

**EMERGENCY OCCUPANCY AGREEMENT**

<u>OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT</u>     
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.</u>  [Insert number]
<u>OCCUPANT AGENCY</u> Health Care Agency

**Preamble**

THIS EMERGENCY OCCUPANCY AGREEMENT ("**Occupancy Agreement**"), is made and entered into this XXth day of March 2020 by and between

\_\_\_\_\_

(hereinafter called the "**Owner**"), without distinction as to number or gender, and the County of Orange, a political subdivision of the State of California, (hereinafter called the "**Occupant**")(Owner and Occupant may be individually referred to herein as a "**Party**," or individually as the "**Parties**."). **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. In so doing, Occupant enters into this Occupancy as the agent of the State of California ("State") and in reliance upon the aforementioned proclamation and executive order and State's assurances to reimburse and make whole Occupant for its expenditures related hereto.**

**WITNESSETH**

**Description**

1. The Owner hereby authorizes the Occupant (including its invitees, tenants, contractors, agents and operator) and the Occupant hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of Laguna Beach, County of Orange, State of California, and more particularly described as follows:

The entire \_\_\_\_\_ located at \_\_\_\_\_, \_\_\_\_\_, CA \_\_\_\_\_ as depicted on, Exhibit A and floor plans as set forth in Exhibit B, the floor plan map attached hereto and incorporated herein, including all nonexclusive unobstructed parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities (collectively, the "**Premises**"). The Occupant 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.

As Occupant is renting the entire Premises, Owner shall not require identification from any of Occupant's invitees or tenants. Occupant will authorize invitees or tenants' admission to the Premises.

**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. Either Party may terminate this Occupancy Agreement at any time by giving written notice to the other Party thirty (30) days prior to the date when such termination shall become effective. If the Occupant 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 Occupant occupies the Premises following the effective date of termination.

**Rent** 4. Rental payments shall be paid by the Occupant, from legally available funds and subject to the California Constitution, in arrears on the last day of each month, upon invoice from the Owner, during said term as follows:

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

**SEVENTY-NINE THOUSAND EIGHT HUNDRED DOLLARS (\$79,800.00) FROM APRIL 1, 2020 THROUGH APRIL 30, 2020 AND MONTHLY THEREAFTER**

THE DAILY RATE FOR PURPOSES OF THE ABOVE CALCULATIONS IS BASED ON \$2,660 PER DAY FOR THE ENTIRE PREMISES.

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

**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:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, California 92651  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**To Occupant:** CEO/Real Estate  
County of Orange  
333 W. Santa Ana Blvd., 3<sup>rd</sup> Floor  
Santa Ana, California 92701  
Attention: Chief Real Estate Officer  
Telephone: (714) 834-6019  
(714) 834-2890  
E-Mail: Thomas.miller@coco.ocgov.com

**ALL NOTICES AND CORRESPONDENCE MUST REFERENCE  
OCCPANT AND PREMISES ADDRESS**

Upon invoice by Owner, as set forth above, Rental Payments 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 at the Premises, upon commencement of the Occupancy Agreement, shall be unobstructed and completely accessible for Occupant'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 utilities to the area occupied by the Occupant, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, laundry room etc., which Occupant shares with other users, if any:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- B. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for Occupant's operations.
- C. Owner shall secure any rooms in which persons can gather, including the restaurant, if any, at the commencement and provide keys to the Occupant.
- D. Lock hotel gymnasium and drain the pool and Jacuzzi, if possible, and not provide access unless requested by Occupant.

In the event of failure by the Owner to furnish any of the above utilities in a satisfactory manner, the Occupant may furnish the same at its own cost; and, in addition to any other remedy the Occupant may have, may deduct the amount thereof, including Occupant's administrative costs, from the rent that may then be, or thereafter become due hereunder. In addition, Owner shall provide a list of all utilities, including contact information, used to operate the Premises contracted out to third parties. Owner shall agree to make available an on-call facilities person to assist Occupant during the Term of this Occupancy Agreement.

Occupant will contract with third parties for elevator service only. Any cost for such services, if needed, will be invoiced at actual cost to the Occupant by the Owner as set forth above.

**Repair and Maintenance**

8. During the term of this Occupancy Agreement, the Occupant shall maintain the occupied Premises in good repair, general wear and tear excepted.

**Assignment and Subletting**

9. The Occupant shall have the ability to assign this Occupancy Agreement upon notice to the Owner.

**Quiet Possession**

10. The Owner agrees that the Occupant, 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 Occupant 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, Occupant, 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 Occupant.

In the event of any such destruction other than total, where the Occupant 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 Occupant 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 Occupant.

In the event the Occupant 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 Occupant 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 Occupant or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the Occupant's request, the Owner shall immediately identify an appropriate route through the building to access the Occupant occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the Occupant 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 Occupant 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, if any, 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](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 Occupant agency to implement such article.

**Holding Over**

15. In the event the Occupant 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 Occupant 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 Occupant 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 Occupant occupies the Premises following the effective date of termination.

**Surrender of  
Possession**

16. Upon termination or expiration of this Occupancy Agreement, the Occupant 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 Occupant 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 that the Occupant is self-insured for liability exposures. Under this form of insurance, the Occupant and its employees acting in the course and scope of their employment are insured for tort liability arising out of official Occupant business. All claims against Occupant based on tort liability should be presented as a government claim to the Government Claims Program through Occupant. (Gov. Code section 900, *et. seq.*)

**Hazardous Substance**

21. Occupant 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 Occupant's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the Occupant 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 Occupant is found to be in breach of this provision due to the issuance or a government order directing the Occupant to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the Occupant or any person acting under Occupant's direct control and authority, Occupant 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 Occupant or the Occupant incurs any liability during or after the term of the Occupancy Agreement in connection with contamination which pre-existed the Occupant's obligations and occupancy under this Occupancy Agreement or which were not caused by the Occupant, Owner shall hold harmless, indemnify, and defend the Occupant in connection therewith and shall be solely responsible as between Occupant 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 Occupant shall be and remain the property of the Occupant, and Occupant shall remove such property when vacating the Premises. Occupant 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. Occupant 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 Occupant 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 Occupant deems necessary.

**Authorization**

24. Occupant and Owner (each, a "signing party") each represents and warrants to the other that the person or persons signing this Occupancy Agreement on behalf of the signing party has full authority to do so and that this Occupancy Agreement binds the signing party. Concurrently with the execution of this Occupancy Agreement, if requested by either Party, each signing party shall deliver to the other a certified copy of a resolution of the signing Party's board of directors or other governing board authorizing the execution of this Occupancy Agreement by the signing Party.

**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 Occupant. During the Term, Owner shall make available an on-call facilities person to assist Occupant with understanding the operational demands of the Premises.

**Taxes**

26. Owner is solely responsible for all tax liabilities, including property taxes, or any assessments related to the Premises, including but not limited to those associated with utilities.

//

//

**N WITNESS WHEREOF, this Occupancy Agreement has been executed by the Parties hereto as of the dates written below**

COUNTY OF ORANGE,  
a political subdivision of the State of California

OWNER

[NAME]  
[NAME]

By \_\_\_\_\_  
THOMAS A. MILLER,  
CHIEF REAL ESTATE OFFICER  
COUNTY EXECUTIVE OFFICE  
PURSUANT TO M.O. DATED

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

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:  
COUNTY COUNSEL

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