements, as described in a separate paragraph herein, and the capital sum has been fully amortized, the holdover rent shall be reduced by the amount of the monthly amortization. If the State fails to vacate the premises within the notice period and remains for an extended period, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the State occupies the premises following the effective date of termination.

Surrender of Possession

16. 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 as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which State has no control or for which Owner is responsible pursuant to this occupancy agreement.

Time of Essence, Binding upon Successors

17. 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 assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

No Oral Agreements

18. 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

19. Owner understands and agrees to the following:

In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of California based on tort liability should be presented as a government claim to the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052. (Gov. Code section 900, et. seq.) Internet link:

<https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/File-a-Government-Claim>

The State of California has also elected to be insured for its motor vehicle liability exposures through the State Motor Vehicle Liability Self-Insurance Program (VELSIP). This program provides liability coverage arising out of the operations of motor vehicles used by state employees for official state business (California Vehicle Code Sections 17000 and 17001). Motor vehicle liability claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798-9052, (800) 900-3634, claims@dgs.ca.gov. If your motor vehicle liability claim is not resolved within six months from the date of loss, California law requires you to file a formal claim with the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052. (Gov. Code section 900, et. seq.) Internet link:

<https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/File-a-Government-Claim>

The State of California has a Master Agreement with the State Compensation Insurance Fund regarding workers' compensation benefits for all state employees, as required by the Labor Code.

21. 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, to the extent authorized by Government Code section 14662.5. Where the State is found to be in breach of this provision due to the issuance or 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 in connection with or in response to such government order, to the extent authorized by Government Code section 14662.5. In the event a government order is issued naming the State or the State incurs any liability during or after the term of the occupancy agreement in connection with contamination which pre-existed the State's obligations and occupancy under this occupancy agreement or which were not caused by the State, Owner shall hold harmless, indemnify, and defend the State in connection therewith and shall be solely responsible as between State and Owner for all efforts and expenses thereto.

**Restoration of
Premises**

22. 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 all surfaces, including floors and walls, to the condition existing prior to its installation, including repair of damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces. State shall clean the premises per the current health and safety protocols established by public health officials, immediately prior to vacating the premises.

Access

23. Owner shall allow State or its agents to enter the premises as of XXX on 03/XX/2020 to stage and prepare the property for tenants, or other parties, or for any other purpose State deems necessary.

**Hotel Staff
Compensation**

24. Owner warrants that this Occupancy agreement will not impact the employment status of any hotel staff for the duration of this Occupancy agreement. Owner and/or its agents shall ensure that all hotel staff will receive the same compensation as they would otherwise have received absent any state occupancy, whether they are reassigned to another hotel or relieved of duty for the duration of the occupancy agreement.

**Operational
Hand-off**

25. Owner shall provide operational hand-off with instructions as needed and as of the occupancy agreement occupancy date of March XX, 2020, the hotel shall be completely vacated and no staff, including contractors, will be permitted to enter without prior authorization from State.

Taxes

26. Owner is solely responsible for all tax liabilities, including property taxes.

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

STATE OF CALIFORNIA

OWNER

DEPARTMENT OF GENERAL SERVICES

[NAME]
[NAME]

By _____
PATRICK FOSTER, CHIEF
REAL ESTATE LEASING AND PLANNING

By _____
[NAME], AUTHORIZED SIGNATOR

Date _____

Date _____